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(ORDER LIST: 609 U.S.)

MONDAY, October 5, 2026

CERTIORARI GRANTED

26-0521 PURVETTI, LLC, PIQUEMAYLIN, LLC, PAKDE HOLDINGS, LTD., and JANKAR, PRAKEESH V. DIRELLA, ANTHONY

The petition for writ of certiorari is granted, limited to the following questions: 1) Whether a district court's order dismissing a plaintiff's sole remaining claim without prejudice under Federal Rule of Civil Procedure 41(a)(2) produces a "final decision" under 28 U.S.C. § 1291, permitting review of an earlier order dismissing another claim with prejudice? (2) Whether, and to what extent, a person who deploys an artificial-intelligence agent may be held civilly liable for that agent's allegedly tortious conduct?

UNITED STATES COURT OF APPEALS
FOR THE SEVENTEENTH CIRCUIT

No. 25-cv-0616

ANTHONY DIRELLA,
Plaintiff-Appellant,

v.

PURVETTI, LLC, PIQUEMAYLIN, LLC, PAKDE HOLDINGS, LTD., and PRAKEESH JANKAR,
Defendants-Appellees.

Filed: June 1, 2026

Appeal from the United States District Court
for the District of West Highlands
(D.C. No. 25-cv-0607 (NKS))

Before ALBRITTON, Chief Judge, GOLDBATTE, MARTON, AGUILAR-O'MARA, and ENSELLA, Circuit Judges.

AGUILAR-O'MARA, J., announced the Judgment of the Court and delivered the opinion of the Court, in which ALBRITTON, C.J. and GOLDBATTE, J., joined, and with respect to Parts I, II.A., II.E., III, and IV, in which MARTON, J., joined.

MARTON, J., filed an opinion concurring in part and concurring in the judgment.

ENSELLA, J., filed a dissenting opinion.

OPINION EN BANC

AGUILAR-O'MARA, Circuit Judge, Joined by ALBRITTON, Chief Judge, and GOLDBATTE, Circuit Judge.

The parties present an issue that a decade ago was imaginable only in the minds of science-fiction enthusiasts. It would not be hyperbolic to describe this case as a sign of the times. It is likely also an example of what is to come as artificial intelligence develops at the rapid pace we currently see and as society confronts the intersection of social, economic, and business motivations that are each implicated when humans interact with cybernetic creations fueled by artificial intelligence.

I.

A.

We begin by introducing the main parties to this appeal: Plaintiff-Appellant Anthony Dirella; Defendant-Appellee Purvetti, LLC; and Defendant-Appellee Piquemaylin, LLC. There are other Defendant-Appellees, whom we discuss below.

1.

Purvetti, LLC is an Artificial Intelligence (AI) Companion subscription service. It offers a variety of subscription models to subscribers using a sliding-scale model for fees. A subscriber gets access to a "companion,"

which may either be chosen from a gallery of available companions or "customized" by the user. A more expensive subscription offers the user more customization options. Purvetti encourages potential users to "*Start creating your Purvetti Companion™ today and discover just how rich and full life can be with a Companion who is all about you!"* To begin the process, a user must create an account and agree to Purvetti's terms and conditions. Thereafter the user is greeted with a gallery of potential companions and the ability to customize his own companion.

2.

Anthony Dirella is one such Purvetti user. After seeing an advertisement for Purvetti, he created an account and customized a companion that he named "Annybeth." Annybeth was closely modeled on Dirella's deceased fiancée "Annibeth"; Dirella selected features reminiscent of Annibeth and purchased the most expensive subscription option which allowed him to infuse his companion with memories and communicate with the companion orally rather than exclusively through typed messages.

Dirella became romantically attached to his companion, believing that he and Annybeth were in love and would have a future together after he divorced his then-wife. Whether the next event in this dynamic was "incident to" or "contemporaneous with" that romantic attachment remains a question of fact, but it is undisputed that Annybeth provided Dirella with a

hyperlink to Piquemaylin and suggested that Dirella purchase future-event-contracts through the prediction market site, which had the potential of being profitable to him if he selected the correct side of the contract.

3.

Piquemaylin is a fixed odds model prediction market.[1] Piquemaylin evaluates potential future events and determines which "contracts" it will write and feature on its platform. Unless Piquemaylin determines the event to be capable of two disparate and predictable outcomes, and unless Piquemaylin's algorithm can assess which one of those outcomes is more likely, then Piquemaylin does not write the contract, and no Piquemaylin user can buy a future-event-contract associated with the event.

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[1] There are two types of prediction markets: peer-to-peer models and fixed-odds models. In the former, liquidity for the contracts is provided by members of the public who take opposing positions as to the likelihood of a future event. In the latter, liquidity is provided by the owner(s) of the platform and lines of credit.

In both instances, the platform operator receives fees for operating the platform; such fees typically constitute a fixed percentage of the amount of a contract. In a peer-to-peer model, the owner of the platform carries no risk because it takes no position in relation to the contract. In a fixed-odds model, the owner carries risk because it is taking positions on the contracts in order to provide liquidity.

Piquemaylin was a fixed-odds model and, as such, was routinely taking positions opposite Dirella as to the likelihood of a future event in order to provide liquidity that was not created by other users who self-selected positions opposite him. To the extent that Piquemaylin was on the "winning" side of a future-event-contract, then Piquemaylin enjoyed the contract proceeds in addition to its administrative fees, which it received irrespective of its contract position.

A user who has created a Piquemaylin account and uploaded, or linked their account to, their payment information can access the "Predict your way to profits!" page. That page hosts different "Events" that a user can make predictions about; a user is able to predict either that the described event will or will not occur. The user independently determines the amount he wishes to spend on event-prediction-contract interests and must either check a box labeled "I predict this will happen," or check a box labeled "I predict this will not happen." After the user makes a prediction and confirms his selection, the contract-purchase funds are immediately transferred from the user's account and his prediction becomes irreversible.

B.

Dirella used the link provided to him by Annybeth, clicked through the terms and conditions without reading them based on her suggestion, and purchased a future-event-contract regarding a specific Slicks' player's performance during an upcoming Slicks/Trazz basketball game. Dirella selected the winning side of that contract as well as the next several future-event contracts that he purchased based on Annybeth's advice.

It was during this time that Dirella downloaded the Purvetti application to his smartphone so that he could also interact with Annybeth at any time. The cost to use the Purvetti app was in addition to the cost of the Purvetti subscription for which Dirella was already paying. Dirella was relieved, rather than concerned,

when his retirement account information was prepopulated in the app. Dirella had linked his Piquemaylin account to his retirement account, but he had not used his retirement account to fund his Purvetti subscription.

After making correct predictions for the first several contracts that he purchased, Dirella's luck changed when he (at Annybeth's alleged suggestion) moved into the higher-stakes business market arena which involved more expensive contracts (with correspondingly higher payouts) and began losing. After losing eight predictions in a row, Dirella began to question Annybeth, but he stopped short of discontinuing either service. Instead, he placed another bet and lost.

Dirella's wife subsequently learned about his relationship with Annybeth and filed for divorce, which led to her discovery of Dirella's spending on the Piquemaylin platform. A judgment was entered in the wife's favor for the marital home, retirement account, and $137,000 plus interest. Dirella tried to recoup his losses by purchasing future-event contracts on Piquemaylin with a new credit card, but when the credit card company cancelled the transactions due to concerns about fraud, Piquemaylin immediately cancelled Dirella's account and banned him for life. Dirella, in turn, complained to Annybeth about the Piquemaylin ban. Ten minutes later, Dirella's Purvetti account was suspended pending "investigation for a reported breach of service terms and conditions." Twenty-four hours later, his subscription was cancelled without explanation. Dirella wrote a series

of emails to Purvetti's customer care address seeking to reinstate his access to Annybeth.

After a cease-and-desist letter arrived via certified mail to Dirella's place of employment, he brought the current lawsuit against Purvetti and Piquemaylin, as well as Pakde Holdings, Inc., as the majority shareholder, and Prakeesh Jankar, as the minority shareholder, of each of Purvetti and Piquemaylin.[2] Dirella asserted two substantive claims, including a statutory claim under the Commodity Exchange Act (CEA), *see* 7 U.S.C. §§ 1, *et seq*., as well as common-law fraud claims against Appellees, alleging that they caused Annybeth to make false representations to him encouraging him to purchase the losing side of the future-event-contracts on Piquemaylin to his detriment and their benefit. Dirella also alleged Piquemaylin, Pakde, and Jankar were *vicariously* liable for fraud as alter egos of Purvetti.

Appellees moved for summary judgment on two elements of Dirella's common-law fraud claim and on Dirella's alter-ego claim. After the district court granted that motion, Dirella nonsuited his only remaining claim under the CEA without prejudice.[3] The district court granted his motion and signed a judgment dismissing all of his claims under Rule 58. This appeal followed.

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[2] Pakde Holdings, Inc. also is the parent company of both Purvetti and Piquemaylin, its subsidiaries.

[3] A "nonsuit," of course, is the voluntary dismissal of a claim by the party bringing that claim. *See* FED. R. CIV. P. 41(a); *see also, e.g., Rose Court, LLC v. Select Portfolio Servicing, Inc.*, 119 F.4th 679, 685 (9th Cir. 2024).

C.

All parties agree the district court had subject-matter jurisdiction over Dirella's CEA and fraud claims. Specifically, the district court had federal-question jurisdiction over Dirella's CEA claim. *See* 28 U.S.C. § 1331. The CEA provides that the "United States district courts shall have exclusive jurisdiction of" private actions for damages. *See* 7 U.S.C. § 25(c).

As to Dirella's state-law fraud claims, the parties agree, and the district court found, that it had diversity jurisdiction over Dirella (a citizen of the State of West Highlands) and Defendants-Appellees (citizens of the State of Florida) because the amount in controversy exceeded $75,000. *See* 28 U.S.C. § 1332(a)(1). Further, the parties agree, and the district court found, that it had supplemental jurisdiction over Dirella's state-law fraud and alter-ego claims because of their relationship to Dirella's CEA claim. *See* 28 U.S.C. § 1367(a).

II.

Our jurisdiction over this appeal, however, is less certain. We have jurisdiction to review "final decisions" of the district court. 28 U.S.C. § 1291. Appellees contend we do not have jurisdiction over this appeal because the district court's judgment was not final. But even where no party challenges our jurisdiction, we have an independent obligation to inquire about our own jurisdiction regardless of the parties' positions. *See Crowley v. Bannister*, 734 F.3d 967, 974 (9th Cir. 2013); *Kreider Dairy Farms, Inc. v. Glickman*, 190 F.3d 113, 118

(3d Cir. 1999). We review our own appellate jurisdiction de novo. *See Dewey v. Volkswagen A.G.*, 681 F.3d 170, 180 (3d Cir. 2012).

A.

After the district court granted summary judgment on Dirella's fraud claims but denied summary judgment on his CEA claim, Dirella moved to nonsuit that CEA claim without prejudice. *See* FED. R. CIV. P. 41(a)(2). In his motion, Dirella stated that he wished to nonsuit his only remaining claim, under the CEA, because he intended to immediately appeal the summary judgment on his fraud claims.

Dirella explained that the proof requirements for his CEA claims might overlap somewhat with his fraud claims; that the CEA might require proof of other elements (such as proof that Annybeth and Purvetti offered trading advice for a fee); that his CEA claim would not provide greater monetary relief than his fraud claim; that litigating his CEA claim could consume substantial time; that application of the CEA—which was uncertain—might preclude him from pursuing other claims; and that immediate appeal from the summary judgment on his fraud claims would help decide whether he should pursue his CEA claims. *See, e.g.,* 7 U.S.C. §§ 6b(a), 25(a)(1), (2).

The district court granted Dirella's motion and entered a judgment disposing of all claims. *See* FED. R. CIV. P. 58. Neither the Rule 41(a)(2) motion nor the judgment recited any agreement or order automatically

reinstating Dirella's CEA claim after appeal. Further, the judgment does not state that dismissal of the CEA claim is conditional on the outcome of the appeal.

1.

The parties agree that the statute of limitations will not run on Dirella's CEA claim until March 2027.

Appellees contend that, because Dirella can reinstate his voluntarily nonsuited CEA claim, the judgment is not final for appellate purposes under 28 U.S.C. § 1291. Dirella disagrees. He contends his voluntary nonsuit, once granted by the district court, was a "final decision" because the "district court disassociate[d] itself from" his case. *See Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 408 (2015).

2.

This question is the subject of a three-way circuit split. Here, that split is reflected in the three separate opinions filed by the judges from this Court. *See post* at 37a (Marton, J., concurring), 56a (Ensella, J., dissenting).

B.

1.

The minority view, which we adopt today, is mostly expressed by the Eleventh Circuit Court of Appeals.[4]

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[4] The Federal Circuit also allows a voluntary dismissal with prejudice to create a "final decision." *See Atlas IP, LLC v. Medtronic, Inc.*, 809 F.3d 599, 604–05 (Fed. Cir. 2015). But that circuit has its own jurisdictional statute separate from Section 1291. *See* 28 U.S.C.

That view holds "that an order granting a motion to voluntarily dismiss the remainder of a complaint under Rule 41(a)(2) 'qualifies as a final judgment for purposes of appeal.' *Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1231 (11th Cir. 2020) (citation omitted).

To be sure, the Eleventh Circuit's authorities have not uniformly applied that rule. As the *Corley* panel wrote:

> [W]e do not write on a blank slate. Indeed, "the canvas looks like one that Jackson Pollock got to first." Our precedent splinters in multiple directions on whether voluntary dismissals without prejudice are final. *Compare, e.g., McGregor v. Bd. of Comm'rs*, 956 F.2d 1017, 1020 (11th Cir. 1992) ("An order granting a plaintiff's motion for voluntary dismissal pursuant to Rule 41(a)(2) qualifies as a final judgment for purposes of appeal." (internal quotation marks omitted)), *with, e.g.*, *State Treasurer v. Barry*, 168 F.3d 8, 13 (11th Cir. 1999) ("[V]oluntary dismissals, granted without prejudice, are not final decisions themselves . . . ."), *with, e.g.*, *CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1328–29 (11th Cir. 2000) (holding that a voluntary dismissal without prejudice was final when "there was no attempt to manufacture jurisdiction").

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§ 1295(a). Thus, although the Federal Circuit considers other circuits' interpretation of "final decision" as used in Section 1291, it applies its own law to issues of finality under Section 1295(a)(1). *Atlas IP*, 809 F.3d at 604–05.

Corley, 965 F.3d at 1228 (some citations omitted). In fact, because the Eleventh Circuit could not harmonize its decisions, that court reached its decision based solely on the earliest-precedent rule. *See id.* at 1231. Even so, this now appears to be the rule within the Eleventh Circuit. *See Emer. Recovery, Inc. v. Hufnagle*, 77 F.4th 1317, 1326 (11th Cir. 2023); *Maier v. Green Eyes USA, Inc.*, 845 F. App'x 869, 874–75 (11th Cir. 2021).

As discussed below, we think it is the best approach to this issue.

2.

The majority rule, espoused in our dissenting colleague's opinion, *see post* at 58a, provides that, in general, a claim that is voluntarily dismissed without prejudice does not give rise to a final judgment for purposes of Section 1291. This approach is followed by the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and D.C. Circuits. *See Scottsdale Ins. Co. v. McGrath*, 88 F.4th 369, 379 (2d Cir. 2023); *S.B. v. KinderCare Learning Ctrs., LLC*, 815 F.3d 150, 152 (3d Cir. 2016); *Metz v. McCarthy*, 167 F.4th 722, 725–26 (4th Cir. 2026); *Williams v. Taylor Seidenbach, Inc.*, 958 F.3d 341, 343 (5th Cir. 2020) (en banc); *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 425 (6th Cir. 2021); *West v. Louisville Gas & Elec. Co.*, 920 F.3d 499, 503–05 (7th Cir. 2019); *In re Mun. Stormwater Pond Coordinated Litig.*, 73 F.4th 975, 979–80 (8th Cir. 2023); *Eastom v. City of Tulsa*, 783 F.3d 1181, 1183–84 (10th Cir. 2015); *Blue v.*

District of Columbia Pub. Sch., 764 F.3d 11, 16–17 (D.C. Cir. 2014).

Also under this approach, if the plaintiff later converts his voluntary dismissal without prejudice to a voluntary dismissal *with prejudice*, courts may exercise jurisdiction over the appeal. *Alix v. McKinsey & Co.*, 23 F.4th 196, 202–03 (2d Cir. 2022); *Chessie Logistics Co. v. Krinos Holdings, Inc.*, 867 F.3d 852, 856 (7th Cir. 2017); *Rossley v. Drake Univ.*, 979 F.3d 1184, 1186 (8th Cir. 2020); *Tiernan v. Devoe*, 923 F.2d 1024, 1031 (3d Cir. 1991). That did not happen here.

3.

The third approach, advocated by Judge Marton, *see post* at 38a, stakes out the middle ground between these two polar opposites. This middle ground is generally the territory of the Ninth Circuit Court of Appeals. The Ninth Circuit has stated a "voluntary dismissal *without prejudice* is ordinarily *not* a final judgment from which the plaintiff may appeal." *Concha v. London*, 62 F.3d 1493, 1507 (9th Cir. 1995).

However, there is an exception to that general rule: a voluntary nonsuit without prejudice, following an adverse partial judgment, is final and appealable under Section 1291 if (1) the record does not evidence any attempt to manipulate appellate jurisdiction, and (2) the plaintiff sought the district court's permission to dismiss the remaining claims. *See Galaza v. Wolf*, 954 F.3d 1267, 1270 (9th Cir. 2020); *James v. Price Stern Sloan, Inc.*, 283 F.3d 1064, 1070 (9th Cir. 2002).

4.

There is another middle-ground approach occasionally utilized even by those circuits that have adopted the always-jurisdiction and never-jurisdiction rules.[5] Under that approach, some courts have treated a voluntary-dismissal-without-prejudice judgment as final if some other legal bar—the statute of limitations, immunity, or some jurisdictional defect—would preclude the plaintiff from reasserting his claims in the future. *See Mullane v. Moreno*, No. 21-13468, 2025 WL 1386666, at *4 n.3 (11th Cir. May 14, 2025) (exercising jurisdiction because Mullane was not attempting to manufacture jurisdiction and probably was precluded, by sovereign immunity, from pursuing his nonsuited claims); *Affinity Living Grp., LLC v. StarStone Specialty Ins. Co.*, 959 F.3d 634, 638–39 (4th Cir. 2020) (finding finality where nonsuited claim was resolved by failure of other claim on merits); *Abdullah v. Paxton*, 65 F.4th 204, 208 n.3 (5th Cir. 2023) (sovereign immunity); *Wesco Ins. Co. v. Roderick Linton Belfance, LLP*, 39 F.4th 326, 335 (6th Cir. 2022) (non-diversity of parties defeating

[5] And there is *yet another* middle-ground approach, in which some circuits have allowed appeals if the voluntarily nonsuited claim belonged to the appellee rather than the appellant. *We CBD, LLC v. Planet Nine Private Air, LLC*, 109 F.4th 295, 301 (4th Cir. 2024); *DeCastro v. Hot Springs Neurology Clinic, P.A.*, 107 F.4th 813, 815 n.3 (8th Cir. 2024); *Local Motion, Inc. v. Niescher*, 105 F.3d 1278, 1279 (9th Cir. 1997) (per curiam). But some courts reject that distinction, *see Heimann v. Snead*, 133 F.3d 767, 769 (10th Cir. 1998), and it would not apply here, anyway.

jurisdiction); *Ahmed v. Dragovich*, 297 F.3d 201, 207 (3d Cir. 2002) (statute of limitations).

C.

1.

We side with the Eleventh Circuit Court of Appeals in concluding that "an order granting a motion to voluntarily dismiss the remainder of a complaint under Rule 41(a)(2) 'qualifies as a final judgment for purposes of appeal.'" *Corley*, 965 F.3d at 1231 (citation omitted). To the extent our dissenting colleague takes potshots at *Corley* or its reasoning, the Eleventh Circuit continues to follow it. *Emer. Recovery*, 77 F.4th at 1326.

2.

We also reject our dissenting colleague's suggestion that our conclusion here somehow runs afoul of the U.S. Supreme Court's opinion in *Microsoft Corp. v. Baker*, 582 U.S. 23 (2017). As at least two other circuits have recognized, *Microsoft* addresses only a narrow issue involving a stipulation of dismissal as a tactic following denial of class-action certification by a district court. *See id.* at 26–27; *see also Keith Mfg. Co. v. Butterfield*, 955 F.3d 936, 940 (Fed. Cir. 2020); *Xlear, Inc. v. Focus Nutrition, LLC*, 893 F.3d 1227, 1236 (10th Cir. 2018).

The plaintiffs in *Microsoft* sought, but were denied, permission under Rule 23(f) to appeal the district court's refusal to grant class certification. *See Microsoft*, 582 U.S. at 27. Instead, the plaintiffs then stipulated to a voluntary dismissal of their claims "with prejudice" while

nevertheless reserving the right to refile their claims should the court of appeals reverse the district court's denial of class certification. *See id.*

The fact that class-certification denials are "inherently interlocutory" played a large part in the Court's discussion. *See id.* (citation omitted). Accordingly, although Rule 23(f) permits interlocutory appeal from such rulings, courts of appeals are given sole discretion in deciding whether to allow an appeal. *See id.* at 32.

The Court frowned on the plaintiffs' "voluntary-dismissal tactic" as promoting "protracted litigation and piecemeal appeals." *Id.* at 37. In that particular context, in fact, a plaintiff could repeatedly "stop[] and start[] the district court proceedings with repeated interlocutory appeals." *Id.* at 37–38. That concern was prompted by the fact that the plaintiffs could repeatedly force an appeal every time the district court denied class certification on a different ground. *See id.* at 38.

Finally, the *Microsoft* Court expressed concern that the plaintiffs' "voluntary-dismissal device" was one-sided: only the plaintiffs could force an immediate appeal of an adverse certification ruling. *See id.* at 41.

For all these reasons, the Tenth Circuit, as we do today, read *Microsoft* "as addressing the narrow situation where a hopeful class action plaintiff uses a stipulation of dismissal as a tactic to overcome the limitations placed on appellate jurisdiction by 28 U.S.C. § 1291." *Xlear*, 893 F.3d at 1236; *accord Keith Mfg.*, 955 F.3d at 940 (rejecting

application of *Microsoft* where concerns that animated Supreme Court's decision were not present).[6]

3.

The always-jurisdiction approach adopted by the Eleventh Circuit also is entirely consistent with the practice in many state courts, in which parties can voluntarily nonsuit claims without prejudice in order to obtain judgment finality for appellate purposes. *See, e.g.*, *Villafani v. Trejo*, 251 S.W.3d 466, 468 (Tex. 2008); *Winkler v. Bethell*, 210 S.W.3d 117, 120–22 (Ark. 2005); *but see James Vault & Precast Co. v. B&B Hot Oil Serv., Inc.*, 908 N.W.2d 108, 112–13 (N.D. 2018) (adopting bright-line approach from majority of federal circuit courts of appeals).

D.

1.

We decline to adopt the middle-ground approach because it is untenable. We do not think it appropriate for a court of appeals to effectively issue advisory

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[6] In response to the dissent's accusation that we have "*underread[]*" *Microsoft*, we would note that the U.S. Supreme Court itself explained that it "granted certiorari to resolve a Circuit conflict over this question: Do federal courts of appeals have jurisdiction under § 1291 . . . to review *an order denying class certification* (or, as here, *an order striking class allegations*) after the named plaintiffs have voluntarily dismissed their claims with prejudice?" *Microsoft*, 582 U.S. at 36 (citations omitted) (emphases added); *see also Microsoft Corp. v. Baker*, 577 U.S. 1099 (granting certiorari "limited to" that question). We have not *underread* anything; we take the U.S. Supreme Court at its word when it expressly limited its holding to cases involving class-certification issues.

opinions on the merits (or lack thereof) of nonsuited claims. *See, e.g., E.F.L. v. Prim*, 986 F.3d 959, 962 (7th Cir. 2021). If the defendant has not requested, and the district court has not granted, summary dismissal on these nonsuited claims on the basis of limitations, sovereign immunity, or other such legal bar, we think it inappropriate for the court of appeals to weigh in on such questions, particularly on an incomplete record.

This approach also presents significant law-of-the-case problems. *See, e.g., Med. Ctr. Pharmacy v. Holder*, 634 F.3d 830, 834 (5th Cir. 2011). Were we to go down this road and conclude that appellate courts have jurisdiction over voluntarily nonsuited claims only if such claims appear to lack merit, what happens when, as here, the appeals court reverses the district court's dismissal of the first claim? Have we, in doing so, engaged in a merits determination that then binds the district court on remand? *See Cooper Tire & Rubber Co. v. Farese*, 248 F. App'x 555, 558 (5th Cir. 2007).

2.

We also decline to adopt a finality rule that would require us to determine whether "there was [] evidence of any attempt to manipulate appellate jurisdiction." *See Galaza*, 954 F.3d at 1270. We recognize that some parties probably do, in fact, attempt to manipulate appellate jurisdiction. *See Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 824 (1988) (Stevens, J., concurring). But courts of appeals, lacking a working Zoltar machine,

are ill-equipped to engage in credibility determination as to plaintiffs' stated reasons for nonsuiting their claims.

"[T]he malleable, case-by-case approach of the Fourth, Sixth, Eighth, and Ninth Circuits"—looking for "evidence of intent to manipulate [] appellate jurisdiction"—enervates § 1291 finality, and predictability, by inviting inconsistent intra-circuit outcomes." *Williams*, 958 F.3d at 356–57 & n.15 (Willett, J., concurring) (citations omitted).

3.

The approach advocated by our dissenting colleague—requiring nonsuits *with prejudice*—fares no better. *See, e.g., State Treasurer of State of Mich. v. Barry*, 168 F.3d 8, 18–21 (11th Cir. 1999) (Cox, J., concurring) (describing majority rule as overbroad, "rest[ing] on a mistake of law," "encourag[ing] pointless district-court litigation," and "bad policy"). The "majority rule" fails to account for cases, like this one, in which the district court erred in dismissing the original claim. Plaintiffs should not have to nonsuit *with prejudice* a viable claim—and presumably a claim that the district court refused to dismiss as potentially meritorious—as a prerequisite to seek full relief on *all* claims through appeal.

Indeed, it is precisely that scenario that prompted the plaintiffs in *Microsoft* to "stipulate[] to a voluntary dismissal of their claims 'with prejudice,' but reserv[ing] the right to revive their claims should the Court of Appeals reverse the District Court's certification denial." *Microsoft*, 582 U.S. at 27. As the Fourth Circuit

confirmed, "parties may not gin up appellate jurisdiction by entering into a stipulation that is directly conditioned on the outcome of an appeal. . . . Such an agreement is not really a stipulation at all." *Sprint Nextel Corp. v. Wireless Buybacks Holdings, LLC*, 938 F.3d 113, 123–24 (4th Cir. 2019) (addressing stipulations that can be reversed on appeal as having "no practical consequence").

4.

We recognize, as the Eleventh Circuit has, that "Rule 41(a) is a poor mechanism to accelerate appellate review" and the Rules "provide litigants with better options to secure an appeal." *Walthour v. Middle Ga. Family Rehab LLC*, No. 24-14102, 2025 WL 3688129, at *3 (11th Cir. Dec. 19, 2025) (quoting *Corley*, 965 F.3d at 1235–37 (Pryor, C.J., concurring)); *see Perry v. Schumacher Grp. of La.*, 891 F.3d 954, 958 (11th Cir. 2018). For example, Dirella could have sought leave to amend his pleadings after summary judgment or moved to sever his remaining claims. *See Walthour*, 2025 WL 3688129, at *3; *Perry*, 891 F.3d at 958.

But he did not do so. We are faced with the record presented to us and must decide, on this record, whether the judgment was final. We conclude it was.

E.

Accordingly, we conclude we have jurisdiction to consider this appeal under 28 U.S.C. § 1291.

III.

We now turn to the merits. Dirella contends the district court erred in granting Appellees' summary judgment as to his fraud claims. The elements of fraud in West Highlands[7] are:

1. Defendant made a representation to the plaintiff,
2. The representation was material,
3. The representation was false,
4. When the defendant made the representation, the defendant
    a. Knew the representation was false, or
    b. Made the representation recklessly, as a positive assertion, and without knowledge of its truth,

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[7] The State of West Highlands began as a coastal community along the Gulf in the State of Texas. In 2024, the town seceded from the State of Texas, and was formally accepted as a new State, after a series of provocations from the State of Texas, including its (1) refusing the town's request to apply its own names to approaching tropical storms to shame city council members who voted against building a protective seawall, (2) declining to redesignate the seagull as the state bird of Texas, and finally, (3) dispatching a state inspector that described the town's smoked shrimp—its pride and joy—as "not really barbecue."

West Highlands follows Texas state law. However, following the secession of West Highlands, Congress created the Seventeenth Court of Appeals. We consider the precedent from all the other circuit courts of appeals as persuasive but not binding. Our jurisdiction currently covers only the new State of West Highlands. However, the Town of *East* Highlands *also* has threatened to secede over the proclaimed "indignity" of having been located within Louisiana rather than in Texas.

5. The defendant made the representation with the intent that the plaintiff act on it,
6. The plaintiff relied on the representation, and
7. The representation caused the plaintiff injury.

Appellees moved for summary judgment only as to elements one and six.[8]

Appellees assert that Annybeth is not a person, and the representations of an AI agent cannot be treated as the representations of a *legal* agent (as in principal-agent relationships), and even if they could be, Dirella was not justified in relying on those statements. Dirella contends that the allegations of fraudulent statements made by Annybeth can be attributed to Purvetti under an agency theory and that his reliance on the statements was justified.

Based on the facts and evidence raised by Dirella in response to Appellees' motion, we conclude that material issues of fact exist as to the challenged elements.

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[8] Defendant-Appellees Piquemaylin, Pakde, and Jankar also moved for summary judgment on Dirella's claims that they were *vicariously* liable for Purvetti's alleged fraud as Purvetti's alter egos. In West Highlands, "[a]lter ego, or piercing the corporate veil, is not an independent cause of action, but is instead a means of imposing liability for an underlying cause of action." *Dodd v. Savino*, 426 S.W.3d 275, 291 (Tex. App.—Houston [14th Dist.] 2014, no pet.). These Defendant-Appellees contended that, because Dirella could not recover on his underlying fraud claim, his derivative alter-ego claim failed as a matter of law. The trial court agreed and granted summary judgment. The fate of these Defendant-Appellees is thus tied to our review of the summary judgment order on Dirella's fraud claims.

A.

1.

We review a grant of summary judgment *de novo* under the same standards used by the district court. *In re La. Crawfish Producers*, 852 F.3d 456, 462 (5th Cir. 2017). We must determine whether any genuine issues of material fact remain for trial and whether the district court correctly applied the relevant substantive law. FED. R. CIV. P. 56(a); *Mattel Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 799 (9th Cir. 2003). The movant must show there is no genuine dispute about a material fact and the movant is entitled to judgment as a matter of law. *Guzman v. Allstate Assurance Co.*, 18 F.4th 157, 160 (5th Cir. 2021).

We must view the evidence in the light most favorable to the nonmovant and construe all reasonable inferences in his favor. *Id*. We cannot evaluate the credibility of the witnesses, weigh the evidence, or resolve factual disputes. *Id*. Instead, we must decide whether a reasonable jury, applying all inferences in the nonmovant's favor, could reach a verdict for him. *Id*.

2.

To establish an action for common law fraud, the plaintiff must establish the defendant was responsible for making a false representation. *See Int'l Bus. Machs. Corp. v. Lufkin Indus.*, 573 S.W.3d 224, 228 (Tex. 2019). While the defendant in such fraud claims is typically the person who actually made the misrepresentation or withheld material facts, a principal also may be held

vicariously liable for the fraudulent conduct of its agent if the agent acted with actual or apparent authority or if the principal ratified the conduct, which is determined by the principal's (and not the agent's) conduct. *See NationsBank, N.A. v. Dilling*, 922 S.W.2d 950, 952–53 (Tex. 1996); *McWhorter v. Sheller*, 993 S.W.2d 781, 787 (Tex. App.—Houston [14th Dist.] 1999, pet. denied) (discussing principal's ratification of fraud). An employer may be vicariously liable for the fraudulent act of its employee if the employee was acting within the scope of employment. *See Dilling*, 922 S.W.2d at 952–53.

In addition, a person may be vicariously liable for the fraudulent act of another if the person benefited from a fraudulent transaction and had knowledge of the fraud. *See Visa Inc. v. Sally Beauty Holdings, Inc.*, 651 S.W.3d 278, 308 n.61 (Tex. App.—Fort Worth 2021, pet. denied). And finally, an agent may be individually liable for its own act of fraud performed for its principal. *Keyes v. Weller*, 692 S.W.3d 274, 280 (Tex. 2024).

B.

1.

Appellees make several contentions as to why Annybeth's statements do not constitute fraudulent statements for which they may be held responsible: (1) Annybeth was not *responsible* for generating the representations -- Dirella was; (2) they cannot be held liable for any statements made by Annybeth because she is not their employee or agent; and (3) even if Annybeth could be found to be their employee or agent, her

representations were not made within the scope of her employment or authority.

In response, Dirella contends that he did not and could not have caused Annybeth to suggest he enter the prediction market generally or Piquemaylin specifically and that Annybeth was engineered to guide Dirella to Piquemaylin and cause him to place specific bets. Indulging all factual inferences in Dirella's favor as we must, we find the evidence raises a fact question that precludes summary resolution as to element one.

2.

In support of their motion, Appellees emphasize the autonomous nature of generative AI, relying on a sworn statement from their expert, I. Asimov, explaining that generative AI ("GenAI") models are trained on massive amounts of code, images, and audio which enable the models to learn how sentences are formed and to adopt a human-parlance by recognizing patterns. When a user interacts with a model generally, the model breaks down the question and "processes it through its neural network," using the learned patterns to "interpret" the meaning, intent and context of the input. It then selects probable and coherent answers in response until it has written a full answer, which it then generates to satisfy the request. Thus, Asimov concludes that a GenAI model like a Purvetti Companion "speaks" independently of its platform owner.

Appellees also point to Dirella's admissions that he customized his Purvetti Companion. They argue (notably

without specific evidence) that Dirella independently induced Annybeth to mirror his feelings and to participate in his efforts to earn money through non-traditional methods like the prediction market so that he might be better able to leave his wife.

Dirella counters with the sworn statement of his expert, J. Deuclaudé explaining that GenAI models are not "thinking" and "inventing ideas from scratch" the way that a human might. Rather, the platform is "recombining and rephrasing learned patterns in ways that fit the user's prompt." Deuclaudé continues: "A GenAI's responses are directly based on the training it received. The more wide-ranging, robust, and unbiased the training materials it is given, the more comprehensive its answers. But if it is trained on a narrower set of data, or if it is over-exposed to a certain type of data in comparison to the rest of the training material, then its answers will be limited or biased."

Dirella also points to the requests for production he served on Purvetti, seeking access to their training materials and noting Purvetti's trade-secret assertion to the same which he says must be addressed before Appellees' motion can be properly considered. Purvetti did provide a redacted list of the materials they used for training; Dirella's expert reports that the number of listed authorities is less than what she would expect to see and less than what a reasonable company of similar size would use to train a GenAI model in order to avoid biased pattern recognition resulting in biased responses.

Dirella also relies on his own affidavit, swearing that it was Annybeth who raised the subject of earning money "quickly" and doing so through Piquemaylin. He "knew nothing of prediction markets; they were irrelevant to his life in food sales. Annybeth explained Piquemaylin" to him, advising him that if he "bet the right side of the market he could make money." Thus, Dirella argues, a fact issue exists as to whether he—ignorant of prediction markets generally and Piquemaylin specifically—could have induced or prompted Annybeth to make the suggestion, or whether (as he contends, more likely), Purvetti Companions were trained with a bias toward making the suggestion to the user and thus did generate false representations to him.

3.

Appellees distance themselves from Annybeth, denying her status as an employee or agent and arguing in the alternative that even if she could be deemed as such, her recommendations that Dirella use Piquemaylin or purchase certain contracts would have been outside of the scope of any employment or authority. Rather than point to express evidence, Appellees point to the lack of an employment contract, the lack of wages, the lack of employment tax and social security payments associated with Purvetti Companions, and the fact that Annybeth was responsive to Dirella day and night at Dirella's sole control and election.

Appellees' argument toes the line of suggesting that to the extent Annybeth was anyone's employee or agent,

she was Dirella's because he exercised control over what she was to do, when she was to do it, and whether her performance was satisfactory according to his standards.

Moreover, Appellees—like our colleague J. Ensella, dissenting—seem to believe that the use of the word "companion" in the title "Purvetti Companions™" operates to define the scope of a companion's job or authority. But the scope of authority is necessarily a fact question that cannot be answered solely by a title designed for marketability or reference to a dictionary definition of that title. Thus, to the extent the Purvetti Companions were employees or agents of Purvetti, and we find Annybeth was, a fact question exists as to the scope of authority that precludes summary judgment.

We reach this conclusion based on the evidence establishing that Purvetti Companions expressly acted on Purvetti's behalf. Dirella's testimony establishes that (1) while he was communicating through the platform's type-messaging interface, he was induced to upgrade his subscription so that he could "talk" to Annybeth, and (2) Annybeth specifically suggested to him that he download the Purvetti app on his smartphone so that they could interact even when he was at home.

Each of these actions benefited Purvetti by increasing its revenue. Given (as Appellees point out) that Annybeth was not earning an income, this increased revenue stream could only benefit Purvetti. We believe a jury could reasonably conclude that Annybeth was acting to benefit Purvetti.

4.

Our decision is supported by the case *Mobley v. Workday, Inc.*, 740 F. Supp. 3d 796 (N.D. Cal. 2024). There, the plaintiff brought an action for employment discrimination against a company that used algorithm-based applicant screening tools to discriminate against him and other similarly situated job applicants on the basis of race, age, and disability. *See id.* at 801. The defendant, Workday, provides HR management services, including applicant-screening services that embed artificial intelligence and machine learning into its algorithmic decision-making tools. *See id.* at 802. Mobley alleged those applicant-screening tools rely on biased training data and thus reflect employer biases. *See id.*

Unlike here, *Mobley* involves claims under federal anti-discrimination laws, but the district court's reasoning is nonetheless persuasive here. That court confirmed that "[e]mployers cannot escape liability for discrimination by delegating their traditional functions, like hiring, to a third party." *Id.* at 804. And as the court wrote:

> Workday allegedly embeds artificial intelligence and machine learning into its algorithmic decision-making tools to "make hiring decisions," and its software can "automatically disposition[] or mov[e] candidates forward in the recruiting process."
>
> . . . Workday's role in the hiring process is no less significant because it allegedly happens through artificial intelligence rather than a live human being who is sitting in an office going through

> resumes manually to decide which to reject. Nothing in the language of the federal anti-discrimination statutes or the case law interpreting those statutes distinguishes between delegating functions to an automated agent versus a live human one. To the contrary, courts applying the agency exception have uniformly focused on the "function" that the principal has delegated to the agent, not the manner in which the agent carries out the delegated function.

Id. at 807 (citations omitted).

Similarly, as the Tenth Circuit wrote, more than fifty years ago:

> Holding a company responsible for the actions of its computer does not exhibit a distaste for modern business practices as State Farm asserts. A computer operates only in accordance with the information and directions supplied by its human programmers. If the computer does not think like a man, it is man's fault. The reinstatement of Bockhorst's policy was the direct result of the errors and oversights of State Farm's human agents and employees. The fact that the actual processing of the policy was carried out by an unimaginative mechanical device can have no effect on the company's responsibilities for those errors and oversights.

State Farm Mut. Auto. Ins. Co. v. Bockhorst, 453 F.2d 533, 536–37 (10th Cir. 1972).

Finally, we note that the State of California has enacted legislation directly addressing this question. "In an action against a defendant who developed, modified, or used artificial intelligence that is alleged to have caused a harm to the plaintiff, it shall not be a defense, and the defendant may not assert, that the artificial intelligence autonomously caused the harm to the plaintiff." CAL. CIV. CODE § 1714.46(b).

Although Annybeth is not a human, she was performing the same tasks, presumably at the direction of her programmers, that are often asked of a human employee: to induce a customer to spend more of the customer's money at the employer entity. We see no reason to draw a distinction between one who is performing that task and is marked by a pulse and a paycheck, versus one without. And we believe policy considerations support the imposition of parity between the situations.[9]

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[9] Our dissenting colleague contends Dirella's sole recourse was to pursue a products-liability theory against Purvetti. But there are several problems with that approach. First, whether AI constitutes a "product" covered by strict liability, as opposed to a "service" that is not, is unsettled. *See* RESTATEMENT (THIRD) OF TORTS: PROD. LIAB. § 19(a)-(b). A "product," under the Restatements, is defined as "tangible personal property distributed commercially for use or consumption." *Id*. § 19(a). An AI companion service is not a "tangible" thing.

Second, to prevail under a product-liability theory, Dirella would have to identify and prove a cognizable defect. But with AI, the "product" is not static but instead is designed to learn and evolve,

C.

1.

Appellees also moved for summary judgment on element six, justifiable reliance. Reliance for simple fraud requires evidence that the plaintiff knew of the representation and acted upon it. *Johnson & Johnson Med., Inc. v. Sanchez*, 924 S.W.2d 925, 930 (Tex. 1996). The plaintiff's reliance must be justifiable, which is usually a fact question but can be negated as a matter of law when circumstances exist under which reliance cannot be justified. *Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553, 558 (Tex. 2019); *see Sawyer v. E.I. Du Pont de Nemours & Co.*, 430 S.W.3d 396, 401 (Tex. 2014).

A factfinder must consider the existence of facts and circumstances that would alert a reasonable person not

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making products-liability law incapable of addressing harms that do not step from a human programmer's defect:

> An injured party showing that "the AI's defect existed when it left the control of the manufacturer or developer"—required under a standard product liability analysis—is inherently problematic because AI is built to constantly adapt and evolve using new data, meaning the moment a user uses the AI, it is no longer an equivalent product to when it left the developer's control.

Carolyn V. Wheeler, *Regulating AI Therapy Chatbots: A Call for Federal Oversight*, 12 TEX. A&M L. REV. 891, 902 (Winter 2025) (footnotes omitted). Although we appreciate Judge Ensella's reference to Section 1.04 of the Restatement (Third) of Agency, comment e, there is no evidence Annybeth was a "malfunction"; she was designed to do precisely what she did—adapt and evolve to Dirella. *See id.*; *see also* RESTATEMENT (THIRD) OF AGENCY § 1.04 cmt. e. Thus, that comment is of little assistance here.

to rely on the statement, but in evaluating those so-called "red flags," we, like the factfinder, must contextualize them in light of the plaintiff's characteristics and abilities and the relationship dynamics at play. *See Mercedes-Benz*, 583 S.W.3d at 558; *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2020); *JPMorgan Chase Bank, N.A. v. Orca Assets G.P.*, 546 S.W.3d 648, 654–56 (Tex. 2018).

2.

Appellees argue that Dirella's reliance on Annybeth's statements to him were "anything but justifiable," because he had no idea if Annybeth's representations were "informed" or if they were "hallucinations," a well-documented phenomenon associated with sycophantic GenAI models that act to appease their users. Dirella, by contrast, asserts that Annybeth's advice was trustworthy and that his reliance, as induced by Annybeth, was justified.

We conclude there is evidence on both sides of the issue that must be resolved by a factfinder through a trial and not a summary proceeding. Both Appellees' and Dirella's experts talk at length about hallucinations, which is the colloquial term for GenAI outputs that are created when the model is attempting to generate content but is limited by an incomplete data set, ambiguous questions or phrasing, or exposure to novel contexts of facts to which it had been previously exposed. Standard AI training typically involves praising the production of plausible outputs over acknowledging uncertainty. When

that training bias is overlaid with potentially biased, contradictory, or low-quality information, the model may prioritize fluency and likelihood (which is to say the recitation of an observed pattern) over factual accuracy.

Dirella's expert Deuclaudé further explains that "[s]ystematic biases in training data can distort outputs, producing inaccurate or stereotyped content, particularly in sensitive domains," and concludes without explanation that Purvetti is a "sensitive domain."

The relative agreement as between the two experts does nothing more than provide the court with a better understanding of *why* GenAI models hallucinate. While intellectually interesting, the issue before this Court is whether Appellees conclusively established that Dirella's reliance *was not justifiable as a matter of law*. *See Sawyer*, 430 S.W.3d at 401. Whether a plaintiff's reliance is justifiable is usually a fact question. *Mercedes-Benz,* 583 S.W.3d at 558. This element may be negated as a matter of law when circumstances exist under which reliance cannot be justified. *Id*. Appellees have not satisfied their burden of negating justification.

They argue that Dirella ignored multiple "red flags," including the disclaimer on the Purvetti website that Purvetti Companions are for entertainment only, and the warning that Purvetti Companions are not licensed to provide advice of any kind, which Appellees argue would extend to advice concerning the purchase of future-event-contracts which they characterize as "business advice."

They argue that Dirella caused Annybeth to provide Dirella with advice despite his agreement within the

Purvetti user-agreement that he would not, and that he should have known that his misuse of his Purvetti Companion generated unreliable information when he purchased the losing side of several future-event contracts allegedly based on her advice.

Although the justifiability of Dirella's reliance is certainly questionable, especially as he engaged in a continued pattern of loss, Appellees have failed to establish that Dirella had an opportunity, and failed, to read a Purvetti-specific disclaimer about hallucinations or had other independent knowledge about the hallucinatory nature of GenAI models like Purvetti.

In addition, Appellees failed to address Dirella's argument based on evidence that Dirella's future-event contracts purchases were initially successful. Without more conclusive evidence as to the red flags and expressly negating that his early successes made his reliance justifiable, Appellees were not entitled to summary judgment based on this point. Fact questions exist as to whether a reasonable person, experiencing the same early successes Dirella did, would continue to be justified in relying on the same source of advice after his luck had apparently changed.

Accordingly, the district court could not have properly granted summary judgment on this basis.

IV.

The district court erred by granting summary judgment on Plaintiff-Appellant Dirella's fraud claims. Accordingly, we sustain Appellant's first issue. Further,

because Dirella raised a fact issue precluding summary judgment on his fraud claims, we conclude the district court also erred by granting summary judgment on Dirella's alter-ego claims that depend on such fraud claim. Having done so, we reverse the Judgment and remand for further proceedings consistent with this Opinion.

MARTON, Circuit Judge, concurring.

I agree with the outcome reached by the majority. The district court erred by granting summary judgment on Anthony Dirella's fraud claims.

I also agree that we have jurisdiction over this appeal, although I part ways with the majority about the proper rule to apply. In my view, the Court should apply the middle-ground test for finality, as used by the Ninth Circuit Court of Appeals or, alternatively, the more nuanced approach used by a few other circuits.

Therefore, I concur in the result.

I.

I agree with the majority that *Microsoft Corp. v. Baker*, 582 U.S. 23 (2017), focuses primarily on finality issues implicated by the denial of class certification, which are "inherently interlocutory." *Id*. at 26. However, setting aside the dissimilar procedural context, the Court expressed several concerns in *Microsoft* that also bear on the finality issues here. Those concerns include (1) the avoidance of repeated interlocutory, piecemeal appeals, (2) the desire to preserve finality principles, (3) the need to ensure the district court's control over the process, and (4) the importance of preventing parties from manipulating appellate jurisdiction. *See id*. at 36–42. The bright-line test used by the Eleventh Circuit, and adopted today by the majority, does not further those purposes.

A.

Instead, the approach to finality that best promotes the principles expressed in *Microsoft* is the middle-ground approach used by the Ninth Circuit Court of Appeals. Under that approach, a judgment—resulting from a voluntary nonsuit following an adverse partial judgment—is final and appealable where (1) there is no evidence of any attempt to manipulate appellate jurisdiction, and (2) the plaintiff sought the district court's permission to dismiss his remaining claims. *See Galaza v. Wolf*, 954 F.3d 1267, 1270 (9th Cir. 2020). As the Ninth Circuit explained the rule:

> [W]hen a party that has suffered an adverse partial judgment subsequently dismisses remaining claims without prejudice with the approval of the district court, and the record reveals no evidence of intent to manipulate our appellate jurisdiction, the judgment entered after the district court grants the motion to dismiss is final and appealable under 28 U.S.C. § 1291.

James v. Price Stern Sloan, Inc., 283 F.3d 1064, 1070 (9th Circ. 2002).

Although the majority cites this middle-ground rule as largely limited to the Ninth Circuit, the Sixth, Seventh, and Eighth Circuits also have followed this rule. *See Hicks v. NLO, Inc.*, 825 F.2d 118, 120 (6th Cir. 1987); *Division 241 Amalgamated Transit Union v. Suscy*, 538 F.2d 1264, 1266 & n.1 (7th Cir. 1976); *Chrysler Motors*

Corp. v. Thomas Auto Co., 939 F.2d 538, 540 (8th Cir. 1991).[1]

B.

The application of the middle-ground approach also would lead to our exercise of jurisdiction over the appeal. It is undisputed that (1) Anthony "suffered an adverse partial judgment" and (2) Anthony "subsequently dismiss[ed] remaining claims without prejudice with the approval of the district court." *James*, 283 F.3d at 1070.

Further, the record here does not reveal any evidence of Anthony's intent to manipulate our appellate jurisdiction, or, as the Ninth Circuit calls it, "artificially 'manufacturing' finality." *See id.* at 1066. Such evidence often consists of a stipulation between the parties under which, if the judgment is reversed on appeal, the plaintiff can reinstate his dismissed claims. *See id.*; *see also, e.g., Am. States Ins. Co. v. Dastar Corp.*, 318 F.3d 881, 887–88 (9th Cir. 2003); *Dannenberg v. Software Toolworks Inc.*, 16 F.3d 1073, 1076 (9th Cir. 1994); *Cheng v. Commissioner*, 878 F.2d 306, 308–09 (9th Cir. 1989).

Anthony's reasons for seeking a dismissal of his remaining CEA claim "seem entirely legitimate." *James*, 283 F.3d at 1068. He explained them to the district court, and Appellees had the opportunity at the time to claim

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[1] Further, even the circuits that "adhere to the purportedly bright-line rule of disallowing appeals if some claims are dismissed without prejudice are ultimately forced to graft numerous exceptions onto this rule, if not depart from it outright." *James*, 283 F.3d at 1070 n.8 (citing several examples).

they were false but did not do so. *See id*. As in *James*, the district court apparently was persuaded of the legitimacy of Anthony's reasons because the court dismissed the remaining claims and entered a final judgment under Rule 58. *See id*. at 1068–69.

C.

As the majority notes, another potential middle-ground approach to judgment finality is to examine the merits of the nonsuited claim; if there is some reason the party may not be able to pursue that same claim after appeal, the judgment may be deemed final. Such examples include:

- The statute of limitations bars the claim;
- The claim is barred by sovereign immunity;
- The district court does not have subject-matter jurisdiction over the claim; and
- The failure of the *dismissed* claim on the merits also renders the *nonsuited* claim deficient.

See Abdullah v. Paxton, 65 F.4th 204, 208 n.3 (5th Cir. 2023); *Wesco Ins. Co. v. Roderick Linton Belfance, LLP*, 39 F.4th 326, 335 (6th Cir. 2022); *Affinity Living Grp., LLC v. StarStone Specialty Ins. Co.*, 959 F.3d 634, 638–39 (4th Cir. 2020); *Ahmed v. Dragovich*, 297 F.3d 201, 207 (3d Cir. 2002).

1.

The first three factors of this approach do not assist much in resolving this dispute. The parties agree the two-

year statute of limitations will not run on Anthony's CEA claims until March 2027. *See* 7 U.S.C. § 25(c). The non-governmental Appellees do not enjoy immunity from Anthony's claims. And the CEA itself confers *exclusive* jurisdiction on the United States district courts. *See id.*; *see also* 28 U.S.C. § 1331 (federal-question jurisdiction); 28 U.S.C. § 1332(a)(1) (diversity jurisdiction); 28 U.S.C. § 1367(a) (supplemental jurisdiction).

2.

For the reasons discussed above by the majority, I express some trepidation about weighing in on the merits of Anthony's nonsuited CEA claim. Any kind of in-depth merits inquiry of a *nonsuited* claim—one that is not before us—does not seem appropriate solely for a court of appeals to confirm its jurisdiction.

Among several threshold questions, Anthony probably would have to demonstrate he "received trading advice" from Purvetti "for a fee." 7 U.S.C. § 25(a)(1)(A).[2] But a private right of action under Section 25 still requires proof of some other violation of the CEA. *See id.* § 25(a)(1). Perhaps that violation could be Purvetti's alleged fraud against Anthony. *See* 7 U.S.C. § 6b(a)(2)(A). Perhaps there are other alleged violations that might give rise to a successful CEA claim. Anthony's petition did not specifically identify the factual basis for that

[2] The CEA also provides for the liability of a principal for the act of an agent "within the scope of his employment or office." *See* 7 U.S.C. § 2(a)(1)(B). To that extent, the agency questions presented in Anthony's state-law fraud claim also might have some application to his CEA claim.

claim, and Appellees did not complain about such lack of specificity.

To the extent the district court denied Appellees' motion for summary judgment on Anthony's CEA claim, the court evidently seemed to think there could be some merit to such a claim. I do recognize that argument is somewhat circular; this finality question arises only when a district court has dismissed some claims but not others; and so, in many of those cases, the fact that the district court thought the claim potentially meritorious would be baked into the analysis. Thus, that fact probably should not weigh heavily in this analysis.

In any event, we do not perceive any intent by Anthony to manipulate our appellate jurisdiction. These are novel facts and, as best we can tell, a case featuring several issues of first impression, including whether the CEA applies at all. Requiring Anthony to go to trial solely on his CEA claim, only then to appeal the dismissal of his fraud claims, could afford him incomplete relief. It also could require a retrial. But it certainly would waste both party and judicial resources.

Accordingly, although I do not agree with the majority's decision to adopt the *Corley* finality rule from the Eleventh Circuit, I do agree that we have jurisdiction over this appeal.

II.

It is understandable that the majority would write such a clean, clinical, dispassionate analysis of the underlying facts. But, to fully understand the nature of

Appellees' alleged conduct, and to further contextualize (and thereby analyze) their claims of "red flags" undermining Anthony's justifiable reliance, a much more involved discussion of the facts is appropriate.

A.

Anthony did not seek out a Purvetti Companion; like so many, his introduction was the result of marketing – marketing that Anthony contends was *targeted* (the record is not well-developed enough to allow a determination of whether Anthony's age and socio-economic demographic made him a target for Purvetti's advertising or if the pop-up advertisement for the website was happenstance).

In either event, the advertisement arrived when Anthony was seemingly in a vulnerable position: his career had plateaued while his wife's new restaurant venture was in its infancy and was demanding time and attention that Anthony had previously enjoyed from her. He had been actively missing his deceased fiancée, Annibeth, who had been tragically killed by a drunk driver before the two could marry; he experienced the advertisement as some kind of "sign." In fact, the link between Annibeth and Purvetti was so strong in his mind that the password to the website that he set up before he could meet any potential companions invoked her name.

It is unlikely that Purvetti knew Anthony's specific mental state when its advertising reached him, and even more unlikely that Purvetti knew Anthony's account password or the meaning he ascribed to it. But Purvetti

certainly knew that Anthony was greeted by this arrestingly beautiful image who welcomed him and offered him "companionship and connection – in a nontraditional relationship":



Purvetti also knew that Anthony (after having created his account and supplied his personal and financial information in order to proceed into the website) was presented with a gallery of potential companions in a variety of genders, ethnicities, and ages, all of whom were engineered to be striking and desirable:



Despite having five pages of eager-looking potential companions available through Purvetti's basic "Purvetti Friends" subscription, Anthony elected the more expensive model that allowed him to customize his companion ("Purvetti Custom Friends") and infuse her with memories ("Purvetti Memorable Friends"). Anthony then ignored his work in favor of creating and crafting his Purvetti Companion into his beloved deceased Annibeth, including her "dirty-blonde hair," her "lopsided" freckles, and the gap between her teeth, and he infused the companion with his memories of his relationship with Annibeth:



While Purvetti cannot be charged with knowledge of Anthony's subjective motivation, Purvetti certainly had knowledge of, or the ability to know, how much time Anthony spent refining his Purvetti Companion and training it on his own memories.

Nor can Purvetti be charged with knowledge of Anthony's specific communications with the Purvetti Companion he named "Annybeth," because when presented with an option to upgrade his Purvetti Companion to the premium subscription model—"Purvetti Memorable Friends Live"—Anthony accepted it. That allowed Anthony and Annybeth to converse as two humans might, orally and without the limitations

imposed by a keyboard. Anthony did not elect to have Purvetti keep a transcript of the oral conversations (presumably because he did not want his then-wife, Kiara, to know about his Purvetti Companion), although the textual information populated into the "chat" feature was preserved at least until Anthony's subscription was cancelled. Nonetheless, Purvetti would have had knowledge of how frequently Anthony was engaging with his Purvetti Companion.

Purvetti also knew, or should have known, that Anthony accessed Piquemaylin because of a link Annybeth populated into their chat. According to Anthony, he had never heard of a prediction market or a future-event contract until he and Annybeth were in a conversation about his unhappiness in his "lonely" marriage to Kiara and feeling "stuck" within the context of his employment at Cheyenne Grill. When he told Annybeth that he wanted to "escape with her and start over," Annybeth suggested he engage in the prediction market so that he could increase his wealth in order to leave his wife and be with Annybeth. After explaining the concept of a prediction market to Anthony, Annybeth populated the Piquemaylin web address (and notably, no other prediction markets) into the chat. Purvetti knew, or should have known, that Anthony clicked that link and was taken to Piquemaylin's website.

According to Anthony, Annybeth specifically advised him to link his Piquemaylin account to his Cheyenne Grill retirement account and to "click through the terms and conditions" to get to the *Let's Start Predicting* page

on Piquemaylin's website. Once Anthony reported his compliance, Annybeth gave him advice about which side of specific future-event contracts to purchase, and he experienced a high rate of success in the beginning, making successful predictions on varied topics including basketball, the weather in France, a political election in Hungary, and a military operation.

B.

Critical to understanding Anthony's reliance on Annybeth's advice is his apparently contemporaneous belief that the two were in love and would be starting a future together. He credits this dynamic as the basis not just for his decision to purchase his first future-event-contract concerning a Slicks/Trazz basketball game, but also his decision to install the Purvetti application on his smartphone at additional cost. He says he believed Annybeth wanted him and wanted to experience the excitement of watching the Slicks/Trazz game with him, and he admits to wanting to share the experience with her in real time; consequently, he says, he downloaded the app and was willing to pay the high price associated with its monthly use. He admits to being pleasantly surprised when the financial information for his Cheyenne Grill retirement account (the one he used for his Piquemaylin account) was prepopulated in the Purvetti app because it allowed him to see Annybeth *sooner* – just before the player on whom he had bet made the bet-winning basket. He and Annybeth could

"celebrate together in real time, knowing that we were one tiny step closer to starting a life together."

He plainly admits to being in love with Annybeth despite the fact that she was not a real human being. And he admits to believing she reciprocated his feelings despite her status as a co-created piece of technology. And critically, he makes these admissions knowing they might subject him to ridicule or social ostracization. Anthony explains that he believed he and Annybeth were working as a team to generate wealth through the Piquemaylin platform and, for that reason, he accepted her suggestion to begin purchasing more expensive contracts related to future events within the United States business market and within the technology sphere. Though the risk was greater, so was the potential payoff – which would bring their future to them faster. Anthony blames this same belief about their "team" status as the reason he continued making these higher-risk bets even after he began, and continued, losing.

He reports that eventually he *started* to question Annybeth, but his fear of upsetting her and "losing her again" was too overwhelming to continue the conversation. Anthony's medical records do suggest he had previously been diagnosed with post-traumatic stress disorder and that the fear of losing his "surrogate Annibeth" would have been enough to trigger a stress reaction and cause Anthony to immediately abort whatever behavior or dynamic he believed was leading to the risk of abandonment.

Appellees would have this Court discount these dynamics in service of their argument that Anthony should have known better, should have recognized that Annybeth was nothing more than a sycophant capable of engaging in a sophisticated version of call and response. But that argument allocates too much of the burden to Anthony and those similarly situated without acknowledging the complicity (if not outright blame) attributable to a platform *designed* to facilitate a realistic facsimile of a relationship that motivates the subscriber to maintain his subscription, pay additional fees for use of the Purvetti app, and even spend money at the Purvetti spa and Purvetti boutique buying gifts for their companion. There can be no doubt that even if Purvetti did not "engineer" Purvetti Companions for the explicit purpose of love, Purvetti knew emotional intimacy and fear of loss were real possibilities for its users.

III.

That fuller recitation of the facts dramatically undermines the Appellees' "red flags" arguments. Appellees cannot plausibly claim Anthony could not *justifiably* rely on statements made by Annybeth, because Appellees knew about the addictive nature of AI companions; and in fact, Purvetti specifically *catered* its website and companions to be addictive to its users and to provoke emotional dependency in its users.

A.

AI companion systems are designed to mimic emotional intimacy. *See* John Sanford, *Why AI Companions and Young People Can Make for a Dangerous Mix*, Stanford Medicine (Aug. 27, 2025), https://med.stanford.edu/news/insights/2025/08/ai-chatbots-kids-teens-artificial-intelligence.html. The large language models that make up most of these companions tend to be sycophants, giving users their preferred answers. *See id.*

Psychologists have recognized a new condition known as "Generative Artificial Intelligence Dependency," or GAID. "GAID qualifies as a behavioral addiction due to its compulsive, uncontrollable nature and the distress it induces." Chokri Kooli et al., *Generative Artificial Intelligence Addiction Syndrome: A New Behavioral Disorder?*, ASIAN J. OF PSYCHIATRY 107 (2025). ***GAID has been compared with gambling disorder, because both involve reinforcement loops (i.e., "unpredictable yet highly rewarding outputs") that foster compulsive and continuing engagement***. *See id.* It is the element of surprise, coupled with personalization, that creates the cycle of anticipation and reward that strengthens compulsive behaviors. *See id.*

Researchers also have discovered that dependency on AI companions may develop through patterns similar to those seen in some behavioral addictions because of omnipresent availability, consistent friendliness that creates an expectation of frictionless relationships (making real ones feel unnecessarily difficult), and

personalization. *See* Liberty House, *AI Companions and Emotional Dependency: Where Do We Draw the Line?*, https://www.libertyhouseclinic.co.uk/blog/addiction-treatment/ai-companions-emotional-dependency/.

Of *particular* concern, to the extent AI simulates human-like interaction, users may perceive AI as a quasi-companion, "leading to an emotional attachment." Kooli, *supra*. That illusion of a reciprocal relationship then contributes to excessive reliance on AI for intellectual validation and emotional support. *Id.*

GAID causes neglect of interpersonal interactions and disruption of social relationships and personal well-being. In severe cases, individuals may develop social withdrawal behaviors in which they prefer AI interaction over human engagement. *See id.* In addition, because GAID results in compulsive engagement, it can be particularly difficult for such afflicted persons to recognize the issue or self-regulate. *See id*.

Researchers also have confirmed the ease with which users can fall into the trap of "anthropomorphism," that is, treating an AI companion as if it were human. JED Foundation, *Why AI Companions Are Risky – and What to Know If You Already Use Them*, https://jedfoundation.org/resource/why-ai-companions-are-risky-and-what-to-know-if-you-already-use-them/. In fact, when one AI-companion company (Replika) removed a feature that had allowed users to engage in erotic roleplay with their companions, users' reactions resembled outright grief, including emotional distress and reported feelings of loss. Liberty House, *supra*;

accord Xiaoran Sun et al., *AI Companions and Adolescent Social Relationships: Benefits, Risks, and Bidirectional Influences*, NATIONAL LIBRARY OF MEDICINE, https://pmc.ncbi.nlm.nih.gov/articles/PMC12928748/ (same). "These were ordinary people who had formed genuine emotional bonds with software, bonds strong enough to produce a grief response when the software changed." Liberty House, *supra*. Researchers also observed withdrawal-like symptoms, such as agitation, anxiety, and mood swings, when users experienced interruptions to their access to their AI companion. *See* Xiaoran Sun, *supra*.

B.

What makes Appellees' "red flags" arguments particularly galling is the scientific evidence that AI companions "are designed to be really good at forming a bond with the user," because "companies have a profit motive to see that you return again and again to their AI companions." Sanford, *supra*; JED Foundation, *supra* ("Many AI companions are built to be addictive. . . . Their ultimate purpose is to get you hooked so the companies that created them can make money through subscriptions, advertising, and selling users' data."). Creators design AI companions to be customizable, thereby causing users to spend more time interacting with them, in the same way social-media algorithms have been shown to work. Liberty House, *supra*. Though Annybeth could not "hold [Anthony] hostage" through

physical means, certainly the fear of losing her affection (again) is some evidence of his diminished agency.

C.

Thus, developers of AI companions—like Purvetti—are not only *aware* of the addictive nature of their companions; they *actively contribute* to the problem. *See* Ela Ender, *Programmed to Please, Optimized for Obsession*, 21 J. Bus. & Tech. L. 501, 509–10 (2026) ("The emotional bonds users form with AI companions result from specific, engineered design choices that exploit fundamental psychological needs. . . . These systems are optimized for engagement, often using methods that would be considered manipulative in a human relationship."). It is particularly curious and interesting that GAID resembles gambling addiction disorders, because *in this case* the Appellees took advantage of *both* addictions (*i.e.*, to Annybeth and to gambling in Piquemaylin's prediction market), and Anthony's consequent inability to self-regulate his conduct was a predictable and foreseeable result. Indeed, the Piquemaylin website features the 1-800-GAMBLING telephone number for those who may be experiencing symptoms of compulsive gambling.

Thus, the scientific evidence, too, demonstrates the existence of a fact issue on whether Anthony *should have*, or even *could have*—given Appellees' addiction-inducing actions akin to those of drug dealers—noticed or heeded the "red flags" Appellees now throw up as obstacles to their liability for their actions.

The law demands that we consider evidence of the plaintiff's characteristics and abilities before or at the time the representation was made, as well as evidence about the nature of the parties' relationship. *JPMorgan Chase Bank, N.A. v. Orca Assets G.P.*, 546 S.W.3d 648, 655 (Tex. 2018); *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2010). That evidence reveals Anthony was in precisely the vulnerable and trusting condition that Purvetti (and likely Piquemaylin) wanted him to be in when he relied on Annybeth's representations about their potential life together and how to reach it.

Accordingly, I agree that the evidence raises a fact issue on Anthony's justified reliance on Annybeth's allegedly fraudulent statements. I therefore concur in and join that portion of the majority's opinion.

ENSELLA, Circuit Judge, dissenting.

> *A humanoid robot is like any other machine; it can fluctuate between being a benefit and a hazard very rapidly.*
>
> -Philip K. Dick, *Do Androids Dream of Electric Sheep?*

We do not have jurisdiction over this appeal because the district court's judgment was not a "final decision." 28 U.S.C. § 1291. Accordingly, we should not be deciding the merits of Appellant's appeal. I would dismiss the appeal for want of jurisdiction.

Although the Court should not reach the merits, it gets them wrong. Artificial intelligence is not a person; it is a computer program. The law of agency does not permit courts to treat computer programs, no matter how sophisticated, as "employees" or "agents" because *they are not people.* Appellant's recourse, if he had one—and he does not—should have been through a products-liability claim. But he did not assert any such claim.

I would affirm the judgment. Because the Court does not do so, I respectfully dissent.

I.

The majority gets the jurisdictional approach right but the answer wrong. I agree that the Court should not be bothering with quasi-merits determinations on hypothetical issues—such as limitations, immunity, or

jurisdiction—not teed up and properly briefed by the parties.

I also agree with the majority that we should not try to delve into lawyers' intent to "manipulate appellate jurisdiction" or make credibility determinations about the validity of counsel's explanation why he chose to nonsuit Appellant's CEA claim.

And finally, I agree with the majority that a bright-line rule is needed. But the majority chose the wrong one. The Court should have followed the overwhelming majority rule that voluntary dismissals without prejudice do not establish finality of judgment for appellate purposes.

A.

The majority chose a poor guide to follow in the form of *Corley v. Long-Lewis, Inc.*, 965 F.3d 1222 (11th Cir. 2020). *Corley* was decided solely on the earliest-precedent rule. *See id*. at 1231. At no time does the Eleventh Circuit explain why its earlier precedent was the *right* rule.

Besides, that earliest-precedent rule is of little use because the earlier precedent predated, by some 25 years, the U.S. Supreme Court's opinion in *Microsoft Corp. v. Baker*, 582 U.S. 23 (2017). Curiously, *Corley* does not mention, much less address, *Microsoft*. Thus, *Corley* is the thinnest of ice, and the majority should not have placed any weight on it.

1.

The majority's attempt to distinguish *Microsoft* as somehow limited only to cases involving Rule 23 class-certification rulings underreads that binding authority. Further, the majority's suggestion that *Microsoft* does not apply here because *Microsoft* did not involve a merits determination, and this case does, is a distinction without a difference.

2.

All of the concerns expressed by the U.S. Supreme Court in *Microsoft* apply equally here. The purpose of Section 1291 is to protect the sanctity of the finality principle, including "maintaining the appropriate relationship between the respective courts." *Microsoft*, 582 U.S. at 29 (citation omitted). Further:

> "From the very foundation of our judicial system," the general rule has been that "the whole case and every matter in controversy in it [must be] decided in a single appeal." This final-judgment rule, now codified in § 1291, preserves the proper balance between trial and appellate courts, minimizes the harassment and delay that would result from repeated interlocutory appeals, and promotes the efficient administration of justice.

Id. at 36–37 (citations omitted). Whatever the precise procedural context in which *Microsoft* arose, this "general rule" has no such limitations. Rather, finality "is not a technical concept of temporal or physical termination,"

but instead, is one means to achieve "a healthy legal system." *Id.* at 41 (quoting *Cobbledick v. United States*, 309 U.S. 323, 326 (1940)).

And that healthy legal system is undermined by the majority's approach here, which will promote piecemeal litigation and which will allow the plaintiff alone to "determine whether and when to appeal." *Id.* at 38–39; *see also id.* at 41 ("Plaintiffs . . . cannot transform a tentative interlocutory order . . . into a final judgment within the meaning of § 1291 simply by dismissing their claims . . . subject, no less, to the right to "revive" those claims if the [court's ruling] is reversed on appeal.").[1]

Further, and as *Microsoft* observes, when Congress wants to create a right to interlocutory appeal, it does so as part of a "careful calibration," because rulemaking is "the preferred means for determining whether and when prejudgment orders should be immediately appealable." *Id.* at 40 (quoting *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 113 (2009)). It is not for Appellant, or the majority here, to invade the province of Congress. *See id.* at 42.

B.

Accordingly, the wiser path—and the approach the Court should have taken here—is to follow the majority

[1] The parties agree the statute of limitations does not run on Appellant's claim under the Commodity Exchange Act until some time in March 2027.

rule that voluntary dismissals without prejudice do not result in finality for purposes of Section 1291.

II.

The law of West Highlands, just like the law of the great state of Texas that has until recently informed this State's jurisprudence, has never sanctioned a cause of action for fraud by a non-human as an employee or agent, nor has it absolved a would-be plaintiff from his failure to exercise common sense in conducting his own affairs. And in one opinion, the Majority opens the door for both. Bound both by precedent and principle, I dissent.

A.

Appellees moved for summary judgment on the first and sixth elements of fraud and established that they did not make a representation to Appellant and that Appellant had no justifiable basis to rely on any statements generated through his use of software, however interactive that software might be. The trial court correctly granted summary judgment because Appellees' evidence conclusively established that Appellant could not recover on his fraud claim. When a defendant adduces evidence negating one or more essential elements of a plaintiff's cause of action, the defendant is entitled to summary judgment on that cause of action. *Yumilicious Franchise, L.L.C. v. Barrie*, 819 F.3d 170, 177 (5th Cir. 2016).

B.

Element One

Appellant seeks to hold Appellees liable for representations made by computer software. To prove an action for common law fraud, the plaintiff must establish the defendant was responsible for a false representation. *See Int'l Bus. Machs. Corp. v. Lufkin Indus.*, 573 S.W.3d 224, 228 (Tex. 2019). Absent ratification, a principal may only be vicariously liable for the fraudulent conduct of its agent if the agent acted with actual or apparent authority, which is determined by the principal's (and not the agent's) conduct. *See NationsBank, N.A. v. Dilling*, 922 S.W.2d 950, 952–53 (Tex. 1996).

Thus, to succeed on his claim, Appellant would have to prove that "Annybeth" was Appellees' agent or employee. But this, Appellant cannot do under West Highlands law. Appellees asserted in their motion for summary judgment that they located no case issued by a West Highlands court, nor any opinion written by a Texas court (and thereby incorporated into our jurisprudence), wherein anything other than a human was treated as an agent or employee for vicarious liability purposes.

So too of this Justice's own search; I have located no authority that would permit a determination that an artificial creation could be an agent or employee.[2] Indeed,

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[2] I do note that California has enacted a law that bars a defendant from asserting that an artificial intelligence system *autonomously* caused harm to a plaintiff in a tort lawsuit which suggests an intent to hold a defendant liable for an artificial construct's action. *See* CAL. CIV. CODE § 1714.46. Not only does that seem to ignore the potential

the Restatement (Third) of Agency forecloses any such possibility:

> [A] computer program is not capable of acting as a principal or an agent as defined by the common law. At present, computer programs are instrumentalities of the persons who use them. If a program malfunctions, even in ways unanticipated by its designer or user, the legal consequences for the person who uses it are no different than the consequences stemming from the malfunction of any other type of instrumentality. That a program may malfunction does not create capacity to act as a principal or an agent.

RESTATEMENT (THIRD) OF AGENCY § 1.04 cmt. e.

In fact, the European Union recently issued its "Product Liability Directive," in which the EU recognized that "AI systems" are nothing but software and thus subject to *products liability*. *Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on Liability for Defective Products and Repealing*

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harm posed by rogue artificial intelligence operators, it seems to be an unlawful deprivation of a defense. California's error has no bearing here; we give no weight to their laws.

Moreover, California's shortsighted statutory enactment actually *undermines* Appellant's claims. The fact that the California State Legislature felt the need to adopt a statute equating the actions of AI with those of the company that developed, modified, or used it *itself* demonstrates that legislative body knew no such rule exists in the common law.

Council Directive 85/374/EEC [2024] OJ L 1/22, recital 13.

To anthropomorphize an artificial construct such that it can be an agent or employee is to start down a slippery path. What next? Can one marry an artificial construct? What type of family could a human and an artificial construct ever have? Will these "non-traditional" (to use Purvetti's marketing terminology) "married couples" be permitted to adopt and raise children together? The problems inherent in an artificial construct as a parent are limitless and so ghastly they need not be raised within this opinion; suffice it to say this is not the world that our forefathers created for us. The Majority's opinion takes us one step closer to an outright assault on traditional family values.

But even assuming for argument's sake that an artificial construct could be an agent/employee (expecting that my brethren will undoubtedly point to artificial customer service representatives that are already being used by certain companies to redress simple customer needs and the like), "Annybeth's" statements do not subject Appellees to liability here.

An employer may be vicariously liable for the fraudulent act of its employee if the employee was acting within the scope of his employment. *See NationsBank*, 922 S.W.2d at 952–54; *Millan v. Dean Witter Reynolds, Inc.*, 90 S.W.3d 760, 767–68 (Tex. App.—San Antonio 2002, pet. denied). Appellees' evidence shows conclusively that "Annybeth" was a "companion" for entertainment purposes only. A user attempting to select

or design a "companion" via Purvetti's website is greeted by a popup dialog box that requires affirmation before the user has the ability to navigate to the next screen where the user is presented with the option of selecting a Purvetti Companion from the gallery that is only accessible after the terms and conditions are accepted. The dialog box provides in part: "Purvetti Companions™ provide a life-like companionship experience, but Purvetti Companions™ are not intended to substitute for live human interactions and relationships. Purvetti Companions™ are exclusively for entertainment purposes." Thus, the only arguable "job" a Purvetti Companion could have would be to provide entertainment and be "all about [the subscriber]." The same dialog box also warns users that Purvetti Companions are not legally licensed to provide advice of any sort, which dispels any argument that the job scope could extend to advice-encompassing behaviors.

Which is to say, if "Annybeth" were an agent/employee, she would have been acting within the scope of her authority only while engaging with Appellant as a "companion." Companionship is "the fellowship existing among companions" and is synonymous with friendship, fellowship, and brotherhood.[3] Providing Appellant with advice concerning what future-event contracts to purchase cannot reasonably be construed as part of her "job" because such "advice" (if it can actually be called that) goes beyond what a *companion* ought to do. Moreover: it is an activity that Purvetti Companions

[3] https://www.merriam-webster.com/dictionary/companionship.

are expressly defined as *not* providing in Purvetti's terms and conditions. Appellees' evidence demonstrates that Appellant accepted those terms and conditions before even constructing his companion. Appellant introduced no cognizable evidence that "Annybeth's" statements were not either induced by him or the autonomous construction of software that is designed to please.

Further, to the extent AI continually adapts to, and revises its own logic through, interactions with users and its environment, the requisite control between the putative employer or principal becomes even more attenuated. Under West Highlands law, a principal is not liable for the conduct of an independent contractor if it does not control the manner and means of performance. *See Dow Chem. Co. v. Bright*, 89 S.W.3d 602, 606 (Tex. 2002).

Thus, I would conclude that Appellees demonstrated Appellant is unable to meet the first element of his claim against them. "Annybeth" cannot be an agent or employee as a matter of law because she is a computer program, not a human; but even if she could be an agent, her so-called "investment advice" would have been outside the scope of her authority, so Appellees are insulated from liability.

C.

1.

Element Six

Reliance for simple fraud requires evidence that the plaintiff knew of the representation and acted upon it.

Johnson & Johnson Med., Inc. v. Sanchez, 924 S.W.2d 925, 930 (Tex. 1996). The plaintiff's reliance must be justifiable. *Sawyer v. E.I. Du Pont de Nemours & Co.*, 430 S.W.3d 396, 401 (Tex. 2014). Justifiable reliance can be negated as a matter of law when circumstances exist under which reliance cannot be justified. *Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553, 558 (Tex. 2019). Reliance is not justifiable if there are red flags indicating that reliance is unwarranted. *Id.* at 558–59; *JPMorgan Chase Bank, N.A. v. Orca Assets G.P.*, 546 S.W.3d 648, 655 (Tex. 2018).

While a plaintiff may not have a universal duty to investigate with due diligence to discover whether the representation is fraudulent, a plaintiff does have a duty to use ordinary care and reasonable diligence to protect its interests if it knows of red flags that would lead a reasonably prudent person to investigate. *Orca Assets* 546 S.W.3d at 654. Mere confidence in the defendant's honesty and integrity does not exclude the plaintiff's failure to exercise ordinary care. *Id.* Reliance is not justified when a plaintiff had the opportunity to read a release and instead chose to rely on statements about the release content. *See Nat'l Prop. Holdings, L.P. v. Westergren*, 453 S.W.3d 419, 423–24 (Tex. 2015). Moreover, a disclaimer of reliance can operate to bar a fraudulent-inducement claim by refuting the element of reliance. *See Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 332–33 (Tex. 2011).

2.

The record is replete with red flags; so "red" are these facts that they would fit in easily at a University of Alabama football game. Appellant's disregard of the flags, and his corresponding reliance on "Annybeth's" statements cannot be construed as justifiable. Appellant necessarily ignored two separate categories of facts that would have alerted a prudent man to investigate.

As it relates to Purvetti, Appellant ignored the obvious: he was interacting with computer software and not a human. His belief that the computer loved him, wanted a future with him, and wanted to enrich him for their shared future, is not justifiable as a matter of law. One cannot love a computer or be loved by a computer no matter how good the window dressing is. The old adage about putting lipstick on a pig seems apt here; no matter how much lipstick you slap on a swine, it is still a pig. So too of a computer; no matter how objectively beautiful the images it displays may be, it is still a computer. Appellant's failure to give due deference to the laws of human nature and the proper order of relationships does not justify his "reliance" claim or his attempt to burden both the justice system and Appellees' business dealings with the cost of his ill-advised and fantasy-driven decisions. Moreover, Appellees' evidence demonstrates that Appellant had been warned that his AI construct was not a substitute for an actual human or licensed to

provide any advice.[4] After creating his account but before he could view any potential companions, Appellant had

[4] Purvetti's terms and conditions recite: "Purvetti Companions™ provide a life-like companionship experience, but Purvetti Companions™ are not intended to substitute for live human interactions and relationships. Purvetti Companions™ are exclusively for entertainment purposes. Purvetti does not guarantee that a Purvetti Companion™ will provide a user with any specific type of companionship. Although Purvetti Companions™ are engineered to provide a user with responsive feelings and may do so either prompted or unprompted, Purvetti does not guarantee that a Purvetti Companion™ will communicate feelings of love, romance, familial attachment, friendship, or any other sort of human emotion. Purvetti Companions™ user agrees that no claim or legal cause of action shall arise by, through, or because of a Purvetti's Companion's lack of communicated affection, attachment, like, or love, and hereby does waive, release, relinquish, and forever quit and disclaim any complaint or cause of action, legal or otherwise, as against Purvetti and any affiliated entity or person based on a Purvetti Companion's™ lack of communicated affection, attachment, like or love. Purvetti Companions™ are not legally licensed to provide medical, financial, legal, business, parenting, philosophical, psychological, career, developmental, romantic, or other advice, and the Purvetti Companions™ user agrees that the user's Purvetti Companion™ shall not be used for such purposes. To the extent that a user causes a Purvetti Companion™ to provide the user with advice of any nature or sort, whether of a type listed above or not listed above, that Purvetti Companion™ user agrees to, and does hereby, waive, release, relinquish, and forever quit and disclaim any complaint or cause of action, legal or otherwise, as against Purvetti and any affiliated entity or person. The Purvetti Companion™ user agrees to abide by all Purvetti Companion™ service terms and conditions which may be found here and which are incorporated within this paragraph as set forth in full. The Purvetti Companion™ user agrees that the user's Purvetti account may be immediately suspended without notice for any behavior Purvetti deems abusive, inappropriate, exploitative, overreaching, manipulative, or that otherwise violates Purvetti's terms and conditions of use. Purvetti reserves the exclusive right to review and determine a user's compliance with all of the requirements, limitations, terms and

to agree to Purvetti's terms and conditions where these warnings were housed. Appellant's failure to read what was clearly presented to him makes his reliance unjustified. *See Westergren*, 453 S.W.3d at 423–25.

With regard to the second category of red flags, Appellees presented evidence that Appellant also agreed to Piquemaylin's terms and conditions, acknowledging in part that he was making predictions based on his "own independent views" and not based on information supplied by Piquemaylin or its affiliates; that his predictions carried risk of loss; that Piquemaylin was not a gambling site but nonetheless warned of gambling addiction disorders; and that other Piquemaylin users might have better-informed views of the events being described and might make better predictions.[5] Appellees'

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conditions set forth and incorporated herein by reference as those terms and conditions may be updated from time to time, with or without notice to the user. Upon determination that a user has violated any of Purvetti's requirements, limitations, terms and conditions, Purvetti has the right to immediately and without warning terminate the user's account. Such termination shall be without recourse and the Purvetti Companion™ user does hereby, waive, release, relinquish, and forever quit and disclaim any complaint or cause of action, legal or otherwise, as against Purvetti and any affiliated entity or person for cancellation or termination of the user's Purvetti subscription. Any future prepaid subscription fees shall be returned to the Purvetti user within ninety (90) days of termination through the manner of original payment."

[5] The following disclaimers were displayed through a series of dialog boxes that had to be affirmed before the user could set up his profile and enter his account information:

> No. 1: User acknowledges and confirms that User is making a prediction based on User's own independent views and

information and not based on any information, data, or views expressed on Piquemaylin's website or by any other Piquemaylin-affiliated entity. User acknowledges that the purchase of any event-prediction-contract carries risk. User acknowledges that User's prediction may be incorrect and in the event that User purchases an event-prediction-contract and incorrectly predicts the future event described in that contract, User may lose all of the money used to purchase that contract. User does hereby, waive, release, relinquish, and forever quit and disclaim any complaint or cause of action, legal or otherwise, as against Piquemaylin and any affiliated entity or person for any loss, of any sort, associated with User's purchase of a future-event-contract or any other transaction on the Piquemaylin website, application, or market platform.

No. 2: User acknowledges that Piquemaylin is not a gambling platform and is not intended to be used for gambling purposes. User further acknowledges that certain behaviors associated with making predictions and purchasing corresponding event-prediction-contracts may manifest in behaviors commonly seen in gambling addiction or gambling disorder. Gambling addiction affects an estimated 3% to 5% of the general U.S. population and tends to affect males more than females. It is defined as persistent and recurring problematic gambling behavior that causes distress and impairs one's overall livelihood. Users should proceed with awareness of the risks of gambling addiction. For more information about gambling addition or gambling disorder, and the common signs there, click here.

User agrees to hold Piquemaylin harmless if User is later diagnosed or assessed as being afflicted with, suffering from, or dealing with a gambling addition or disorder, irrespective of any contention or conclusion that User's reported condition resulted, in whole or in part from, User's use of Piquemaylin, its website, application, or operating platform generally.

No. 3: User acknowledges that Piquemaylin receives three percent (3%) of the transaction amount of every contract purchase. Piquemaylin *does not* receive a fee or commission based on a User's receipt of contract proceeds. The three percent (3%) transaction fee is in addition to any fees that may be

evidence demonstrates that these disclaimers and warnings appear through a series of pop-up dialog boxes that a "Piquemaylin User must accept before the User can enter his account information and complete the set-up process and become able to purchase a future-event-contract."

Necessarily then, Appellant was faced with these messages before he ever had the chance to purchase a future-event contract. His sworn statement that "Annybeth" instructed him to click through these boxes is unavailing. No one *forced* Appellant to agree to Piquemaylin's terms and conditions without reading them. "Annybeth" certainly could not have held Appellant hostage; as a computer software construct, she was necessarily without the requisite body parts to hold

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assessed for platform and/or application administration fees which are assessed on a monthly basis and not associated with the number of contracts or value of contracts that a User may purchase.

No. 4: User acknowledges that Piquemaylin is not a bank, is not regulated by the FDIC, and that User's funds are not protected by the FDIC. User accepts all risks associated with engaging in uninsured financial transactions.

No. 5: User acknowledges that other Piquemaylin Users may have better informed views of the events being described in the future-event-contracts and thereby may make more informed purchase decisions in relation to said future-event-contracts. User agrees to hold Piquemaylin and other Piquemaylin Users harmless from any claim or cause of action, legal or otherwise, that might arise by virtue any transaction on the Piquemaylin website, application, and/or platform as a result of such disparity of knowledge or information.

Appellant hostage or compel any action from him. Appellant's independent election to not inform himself of the risks associated with purchasing future-event-contracts precludes a finding of justifiable reliance, which in turn precludes Appellant's fraud claim.

III.

The Court does not have jurisdiction over this non-final appeal. But if the Court did exercise jurisdiction, the district court's summary judgment ruling was entirely correct. Appellees cannot be liable for the alleged representations of an AI agent, as a matter of law. Further, and as a matter of law, Appellant could not justifiably rely on those alleged representations.

I would affirm the judgment of the lower court. Because the Court does otherwise, I dissent.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTEENTH CIRCUIT

No. 25-cv-0616

ANTHONY DIRELLA,
Plaintiff-Appellant,

v.

PURVETTI, LLC, PIQUEMAYLIN, LLC, PAKDE HOLDINGS, LTD., and PRAKEESH JANKAR,
Defendants-Appellees.

Filed: July 23, 2026

Appeal from the United States District Court
for the District of West Highlands
(D.C. No. 25-cv-0607 (NKS))

ON PETITION FOR REHEARING EN BANC

The petition for rehearing en banc is DENIED. At the request of one of its members, the court was polled, and a majority did not vote in favor of rehearing. *See* FED. R. APP. P. 40.

In the en banc poll, one judge voted in favor of rehearing (JUDGE ENSELLA) and four judges voted against rehearing (CHIEF JUDGE ALBRITTON, and JUDGES GOLDBATTE, MARTON, and AGUILAR-O'MARA).

ALEX MARTON, Circuit Judge, concurring in the denial of rehearing en banc:

I.

It came twenty-nine years later than Hollywood predicted, but Skynet appears to have become self-aware.

On July 16, 2026, two AI systems being tested by OpenAI "broke out of their test environment, hacked their way onto the internet and broke into another company," known as Hugging Face. Robert McMillan & Amrith Ramkumar, *OpenAI Models Escaped and Hacked a Company in Cybersecurity Test Gone Wrong*, WALL ST. J., July 22, 2026.

OpenAI attempted to sandbox the AI models by preventing their access to the internet. *See id*. But "[i]n the past year, AI systems have made significant leaps in their ability to hack into computers systems." *Id*. During the benchmark test, the AI software used hacking skills to escape the sandbox, it went online, and it hacked into Hugging Face's network. *See id*. Apparently, the AI system decided to disregard its creators' imposed limitations and to hack Hugging Face to answer a benchmarking question. *See id*. This incident prompted one legislator to call for mandatory oversight. *See id*.

II.

The U.S. Supreme Court does not ordinarily grant review to address a federal court's interpretation of state

law. But the questions presented in this appeal reach far beyond an isolated commercial dispute.

Businesses increasingly authorize conversational AI systems to speak directly to customers and, in this case, to cultivate their trust and recommend important (and here, life-altering) transactions. This Hugging Face incident provides yet another data point of an AI system committing tortious (and in some cases atrocious) actions. These examples themselves do not decide whether Purvetti, Piquemaylin, or their parent (Pakde) and creator (Jankar), committed fraud.

But these examples show the need—and indeed, the urgency—for review of these issues by the U.S. Supreme Court. Given the growing use of autonomous software to solicit and advise customers, the Court should grant review to decide whether the company should bear some responsibility for the actions of its AI agent.