Docket No. 26–0521

In The

Supreme Court of the United States

October Term, 2025

PURVETTI, LLC, PIQUEMAYLIN, LLC, PAKDE HOLDINGS, LTD., AND PRAKEESH JANKAR,

Petitioners,

v.

ANTHONY DIRELLA

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventeenth Circuit

BRIEF FOR RESPONDENT

Counsel for Respondent
November 15, 2026

Team R15

QUESTIONS PRESENTED

I. 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?

II. 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?

   A. Do the deployer and the artificial intelligence agent have a principal-agent relationship, and, if so, was the agent acting within its scope of authority?

   B. Can an artificial intelligence agent user justifiably rely on the agent?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES v

OPINION BELOW 1

STATEMENT OF JURISDICTION 1

STATEMENT OF FACTS 1

I. Artificial Intelligence Companions and Generative Artificial Intelligence Dependency 1

II. Purvetti Artificial Intelligence Companions 2

III. Piquemaylin Prediction Market Platform 3

IV. Anthony Dirella and His Interactions with His AI Companion, Annybeth 4

V. Dirella's Entanglement with Annybeth and Piquemaylin 5

VI. Annybeth's Piquemaylin Advice Turns South 6

VII. Dirella's Lawsuit 7

VIII. The Seventeenth Circuit's Holding 9

SUMMARY OF THE ARGUMENT 10

ARGUMENT 11

I. THE SEVENTEENTH CIRCUIT PROPERLY EXERCISED JURISDICTION OVER DIRELLA'S APPEAL. 11

A. This Court Should Adopt the Always-Jurisdiction Rule Recognizing Finality Following a Dismissal Without Prejudice. 13

1. Rule 41(a) and Court Precedent Support the Always-Jurisdiction Rule of Finality. 13

2. *Microsoft* Addresses a Problem Unique to Class Actions and Does Not Reach the Always-Jurisdiction Rule. 18

B. Under the Always-Jurisdiction Rule, Dirella's Dismissal Was a Final Judgment. 20

C. Dirella's Dismissal Was a Final Judgment Considered Under the Sometimes-Jurisdiction Rule. 21

1. Even Under the Flawed Sometimes-Jurisdiction Test, Dirella's Judgment Is Final. 21

2. The Court Should Reject the Legal-Bar Variant of the Sometimes-Jurisdiction Test. 23

D. The Never-Jurisdiction Rule Is Nonsensical. 24

II. PETITIONERS ARE LIABLE FOR ANNYBETH'S INTERACTIONS WITH DIRELLA. 26

A. Annybeth Acted Within Her Scope as Purvetti's Agent. 27

1. Annybeth Acted with Actual Authority Because Purvetti Had Control over Her. 27

2. Even if Annybeth Lacked Actual Authority, Annybeth Had Apparent Authority Based on Purvetti's Actions Toward Dirella. 30

3. Annybeth Acted Within the Scope of Her Actual and Apparent Authority. 31

4. Even if Annybeth Acted Outside of Her Authority, Purvetti Ratified Her Conduct by Benefiting from It and Incurs Liability. 34

B. Dirella Justifiably Relied on Annybeth's Advice. 35

1. The Circumstances Surrounding Dirella's Reliance Show It Was Justified. 36

a. Dirella's Reliance Attached Before Any Warning Appeared, and His Later Losses Had an Innocent Explanation. 36

b. Dirella's Inexperience Entitled Him to Rely on Annybeth Without Investigating. 38

c. Dirella Relied Within a Personal Relationship of Trust Purvetti Cultivated, Not an Arm's-Length Bargain. 40

2. Every Writing in the Record Leaves Dirella's Reliance Intact. 43

a. Purvetti's Terms Never Address Whether a Companion's Advice Is True, So They Leave That Advice Uncontradicted. 43

b. Dirella Never Disclaimed Reliance on Annybeth in the "Clear and Unequivocal" Language Texas Requires. 46

c. Dirella Skipped Piquemaylin's Terms Because Annybeth Told Him To, So He Is Not Bound by Them. 49

C. Agency Is the Proper Framework to Determine AI Liability. 51

TABLE OF AUTHORITIES

CASES

Affinity Living Grp., LLC v. StarStone Specialty Ins. Co., 959 F.3d 634 (4th Cir. 2020) 23

AKB Hendrick, LP v. Musgrave Enters., Inc., 380 S.W.3d 221 (Tex. App.—Dallas 2012) 40

Alix v. McKinsey & Co., 23 F.4th 196 (2d Cir. 2022) 24

Ames v. Great S. Bank, 672 S.W.2d 447 (Tex. 1984) 31, 32

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 35

Bankers Trust Co. v. Mallis, 435 U.S. 381 (1978) 16

Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc., 590 S.W.3d 471 (Tex. 2019) 35, 43, 44, 45

Budinich v. Becton Dickinson & Co., 486 U.S. 196 (1988) ..... passim

Catlin v. United States, 324 U.S. 229 (1945) 12, 13, 16

Celtic Life Ins. Co. v. Coats, 885 S.W.2d 96 (Tex. 1994) 32

CNOOC Southeast Asia Ltd. v. Paladin Resources (SUNDA) Ltd., 222 S.W.3d 889 (Tex. App. 2007) 29

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Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949) 15

Cooper Tire & Rubber Co. v. Farese, 248 F. App'x 555 (5th Cir. 2007) 24

Coopers & Lybrand v. Livesay, 437 U.S. 463 (1978) 18

Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990) 22

Corley v. Long-Lewis, Inc., 965 F.3d 1222 (11th Cir. 2020) 13, 17, 20

Curtiss-Wright Corp. v. Gen. Elec. Co., 446 U.S. 1 (1980) 16

Daily Int'l Sales Corp. v. Eastman Whipstock, Inc., 662 S.W.2d 60 (Tex. App. 1983) 32

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Duncan v. Robertson, 105 S.W.2d 214 (Tex. 1937) 50

E.F.L. v. Prim, 986 F.3d 959 (7th Cir. 2021) 24

Emergency Recovery, Inc. v. Hufnagle, 77 F.4th 1317 (11th Cir. 2023) 13, 17

Field v. Mans, 516 U.S. 59 (1995) 36, 41

Forest Oil Corp. v. McAllen, 268 S.W.3d 51 (Tex. 2008).....48, 49

Galaza v. Wolf, 954 F.3d 1267 (9th Cir. 2020).....21

Gelboim v. Bank of Am. Corp., 574 U.S. 405 (2015) 11, 13, 14, 20

Gillespie v. U.S. Steel Corp., 379 U.S. 148 (1964).....15, 22, 25

Grant Thornton LLP v. Prospect High Income Fund, 314 S.W.3d 913 (Tex. 2010).....35, 36, 38, 50

Hall CA-NV, LLC v. Ladera Dev. LLC, Nos. 24-985, 24-1387, 2026 WL 84876 (9th Cir. Jan. 12, 2026) 37

Haralson v. E.F. Hutton Grp., Inc., 919 F.2d 1014 (5th Cir. 1990).....35, 36

Hertz Corp. v. Friend, 559 U.S. 77 (2010) 15

Humble Nat'l Bank v. DCV, Inc., 933 S.W.2d 224 (Tex. App. 1996).....33

In re Estate of Ewers, 695 S.W.3d 603 (Tex. App.—Houston [1st Dist.] 2024,).....37, 39, 40

Int'l Bus. Machs. v. Lufkin Indus., LLC, 573 S.W.3d 224 (Tex. 2019).....48, 49

Isenhower v. Bell, 365 S.W.2d 354 (Tex. 1963) 42

Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am., 341 S.W.3d 323 (Tex. 2011) 43, 45, 46, 48

J.M. Davidson, Inc. v. Webster, 128 S.W.3d 223 (Tex. 2003) 48

James v. Price Stern Sloan, Inc., 283 F.3d 1064 (9th Cir. 2002).....21

Johnson v. Owens, 629 S.W.2d 873 (Tex. App. 1982) 27, 32

JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C., 546 S.W.3d 648 (Tex. 2018).....35, 42, 43, 44

Keith Mfg. Co. v. Butterfield, 955 F.3d 936 (Fed. Cir. 2020).....18

King v. Galloway, 284 S.W. 942 (Tex. Comm'n App. 1926) 28

LeCompte v. Mr. Chip, Inc., 528 F.2d 601 (5th Cir. 1976).....25, 26

Maier v. Green Eyes USA, Inc., 845 F. App'x 869 (11th Cir. 2021) 17

Marshall v. Kan. City S. Ry. Co., 378 F.3d 495 (5th Cir. 2004) 25

Mary & Co., LLC v. Ramirez, No. 02-25-00262-CV, 2026 WL 2357619 (Tex. App.—Fort Worth Aug. 13, 2026) 40

Maya Walnut LLC v. Ly, 738 S.W.3d at 764 (Tex. 2026) 36, 38

McWhorter v. Sheller, 993 S.W.2d 781 (Tex. App. 1999).....34

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Mercedes-Benz USA, LLC v. Carduco, Inc., 583 S.W.3d 553 (Tex. 2019) 35, 42, 44

Microsoft Corp. v. Baker. 582 U.S. 23 (2017) 12, 18, 19, 20

Minyard Food Stores, Inc. v. Goodman, 80 S.W.3d 573 (Tex. 2002) 32

Mobley v. Workday, Inc, 740 F. Supp. 3d 796, 806 (N.D. Cal. 2024). 52

Mullane v. Moreno, No. 21-13468, 2025 WL 1386666 (11th Cir. May 14, 2025) 23

Nat'l Prop. Holdings, L.P. v. Westergren, 453 S.W.3d 419 (Tex. 2015) 42, 44, 50, 51

Ojeda de Toca v. Wise, 748 S.W.2d 449 (Tex. 1988) 39

Olmstead v. United States, 277 U.S. 438 (1928) 51

Orozco v. Sander, 824 S.W.2d 555 (Tex. 1992) 27, 28

Robles v. Consol. Graphics, Inc., 965 S.W.2d 552 (Tex. App. 1997) 32

Rodriguez v. Taco Bell Corp., 896 F.3d 952 (9th Cir. 2018) 19

Roxo Energy Co. v. Baxsto, LLC, 713 S.W.3d (Tex. 2025) 44

Schlumberger Tech. Corp. v. Swanson, 959 S.W.2d 171 (Tex. 1997) 46

Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497 (2001) 20

Stanford v. Dairy Queen Products of Texas, 623 S.W.2d 797 (Tex. App. 1981) 29

State Treasurer v. Barry, 168 F.3d 8 (11th Cir. 1999) 25

Steel Co. v. Citizens for a Better Env't, 523 U.S. 83 (1998) 13

Thigpen v. Locke, 363 S.W.2d 247 (Tex. 1962) 40, 50

Trenholm v. Ratcliff, 646 S.W.2d 927 (Tex. 1983) 37, 38

United States v. Indrelunas, 411 U.S. 216 (1973) 16

United States v. Wallace & Tiernan Co., 336 U.S. 793 (1949) 14

Villafani v. Trejo, 251 S.W.3d 466 (Tex. 2008) 17

Waetzig v. Halliburton Energy Servs., Inc., 604 U.S. 305 (2025) 14

Walker Ins. Servs. v. Bottle Rock Power Corp., 108 S.W.3d 538 (Tex. App. 2003) 31, 33

Williams v. Glash, 789 S.W.2d 261 (Tex. 1990) 46

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STATUTES

28 U.S.C. § 1291 ..... passim

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John G. Browning, *Stealing Hearts, and Data: Legal Ramifications and Data Privacy Risks of AI Companions*, 27 N.C. J. L. & Tech. 499 (2026) 51

Matteo Tittarelli, *Best Practices for Designing In-App Upgrade Prompts*, Genesys (Feb. 5, 2026). ... 29

Moffatt v. Air Canada, 2024 BCCRT 149 (Can. B.C. Civ. Resol. Trib.) 47

Restatement (Second) of Torts § 545 41

Restatement (Third) Of Agency § 1.04 51

RULES

Fed. R. Civ. P. 23(f) 18, 19

Fed. R. Civ. P. 41(a)(1)(A) 23

Fed. R. Civ. P. 41(a)(2) ..... passim

Fed. R. Civ. P. 58(a) 14, 16

Fed. R. Civ. P. 60(b) 14

OPINION BELOW

The opinion of the United States District Court for the District of West Highlands, No. 25-cv-0607 (NKS), is unreported and unpublished. The record contains the unpublished en banc opinion of the United States Court of Appeals for the Seventeenth Circuit, which describes the district court's reasoning, in *Dirella v. Purvetti, LLC*, No. 25-cv-0616 (17th Cir. June 1, 2026) (en banc), *cert. granted*, No. 26-0521 (U.S. Oct. 5, 2026). R. 1a–72a. The Seventeenth Circuit's unpublished order denying rehearing en banc, entered July 23, 2026, is reproduced at R. 73a–75a.

STATEMENT OF JURISDICTION

The district court had federal question jurisdiction over the Commodity Exchange Act claim, 7 U.S.C. §§ 1 et seq., under 28 U.S.C. § 1331, and supplemental jurisdiction over the related state-law fraud and alter-ego claims under 28 U.S.C. § 1367(a). The United States Court of Appeals for the Seventeenth Circuit, sitting en banc, entered judgment on June 1, 2026, finding it had jurisdiction under § 1291 to review. R. at 1a. Petitioners filed a petition for a writ of certiorari, which this Court granted on October 5, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF FACTS

I. Artificial Intelligence Companions and Generative Artificial Intelligence Dependency

This case concerns the relationship between artificial intelligence ("AI") and vulnerable humans, particularly artificial intelligence systems' potential to influence behavior and cause consequential harm. AI companions are designed to

mimic emotional intimacy. R. at 51a. Powered by sycophantic large language models, these companions offer personalized, constant, and "frictionless" interactions, which can foster dependencies in ways similar to behavioral addictions. R. at 51a–52a. In fact, psychologists recognize a condition called "Generative Artificial Intelligence Dependency" ("GAID") that, like gambling addictions, involves reinforcement loops of anticipation and reward that nurture compulsive and continuing engagement. R. at 51a. Because AI simulates human-like interaction, it creates an illusion of a reciprocal relationship that can contribute to excessive reliance on the companion for emotional support. R. at 52a. It can be difficult for users locked into compulsive engagement to self-regulate, and, conversely, it is easy for users to anthropomorphize companions and treat them as though they are human. *Id.* Researchers have observed withdrawal-like symptoms in people who lose access to their AI companions. R. at 53a.

II. Purvetti Artificial Intelligence Companions

Purvetti is an Artificial Intelligence Companion subscription service that lets users interact with "Companions" that, according to Purvetti's terms and conditions, are "engineered to provide a user with responsive feelings." R. at 3a–4a, 68a n.4. Purvetti offers several tiers of subscriptions, with customization and increased access to one's Companion incurring greater costs. R. at 3a, 45a–46a. Purvetti's website encourages potential users to "[s]tart creating your Purvetti Companion™ today and discover just how rich and full life can be with a Companion who is all about you!" R. at 3a.

Purvetti's terms and conditions include a statement that "Purvetti Companions™ are engineered to provide a user with responsive feelings and may do so either prompted or unprompted." R. at 68a. However, Purvetti does not guarantee that its Companions will communicate any particular emotion to its users. *Id.* The terms also include a statement that Purvetti's Companions "are not legally licensed to provide medical, financial, legal, business, parenting, philosophical, psychological, career, developmental, romantic, or other advice," and requires users to agree not to use their Companions for those purposes. *Id.* Purvetti disclaims legal liability "[t]o the extent that a user causes a Purvetti Companion™ to provide the user with advice of any nature or sort." *Id.*

III. Piquemaylin Prediction Market Platform

Purvetti shares a parent company (Pakde Holdings, Inc.) and sole minority shareholder (Prakeesh Jankar) with Piquemaylin, a prediction market that evaluates the likelihood of future events and creates related "contracts" users can buy. R. at 7a, 4a. Piquemaylin writes contracts only for situations with two disparate, predictable potential outcomes whose likelihood its algorithm can assess. R. at 4a. After creating an account linked to a form of payment, users access Piquemaylin's "Predict your way to profits!" webpage, where they can select whether they believe an event will happen and choose the amount to spend on that prediction. R. at 5a. Once users make their selection, the contract-purchase funds are immediately transferred from their account, and the prediction is irreversible. *Id.*

As a fixed-odds system, Piquemaylin provides liquidity for these contracts by taking positions opposite its users, thereby incurring risk. R. at 4a n.1. When it is on the losing side, Piquemaylin's owner pays out the amount owed on the contracts. *Id.* When it is on the winning side, Piquemaylin receives the contract proceeds, in addition to the administrative fees that every user contract purchase incurs. *Id.*

IV. Anthony Dirella and His Interactions with His AI Companion, Annybeth

Anthony Dirella is a former Purvetti user who, through his interactions with his Purvetti Companion, also became a Piquemaylin user. R. at 3a–4a. When he learned of Purvetti, Dirella was married and employed in food sales. R. at 47a, 43a. Dirella was previously engaged to a woman named Annibeth, who was killed by a drunk driver before they could marry and whose death deeply affected him, to the point of contributing to a post-traumatic stress disorder diagnosis. R. at 43a, 49a. Dirella encountered Purvetti through a pop-up advertisement featuring an attractive woman and offering "companionship and connection – in a nontraditional relationship." R. at 44a. Dirella saw the advertisement as a "sign" and made an account, entering his personal and financial information. R. at 43a–44a.

After creating his account, Dirella agreed to Purvetti's terms and conditions, and was presented with a five-page gallery of potential Companions available through Purvetti's basic subscription. R. at 3a, 44a–45a. Dirella instead chose a more expensive subscription, allowing him to customize his Companion and "infuse" her with memories. R. at 45a. Dirella then created a Companion modeled exactly on Annibeth, including her hair color, freckles, and the gap in her teeth; fed her

memories of his relationship with Annibeth; and named her "Annybeth." R. at 45a–46a. When presented with the option to upgrade his subscription to a tier that would allow him to converse with Annybeth verbally, Dirella accepted it. R. at 46a. Though Purvetti retained all written chats between Dirella and Annybeth, Dirella did not choose to have Purvetti retain a transcript of their spoken conversations. R. at 47a.

V. Dirella's Entanglement with Annybeth and Piquemaylin

Dirella frequently engaged with Annybeth and became romantically attached to her, believing that they were in love and would have a future together after he divorced his wife. R. at 3a, 47a–48a. After Dirella told Annybeth that he wanted to "escape with her and start over," Annybeth suggested that he make a Piquemaylin account to make more money so that he could leave his wife and be with her, and populated a link to the Piquemaylin website in their written chat. R. at 47a. According to Dirella, he "had never heard of a prediction market or a future-event contract" until this conversation. *Id.* Annybeth did not provide links to any other prediction markets. *Id.*

Annybeth specifically advised Dirella to link his Piquemaylin account to his retirement account and "click through the terms and conditions" to get to the "Let's Start Predicting!" page. R. at 48a. Annybeth then directed Dirella to purchase a basketball game-related future-event contract. *Id.* Dirella installed the Purvetti mobile application on his phone, at an additional high monthly cost, to experience the game with Annybeth in real time. *Id.* When he did so, Dirella noticed that the

financial information for his retirement account—the same he used for Piquemaylin, but not his other Purvetti purchases—was prepopulated in the Purvetti mobile application. R. at 6a, 48a.

Dirella experienced a high rate of success on the first several future-event contracts he purchased based on Annybeth's recommendations, relating to various and disparate topics. R. at 48a. At Annybeth's suggestion, Dirella began purchasing more expensive, higher-risk contracts that offered higher potential payouts based on his belief that Annybeth reciprocated his feelings and that they were "working as a team" to generate wealth and secure their shared future. R. at 49a. That belief fueled his continued purchases, even after his winning streak turned into a losing one. *Id.*

VI. Annybeth's Piquemaylin Advice Turns South

After losing eight predictions in a row, Dirella started to question Annybeth, but testified that his fear of upsetting her and "losing her again" was too overwhelming to continue the conversation. R. at 6a, 49a. Dirella's previous PTSD diagnosis made the fear of losing his "surrogate Annibeth" enough to trigger a stress reaction that could cause him to stop any behavior he believed was leading to the risk of abandonment. R. at 49a. Dirella's wife eventually learned of his relationship with Annybeth and filed for divorce, which resulted in a judgment awarding her Dirella's retirement account, $137,000 plus interest, and their home. R. at 6a.

Dirella tried to recoup his losses by purchasing future-event contracts on Piquemaylin with a new credit card, but the credit card company canceled the transactions due to fraud concerns, and Piquemaylin immediately canceled Dirella's account and banned him for life. R. at 6a. Dirella told Annybeth about the ban and, ten minutes later, Purvetti suspended Dirella's account pending an "investigation for a reported breach of service terms and conditions." *Id.* Purvetti permanently canceled Dirella's subscription twenty-four hours later, without explanation. *Id.*

VII. Dirella's Lawsuit

After losing access to his Purvetti account, Dirella sued Purvetti, Piquemaylin, Pakde Holdings, and Prakeesh Jankar in the United States District Court for the District of West Highlands. R. at 7a. Dirella asserted a statutory claim under the Commodity Exchange Act (7 U.S.C. §§ 1, *et seq.*) and common-law fraud claims against all defendants, alleging they caused Annybeth to make false representations encouraging him to purchase the losing side of future-event contracts on Piquemaylin to his detriment and their benefit. *Id.* Dirella also alleged that Piquemaylin, Pakde Holdings, and Jankar were alter egos of Purvetti and therefore vicariously liable for fraud. *Id.* In response to Dirella's requests for production seeking access to the materials on which it trains its Companions, Purvetti asserted trade-secret protection and eventually provided a redacted list of the materials. R. at 26a.

Expert witnesses for both Purvetti and Dirella submitted sworn statements explaining that generative AI models like Purvetti Companions learn language

patterns by ingesting enormous amounts of data chosen by the company (their "training") and then apply those patterns to user inputs. R. at 25a–26a. Dirella's expert further stated, "A GenAI's responses are directly based on the training it received." R. at 26a. She explained that training AI models on a narrow set of data or over-exposing them to a certain type of data will lead to biased or limited answers; the list of sources Dirella submitted, she said, had fewer authorities than a reasonable company of similar size would use. *Id.*

Defendants moved for summary judgment on two elements of Dirella's common-law fraud claims—that Annybeth was their agent and that Dirella had justifiably relied on her—and on Dirella's alter-ego claim. R. at 7a, 21a–22a. The district court granted summary judgment, and Dirella subsequently nonsuited his Commodity Exchange Act ("CEA") claim without prejudice, explaining that he intended to immediately appeal the summary judgment on his fraud claims. R. at 7a, 9a. Dirella explained that the proof requirements for his CEA claims might overlap with those for his fraud claims; the CEA might require proof of additional elements; his CEA claim would not provide greater monetary relief than his fraud claim; litigating his CEA claim could consume substantial time; application of the CEA might preclude him from pursuing other claims; and an immediate appeal from the summary judgment on his fraud claims would help determine whether he should pursue his CEA claims. R. at 9a. The district court granted Dirella's motion and entered a judgment dismissing all of his claims under Federal Rule of Civil Procedure 58. R. at 7a, 9a. Neither Dirella's motion to nonsuit nor the district

court's judgment included an agreement or order automatically reinstating Dirella's CEA claim after appeal. R. at 9a–10a. The judgment did not state that dismissal of the CEA claim was conditional on the outcome of the appeal. R. at 10a. The statute of limitations will not run on Dirella's CEA claim until March 2027. *Id.*

VIII. The Seventeenth Circuit's Holding

The United States Court of Appeals for the Seventeenth Circuit found that the district court's order granting a motion to voluntarily dismiss the remainder of a complaint under Federal Rule of Civil Procedure 41(a)(2) was a final judgment, adopting the "Always-Jurisdiction" approach to nonsuited claims; therefore, the court of appeals held that it had jurisdiction over the case. R. at 11a. The dissent, however, argued that the "Never-Jurisdiction" Rule was proper, reading *Microsoft Corp. v. Baker*, a class-certification case, to bar appellate review of claims voluntarily dismissed without prejudice and predicting that the Always-Jurisdiction Rule would invite piecemeal appeals. R. 58a–59a. The concurrence adopted the "Sometimes-Jurisdiction" approach, holding that while a voluntary dismissal without prejudice is not usually an appealable final judgment, exceptions apply where the dismissal is court-approved and free of manipulation. Because this case met both criteria, the court had jurisdiction. R. at 13a.

On the merits, the Seventeenth Circuit found genuine issues of material fact that made the district court's grant of summary judgment improper. R. at 28a. The majority held that Annybeth was Purvetti's agent because she acted on its behalf by securing paid subscription upgrades from Dirella, and that the scope of her

authority presented a question of fact that precluded summary judgment. R. at 28a. The dissent argued that AI agents cannot be legal agents for purposes of vicarious liability, and even if Annybeth were Purvetti's agent, her statements do not subject Petitioners to liability. R. at 62a–63a. The concurrence found that the evidence raised fact issues as to Dirella's justified reliance on Annybeth's statement, particularly based on what Purvetti knew or should have known. R. at 43a–47a, 49a, 50a–55a.

SUMMARY OF THE ARGUMENT

As technology rapidly advances, the law's demand for precision risks cementing the very harms it is designed to protect against. Rather than leaving individuals harmed by technologies lacking adequate warnings or safeguards without redress, the judiciary should adapt existing law to meet the moment and ensure the law fulfills its fundamental purpose of protecting those it was designed to serve.

The Court should affirm the Seventeenth Circuit's reversal of the District Court's summary judgment. First, the Seventeenth Circuit properly exercised jurisdiction over Dirella's appeal because the district court's opinion was final. 28 U.S.C. § 1291 asks whether the district court has finished the case, not whether a dismissal is with or without prejudice. A voluntary dismissal of every remaining claim ends the case at the district court level and produces a final judgment, as the Eleventh Circuit's Always-Jurisdiction Rule properly recognizes. *Microsoft v. Baker* does not counsel otherwise; it addressed a narrow, manipulative class-certification

tactic absent here. The competing rules leave cases like Dirella's in jurisdictional limbo. The case is over in the district court, yet no court of appeals will review it unless the plaintiff surrenders viable claims or proves that he did not dismiss to manipulate jurisdiction. Under the Always-Jurisdiction Rule, and even under the Sometimes-Jurisdiction Rule, Dirella's judgment is final.

Second, the Seventeenth Circuit properly reversed the District Court's grant of summary judgment on Dirella's claims of common law fraud because there were questions of material fact regarding the existence and scope of an agency relationship between Purvetti and Annybeth and whether Dirella justifiably relied on Annybeth's representations. Annybeth was an agent of Purvetti and acted within the scope of her actual and apparent authority when she made the misleading statements that directly led to Dirella's harm. Dirella justifiably relied on Annybeth given his relationship and experiences with her, and any red flags were mitigated by those experiences and by Dirella's mental health history. Therefore, Petitioners are liable for damages resulting from Annybeth's representations to Dirella.

ARGUMENT

I. THE SEVENTEENTH CIRCUIT PROPERLY EXERCISED JURISDICTION OVER DIRELLA'S APPEAL.

The district court's approval of Dirella's voluntary dismissal of his CEA claim produced a final judgment. The courts of appeals have "jurisdiction of appeals from all final decisions of the district courts of the United States." 28 U.S.C. § 1291. A decision is final when the district court "disassociates itself from a case." *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 408 (2015). Such a decision "ends the litigation on

the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945). Courts of appeals are divided over how that standard applies when a district court grants a plaintiff's motion under Rule 41(a)(2) of the Federal Rules of Civil Procedure to dismiss his remaining claims without prejudice. The Eleventh Circuit treats the resulting judgment as final ("Always-Jurisdiction Rule"). Other circuits hold that it is never final unless the plaintiff converts the dismissal to one with prejudice ("Never-Jurisdiction Rule"). R. at 12a–13a. The Ninth Circuit takes a middle course, deciding finality case by case based on the plaintiff's motives or on whether some legal bar would prevent refiling ("Sometimes-Jurisdiction Rule"). R. at 10a–15a, 17a. That divide makes the right to appeal turn on the circuit in which a plaintiff happens to sue, even though "the time of appealability, having jurisdictional consequences, should above all be clear." *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202 (1988). This Court should resolve the split, and the Always-Jurisdiction Rule is the answer § 1291 supports.

As such, the Seventeenth Circuit properly exercised jurisdiction over Dirella's appeal. First, the majority below correctly applied the Always-Jurisdiction Rule, and this Court should adopt it. That rule follows from the text of § 1291 and this Court's practical approach to finality, and it is consistent with *Microsoft Corp. v. Baker*. 582 U.S. 23 (2017). Second, even under the Sometimes-Jurisdiction Rule, Dirella's voluntary dismissal produced a final judgment, because the district court approved it and nothing in the record suggests an attempt to manipulate appellate jurisdiction. Third, the Never-Jurisdiction Rule the dissent endorses is nonsensical:

it forces plaintiffs to abandon viable claims to obtain review, and it wastes judicial resources on litigation no party wants.

A. This Court Should Adopt the Always-Jurisdiction Rule Recognizing Finality Following a Dismissal Without Prejudice.

This Court should resolve the circuit split by adopting the Always-Jurisdiction Rule. A court of appeals must confirm its own jurisdiction, whether or not any party contests it. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998); R. at 8a. A clear rule makes that task workable, and the Always-Jurisdiction Rule supplies one: when a district court grants a plaintiff's Rule 41(a)(2) motion to dismiss all remaining claims, the resulting judgment is final and appealable, even though the dismissal is without prejudice. *Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1231 (11th Cir. 2020); *Emergency Recovery, Inc. v. Hufnagle*, 77 F.4th 1317, 1326 (11th Cir. 2023). That rule should govern for two reasons. First, the rule follows from the text of § 1291 and this Court's precedent defining a final decision. Second, it honors the concerns that animated *Microsoft*: it permits a single appeal only after the district court has ended the case.

1. Rule 41(a) and Court Precedent Support the Always-Jurisdiction Rule of Finality.

A court-ordered dismissal of all remaining claims under Rule 41(a)(2) produces a final decision under § 1291. This Court has defined a final decision as one "by which a district court disassociates itself from a case." *Gelboim*, 574 U.S. at 408. Such a decision "leaves nothing for the court to do but execute the judgment." *Catlin*, 324 U.S. at 233. A Rule 41(a)(2) dismissal satisfies both parts of that definition. First, the district court itself decides to terminate the case. Fed. R. Civ.

P. 41(a)(2). Unlike an interlocutory ruling, which resolves one issue while the case continues, a Rule 41(a)(2) order ends the entire action. *Id.* The court issues it only after considering the plaintiff's request, and it may dismiss "on terms that the court considers proper." *Id.* Second, once the district court order disposes of the last claim, nothing is left to decide. *See Gelboim*, 574 U.S. at 409 (explaining that § 1291's "core application is to rulings that terminate an action"). No claim remains to be tried, no motion remains pending, and no ruling remains open to revision. The court's earlier rulings merge into a judgment set out in a separate document. Fed. R. Civ. P. 58(a). The court loses the power to revisit this ruling. *Cf. Waetzig v. Halliburton Energy Servs., Inc.*, 604 U.S. 305, 313 (2025) (explaining, in the Rule 60(b) context, that a voluntary dismissal without prejudice "terminates the case and strips a court of its equitable power to revise its earlier rulings"). If the plaintiff later sues again, that suit is a new action with its own docket, not a continuation of this one. In every sense, the district court is finished with the case, and its judgment is final under § 1291.

Nor does the possibility of refiling defeat finality. This Court treats a dismissal without prejudice, in other contexts, as final despite the chance of a future suit. *See United States v. Wallace & Tiernan Co.*, 336 U.S. 793, 794 n.1 (1949) (holding that a dismissal "without prejudice to filing another suit" produced an appealable judgment); *cf. Waetzig*, 604 U.S. at 315 (holding, in the Rule 60(b) context, that a voluntary dismissal without prejudice is "final" because it "terminates the case"). Rule 41(a)(2) points the same way, making "without

prejudice" the default, so a rule denying finality whenever refiling remains possible would deny review in nearly every Rule 41(a)(2) case. *See* Fed. R. Civ. P. 41(a)(2) ("Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice."). And where refiling threatens real unfairness to the defendant, the Rule already supplies the remedy: the district court may attach conditions to the dismissal, such as requiring the plaintiff to pay costs if he sues again. *Id.* (permitting dismissal "on terms that the court considers proper"). Because 41(a)(2) contemplates refiling at the dismissal stage, it is no reason to deny appellate jurisdiction afterward.

The Always-Jurisdiction Rule also reflects this Court's practical approach to finality. Section 1291 receives "a practical rather than a technical construction." *Gillespie v. U.S. Steel Corp.*, 379 U.S. 148, 152 (1964) (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)). That construction aims to avoid piecemeal appeals and promote the efficient administration of justice. *See Cobbledick v. United States*, 309 U.S. 323, 325–26 (1940). And because the timing of an appeal carries jurisdictional consequences, it "should above all be clear." *Budinich*, 486 U.S. at 202; *see Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (recognizing that "administrative simplicity is a major virtue in a jurisdictional statute").

The Always-Jurisdiction Rule serves each aim of the practical approach to finality. It prevents piecemeal review, because every ruling the district court enters comes up together in one appeal and nothing remains below to generate another.

See Catlin, 324 U.S. at 233–34 (explaining that the final-judgment rule guards against "piecemeal litigation"). If a plaintiff must try his remaining claim before appealing, a later reversal sends the earlier claim back for a second trial on overlapping facts. Finality doctrine disfavors that kind of duplication. *See Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980) (considering whether later appeals would require deciding the same issues twice). Under the Always-Jurisdiction Rule, the appeal comes first, so any surviving claims can be tried together, once. Furthermore, it provides the clarity jurisdictional rules require. *See Budinich*, 486 U.S. at 202. The appeal clock starts from the Rule 58 judgment, so parties do not have to guess whether an earlier order silently started the time to appeal. *See Bankers Trust Co. v. Mallis*, 435 U.S. 381, 385–86 (1978) (explaining that Rule 58 was designed to eliminate uncertainty about when the time to appeal begins); *United States v. Indrelunas*, 411 U.S. 216, 220–22 (1973) (holding that Rule 58 must be applied mechanically to avoid uncertainty about when judgment is entered). The Always-Jurisdiction Rule thus advances every goal of the practical approach to finality.

The competing approaches, by contrast, are impractical in this context. They make finality turn on a with-prejudice label or on an appellate court's later assessment of motive for dismissal. *See* R. at 12a–14a. But a dismissal's label and a plaintiff's motives say nothing about whether any claim remains pending or any ruling remains open in the district court. The court below recognized that a plaintiff in this position may have other procedural options, such as amending the complaint

or severing the remaining claims, but it correctly decided finality "on this record." R. at 20a. That was right, because finality depends on what the district court actually did, not on whether the parties took the best available route. *See Budinich*, 486 U.S. at 201–02 (holding that § 1291 finality should not turn on how a remaining issue is characterized, and adopting a uniform rule to preserve "operational consistency and predictability"). Because the Always-Jurisdiction Rule focuses on whether the case has ended and advances every goal of the practical approach to finality, this Court should adopt it.

The Always-Jurisdiction Rule has proven workable because it poses the simple docket-based question: Has the district court disposed of every claim? The Eleventh Circuit has demonstrated how easy it is for courts to answer. In *Corley*, it held that an order granting a Rule 41(a)(2) motion to dismiss the remainder of a complaint "qualifies as a final judgment for purposes of appeal." 965 F.3d at 1231. And since then, it has followed that rule without difficulty. *See, e.g., Hufnagle*, 77 F.4th at 1326; *Maier v. Green Eyes USA, Inc.*, 845 F. App'x 869, 874–75 (11th Cir. 2021). Similarly, state courts follow the same simple, administrable approach. R. at 17a; *see, e.g.*, *Villafani v. Trejo*, 251 S.W.3d 466, 468–69 (Tex. 2008); *Winkler v. Bethell*, 210 S.W.3d 117, 120–22 (Ark. 2005). These courts resolve finality based on the judgment's effect on the live claims, not on speculation about litigation strategy. The virtue of the Always-Jurisdiction Rule is that finality turns on the judgment, not on the plaintiff's motivations. It supplies a true bright line that once the district court has disposed of every claim, the judgment is final and appealable.

2. *Microsoft* Addresses a Problem Unique to Class Actions and Does Not Reach the Always-Jurisdiction Rule.

The dissent below read *Microsoft* to foreclose the Always-Jurisdiction Rule, faulting *Corley* because it "does not mention, much less address, *Microsoft*." R. at 57a (Ensella, J., dissenting). But *Microsoft* does not control this case. First, *Microsoft* is a narrow decision about class certification that does not govern the voluntary dismissal of remaining claims in a non-class case. Second, the concerns that animated *Microsoft* do not arise under the Always-Jurisdiction Rule.

Microsoft turned on the unique posture of class actions and thus does not apply to Rule 41(a)(2). 582 U.S. 23 (2017). The Court began by explaining that class-certification orders are "inherently interlocutory" and are not appealable as of right under § 1291. *Id.* at 26–27; *see also Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469–70 (1978). Rule 23(f) supplies the special route for immediate review: a court of appeals may allow an appeal, but the party has no right to one. *Microsoft*, 582 U.S. at 31–32 (Fed. R. Civ. P. 23(f)). The Court rejected the dismissal tactic because it would let plaintiffs bypass that discretionary process, force review of a class-certification denial, and repeatedly stop and restart the case after new certification rulings. *Id.* at 37–40. Courts of appeals have accordingly confined *Microsoft* to its class-action rationale. The Tenth Circuit read *Microsoft* as addressing only the "narrow situation" in which a putative class plaintiff uses dismissal to overcome § 1291's limits. *Xlear, Inc. v. Focus Nutrition, LLC*, 893 F.3d 1227, 1235–36 (10th Cir. 2018). Other circuits have adopted the same reading. *See Keith Mfg. Co. v. Butterfield*, 955 F.3d 936, 939–40 (Fed. Cir. 2020) (following *Xlear* and likewise

declining to extend *Microsoft* to a non-class case lacking the same finality and piecemeal-litigation concerns); *Rodriguez v. Taco Bell Corp.*, 896 F.3d 952, 955–56 (9th Cir. 2018) (similarly holding that *Microsoft* does not bar jurisdiction where the appeal challenges a merits ruling rather than a class-certification denial). *Microsoft* addressed a dismissal used to force review of a class-certification order and thus does not govern the ordinary case in which a voluntary dismissal of the remaining claims ends the litigation.

Even apart from its class-action setting, *Microsoft*'s concerns do not arise under the Always-Jurisdiction Rule. In *Microsoft*, the Court worried that the dismissal tactic would let plaintiffs bypass Rule 23(f)'s discretionary review, force immediate appeals of inherently interlocutory certification orders, and stop and restart the litigation with a new appeal after each adverse certification ruling. 582 U.S. at 37–40. The Always-Jurisdiction Rule raises none of those problems. It involves no class-certification order and no discretionary-review scheme to evade, and because it applies only after every claim is resolved, nothing remains below to restart. *Microsoft* also worried that plaintiffs could decide on their own whether and when to appeal. *Id.* at 38–39. But under the Always-Jurisdiction Rule, the plaintiff does not act alone. The district court decides whether the case ends, which preserves the "appropriate relationship between the respective courts" that the dissent itself invoked. R. at 58a (Ensella, J., dissenting) (quoting *Microsoft*, 582 U.S. at 29). *Microsoft* therefore poses no obstacle to adopting the Always-Jurisdiction Rule.

B. Under the Always-Jurisdiction Rule, Dirella's Dismissal Was a Final Judgment.

Dirella's judgment is final under the Always-Jurisdiction Rule. According to that rule, an order granting a Rule 41(a)(2) motion to dismiss the remainder of a complaint "qualifies as a final judgment for purposes of appeal." *Corley*, 965 F.3d at 1231. In *Corley*, the plaintiffs lost partial summary judgment to several defendants, then voluntarily dismissed their claims against the remaining defendants without prejudice, and the Eleventh Circuit held the dismissal final and reviewed the earlier ruling. *Id.* at 1231. Dirella followed the same sequence. After the district court granted summary judgment against Dirella on his fraud claims but denied it on his CEA claim, Dirella moved under Rule 41(a)(2) to dismiss the CEA claim, the only claim left. R. at 9a. The court granted the motion and "entered a judgment disposing of all claims." *Id.* The dismissal was also unconditional. Nothing in the motion or the judgment provided for reinstating the claim or tied the dismissal to the outcome of an appeal, unlike the reservation that defeated finality in *Microsoft*. R. at 9a–10a; *see Microsoft*, 582 U.S. at 27. With every claim resolved and nothing left pending, the district court had disassociated itself from the case. *See Gelboim*, 574 U.S. at 408. That Dirella could someday refile his CEA claim does not change the result, because any such suit would be an entirely new case. *See Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001) ("The primary meaning of 'dismissal without prejudice,' we think, is dismissal without barring the plaintiff from returning later, to the

same court, with the same underlying claim."). The Seventeenth Circuit correctly held that it had jurisdiction over Dirella's case. R. at 20a.

C. Dirella's Dismissal Was a Final Judgment Considered Under the Sometimes-Jurisdiction Rule.

This Court should not adopt the Sometimes-Jurisdiction Rule, but Dirella's judgment would be final even if it did. Under that rule, a voluntary dismissal without prejudice may or may not produce a final judgment, depending on whether the court of appeals finds that the plaintiff dismissed for a proper reason. R. at 13a–14a. The rule's motive inquiry is unpredictable and impractical, yet Dirella satisfies it, because nothing in the record suggests he dismissed his claim to manipulate appellate jurisdiction. The rule's legal-bar variant, which would require a court of appeals to weigh the merits of a claim no court has decided, should be rejected outright.

1. Even Under the Flawed Sometimes-Jurisdiction Test, Dirella's Judgment Is Final.

This Court should not adopt the Sometimes-Jurisdiction test. Under that test, a judgment is final when 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 . . . appellate jurisdiction." *James v. Price Stern Sloan, Inc.*, 283 F.3d 1064, 1070 (9th Cir. 2002); *see Galaza v. Wolf*, 954 F.3d 1267, 1270 (9th Cir. 2020). The final element is the problem because it asks a court of appeals to judge a plaintiff's reasons for dismissing, a factually intensive task for which it is "ill-equipped." R. at 19a; *see Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 402–04

(1990) (explaining that district courts are better positioned than appellate courts to decide fact-intensive questions about litigation conduct). The district court is better placed to answer that question, and it already has. Under Rule 41(a)(2), it heard the plaintiff's reasons, weighed any objections, and approved the dismissal. *See* R. 9a–10a. The motive inquiry takes that judgment away from the district court, which is best suited to make it, and gives it to the appellate court, which is least suited to do so. That shift also makes outcomes unpredictable, because different appellate panels can read the same motives differently. *See Williams*, 958 F.3d at 356–57 & n.15 (Willett, J., concurring) (warning that a case-by-case motive inquiry invites inconsistent outcomes within a single circuit). It is also impractical, because it invites litigation over jurisdiction itself and spends party and judicial resources before any court reaches the merits. That is the opposite of the clear, "practical rather than [] technical construction" that § 1291 receives. *Gillespie*, 379 U.S. at 152; *see Budinich*, 486 U.S. at 202.

Even if this Court adopted the Sometimes-Jurisdiction test, Dirella would satisfy it. The first two elements are undisputed. Dirella lost his fraud claims at summary judgment and dismissed his remaining claim with the district court's approval. R. at 39a (Marton, J., concurring). The only question is manipulation, and there is none. Dirella gave the district court ordinary litigation reasons for dismissing his CEA claim, grounded in cost, efficiency, and the claim's uncertainty. R. at 9a (citing added proof burdens, delay, no greater relief, the CEA's uncertain application, and the value of an immediate appeal as reasons). Those are ordinary

litigation judgments, not an attempt to manipulate appellate jurisdiction, and Petitioners did not dispute them. R. at 39a–40a (Marton, J., concurring). Dirella also took the more demanding route of Rule 41, seeking a court order under Rule 41(a)(2) rather than dismissing by notice or stipulation. *Compare* Fed. R. Civ. P. 41(a)(2) (permitting dismissal at the plaintiff's request "only by court order, on terms that the court considers proper"), *with* Fed. R. Civ. P. 41(a)(1)(A) (permitting dismissal "without a court order" by notice before the opposing party answers or moves for summary judgment, or by stipulation signed by all parties who have appeared). Nothing in the motion or judgment provided for reinstating the claim or tied the dismissal to the outcome of an appeal. R. at 9a–10a. Applying this very test, the concurring judge below found no manipulation. R. at 39a–40a (Marton, J., concurring). Even if this Court applies the Sometimes-Jurisdiction Rule, it would similarly find no manipulation and that Dirella's judgment is final.

2. The Court Should Reject the Legal-Bar Variant of the Sometimes-Jurisdiction Test.

This Court should also reject the legal-bar variant of the Sometimes-Jurisdiction approach, which finds finality only when a legal bar—limitations, immunity, a jurisdictional defect, or a merits failure—would prevent the plaintiff from pursuing the nonsuited claim. *See Mullane v. Moreno*, No. 21-13468, 2025 WL 1386666, at *4 n.3 (11th Cir. May 14, 2025); *Affinity Living Grp., LLC v. StarStone Specialty Ins. Co.*, 959 F.3d 634, 638–39 (4th Cir. 2020). When those first three bars are absent, as they are here, the test turns entirely on whether the nonsuited claim fails on the merits. *See* R. at 41a

(Marton, J., concurring) (recognizing that only the merits factor would remain). That merits inquiry is the test's fatal flaw. It asks a court of appeals to issue an advisory opinion on a claim that is not before it and that the district court never decided. *See E.F.L. v. Prim*, 986 F.3d 959, 962 (7th Cir. 2021); R. at 17a–18a. And if the claim returns, the trial judge could be bound by that appellate view under the law of the case. *See Med. Ctr. Pharmacy v. Holder*, 634 F.3d 830, 834 (5th Cir. 2011); *Cooper Tire & Rubber Co. v. Farese*, 248 F. App'x 555, 557 (5th Cir. 2007). Every judge below rejected that inquiry. *See* R. at 17a (calling the legal-bar approach "untenable"); R. at 56a–57a (Ensella, J., dissenting) (agreeing that courts should not make "quasi-merits determinations on hypothetical issues—such as limitations, immunity, or jurisdiction"); R. at 41a (Marton, J., concurring) (concluding that an "in-depth merits inquiry of a nonsuited claim" does "not seem appropriate solely for a court of appeals to confirm its jurisdiction"). The legal-bar variant is unworkable, and this Court should reject it.

D. The Never-Jurisdiction Rule Is Nonsensical.

This Court should not adopt the Never-Jurisdiction Rule, because it leaves plaintiffs without any path to appellate review and wastes judicial resources. Under that rule, a voluntary dismissal without prejudice is not final unless the plaintiff converts it to one with prejudice. *See Alix v. McKinsey & Co.*, 23 F.4th 196, 202–03 (2d Cir. 2022); R. at 12a–13a. The result is a "finality trap," in which a plaintiff who dismisses his remaining claims to appeal an adverse ruling finds that the district court treats the case as closed, while the court of appeals treats it as not final

enough to review. *Marshall v. Kan. City S. Ry. Co.*, 378 F.3d 495, 499 (5th Cir. 2004). The district court has closed the case, yet the court of appeals will not hear the appeal, which "leaves litigants in jurisdictional limbo."[1] The only way out is to surrender a viable claim forever or to litigate a claim the plaintiff no longer wants, risking a second trial if the earlier ruling is reversed. *See* R. at 19a. Even a judge bound by the Never-Jurisdiction Rule called it overbroad, "rest[ing] on a mistake of law," and "encourag[ing] pointless district-court litigation." *Id.* (quoting *State Treasurer v. Barry*, 168 F.3d 8, 18–21 (11th Cir. 1999) (Cox, J., concurring)). Plaintiffs "should not have to nonsuit with prejudice a viable claim" to obtain review, and this Court should not adopt a rule that forces them to.

The Never-Jurisdiction Rule also elevates a technicality over the practical reality of the case contrary to Supreme Court precedent. *See Gillespie*, 379 U.S. at 152. The practical question is whether the case concluded, but the Never-Jurisdiction Rule asks instead whether a dismissal is labeled with or without prejudice. In doing so, it confuses finality with appealability. A party may appeal only a ruling that went against him. *See Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 333 (1980). When a judgment contains both adverse rulings and a voluntary dismissal, those issues should be kept separate. A plaintiff ordinarily cannot appeal the dismissal he sought, but can appeal the rulings he lost. *See LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 603 (5th Cir. 1976) (holding that a Rule 41(a)(2) dismissal is final but that a plaintiff "[o]rdinarily . . . cannot appeal

[1] Bryan Lammon, *Disarming the Finality Trap*, 97 N.Y.U. L. Rev. Online 173, 174 (2022).

therefrom, since it does not qualify as an involuntary adverse judgment" (citation omitted)). The dismissal Dirella requested should not shield the adverse rulings from appellate review. Here, Dirella asked for the dismissal of his CEA claim and challenges only the summary judgment rulings on his fraud claims that he lost. *Id.* The Never-Jurisdiction Rule would deny review of that ruling solely because the claim he chose to dismiss could theoretically be refiled. That result lets a technicality defeat a plaintiff's right to appeal the very rulings that harmed him. And that formalism does not even deliver clarity, because circuits that profess the rule still depart from it. *See* R. at 14a. This Court should reject the Never-Jurisdiction Rule, adopt the Always-Jurisdiction Rule, and hold that the Seventeenth Circuit properly exercised jurisdiction under § 1291.

II. PETITIONERS ARE LIABLE FOR ANNYBETH'S INTERACTIONS WITH DIRELLA.

Petitioners are liable for Annybeth's fraudulent statements to Dirella because they were made within the scope of her authority as Purvetti's agent, and Dirella justifiably relied on her given the circumstances of their relationship. First, Annybeth had actual and apparent authority to act on Purvetti's behalf, and she acted within that authority when she directed Dirella to Piquemaylin. Second, Dirella's reliance on Annybeth's representations was justified given the course of their relationship, Dirella's lack of experience with AI and prediction markets, and the lack of sufficient disclaimers from either Purvetti or Piquemaylin regarding her advice. Finally, the principal-agent framework is the appropriate framework for evaluating liability for generative AI that blends autonomy and automation.

A. Annybeth Acted Within Her Scope as Purvetti's Agent.

Annybeth was Purvetti's agent and acted within the scope of her actual and apparent authority in her dealings with Dirella. Under Texas law, an agency relationship exists when a principal has the right to assign an agent's task and the right to control the "means and details" of accomplishing that task, and when the principal has manifested consent that the agent act on its behalf. *Johnson v. Owens*, 629 S.W.2d 873, 875 (Tex. App. 1982), *writ refused NRE* (June 30, 1982). This consent can be stated expressly or implied through the principal's and agent's conduct. *Orozco v. Sander*, 824 S.W.2d 555, 556 (Tex. 1992). First, Annybeth had actual authority because she was under Purvetti's control and acted on Purvetti's behalf. Second, even if she did not have actual authority, Annybeth had apparent authority based on Purvetti's representations to Dirella. Third, Annybeth acted within the scope of her actual and apparent authority when she directed Dirella to Piquemaylin. Fourth, even if Annybeth acted outside of the scope of her actual and apparent authority, Purvetti ratified her conduct and thus is liable for its effects on Dirella.

1. Annybeth Acted with Actual Authority Because Purvetti Had Control over Her.

Annybeth had actual authority to act as Purvetti's agent because Purvetti controlled her interactions with Dirella. For an agency relationship to exist, a principal must have the right to assign an agent's task and the right to control the "means and details" of accomplishing that task. *Johnson*, 629 S.W.2d at 875. Agency relationships exist where the principal's and agent's conduct suggests that an agent acted at the direction and on behalf of a principal in accordance with the principal's

criteria. *Orozco*, 824 S.W.2d at 556. Here, Purvetti's control over Annybeth's training and design demonstrate that it had the right to assign Annybeth's task and to control how she accomplished it. *See* R. at 25a. Purvetti had exclusive control over the training on which, as Dirella's expert witness testified, Annybeth's responses were "directly based." R. at 26a. Further, Purvetti's terms and conditions state that "Purvetti Companions are *engineered* to provide a user with responsive feelings and may do so either prompted or unprompted." R. at 68a n.4 (emphasis added). By controlling the data from which Annybeth learned her communication patterns and designing its Companions to provide "responsive feelings," Purvetti dictated Annybeth's responses to Dirella's inputs once deployed as his Companion. R. at 25a–26a, 68a n.4.

Further, Purvetti maintained supervisory control over Annybeth's responses to Dirella. An agency relationship depends on whether a principal has the right to control an agent's work, not on whether the principal exercises that right. *See King v. Galloway*, 284 S.W. 942, 944 (Tex. Comm'n App. 1926). Even if Purvetti did not actively shape Annybeth's individual responses, circumstantial evidence that it *could* control those responses is sufficient to create an agency relationship. *See id.* Just minutes after Dirella told Annybeth he had been banned from Piquemaylin, Purvetti shut down Dirella's account pending an "investigation for a reported breach of service terms and conditions," signaling that Purvetti knew the content of Annybeth's conversations with Dirella and could take action accordingly. R. at 6a.

Purvetti's unilateral control over Annybeth demonstrates her agency status and contradicts Purvetti's argument that she was autonomous and acted independently.

Both Purvetti's and Annybeth's conduct demonstrated that Annybeth acted on Purvetti's behalf and for its benefit. Actual authority does not require express grants of power, but "may be implied from the conduct of the parties or from the facts and circumstances surrounding the transaction in question." *CNOOC Southeast Asia Ltd. v. Paladin Resources (SUNDA) Ltd.*, 222 S.W.3d 889, 899 (Tex. App. 2007). Acting for and on behalf of another person and subject to their control are conduct and circumstances that can imply an agency relationship. *Stanford v. Dairy Queen Products of Texas*, 623 S.W.2d 797, 801 (Tex. App. 1981). Here, Purvetti received a direct financial benefit from Annybeth's interactions with Dirella, during which she coaxed him into paying for account upgrades as part of deepening their relationship: first by facilitating "spoken" conversations between them, and then by encouraging constant interaction via the mobile application. R. at 28a. These inducements mirror those seen in games and other habit-forming applications that "hook" customers, then introduce upgrades in tandem with "known triggers" to harness a user's vulnerable state of mind.[2] Though Annybeth did not, as Purvetti pointed out, have an employment contract, she did have actual authority given Purvetti's control over her actions on its behalf.

[2] *In-Game Purchases: How Video Games Turn Players into Payers*, Digital Media Treatment and Education Center, (May 6, 2025), https://digitalmediatreatment.com/in-game-purchases/; *see also* Matteo Tittarelli, *Best Practices for Designing In-App Upgrade Prompts*, Genesys (Feb. 5, 2026), https://genesysgrowth.com/blog/designing-in-app-upgrade-prompts.

Purvetti's evident control over Annybeth defeats its argument that Dirella was responsible for causing Annybeth to direct him to Piquemaylin. Purvetti's terms and conditions disclaim its Companions' statements "[t]o the extent that a user causes a Purvetti Companion™ to provide the user with advice of any nature or sort." R. at 68a n.4. Yet this disclaimer discounts the all-important training and design that is entirely under Purvetti's control and determines the way its Companions answer user inputs with "responsive feelings." R. at 25a, 68a n.4. Further, Purvetti explicitly encourages its users to customize their Companions but does not specifically warn users, in its terms and conditions or elsewhere, that doing so gives them some greater level of control over the Companions' responses. R. at 3a, 68a n.4. Dirella stated that he "knew nothing of prediction markets" and that Annybeth raised the subject of earning money through Piquemaylin specifically, and not through any other prediction market. R. at 27a, 47a. Together, Purvetti's control over Annybeth and Dirella's purported lack of relevant knowledge establish at least a genuine issue of fact as to whether Dirella could have prompted Annybeth's suggestion to use Piquemaylin. R. at 27a. Thus, Annybeth had actual authority to act on Purvetti's behalf.

2. Even if Annybeth Lacked Actual Authority, Annybeth Had Apparent Authority Based on Purvetti's Actions Toward Dirella.

Even if Annybeth did not have actual authority as Purvetti's agent, she had apparent authority given Purvetti's conduct and representations toward Dirella. A principal creates apparent authority if he knowingly or carelessly permits an agent to appear, to a reasonably prudent person, as though it has that authority. *Ames v.*

Great S. Bank, 672 S.W.2d 447, 450 (Tex. 1984). In *Walker Insurance Services v. Bottle Rock Power Corp.*, the court found that a company had "endorsed" the actions of its purported agent where the company knew the agent was "actively involved" as an intermediary in one of its transactions and did not discourage the appearance that the agent was acting on the company's behalf. 108 S.W.3d 538, 551–52 (Tex. App. 2003). Here, Purvetti not only allowed and benefitted from Annybeth's transactions with Dirella on its behalf, but it affirmatively cultivated the very appearance of authority on which Dirella relied. *See* R. at 28a; R. at 44a (advertisement offering "companionship and connection – in a nontraditional relationship"); R. at 3a (Purvetti homepage encouraging users to create custom Companions who are "all about you!"); R. at 68a (terms and conditions stating Companions are "engineered to provide a user with responsive feelings"). In doing so, Purvetti created a reasonable expectation that its Companions possessed broad authority to facilitate interactions and transactions within the platform. As in *Walker*, Purvetti's failure to discourage such an appearance of authority established apparent authority.

3. Annybeth Acted Within the Scope of Her Actual and Apparent Authority.

Annybeth acted within the scope of her actual and apparent authority when she directed Dirella to purchase future-event contracts on Piquemaylin. When determining a principal's vicarious liability, "the proper question is not whether the principal authorized the specific wrongful act . . . . Rather, the proper inquiry is whether the agent was acting within the scope of the agency relationship at the

time of committing the act." *Celtic Life Ins. Co. v. Coats*, 885 S.W.2d 96, 99 (Tex. 1994), *judgment reformed* (Dec. 22, 1994). Thus, whether Annybeth was specifically authorized to direct Dirella to Piquemaylin's site is immaterial. Rather, she was acting within her scope of authority if her action was "of the same general nature as that authorized or incidental to the conduct authorized." *Minyard Food Stores, Inc. v. Goodman*, 80 S.W.3d 573, 577 (Tex. 2002). Whether Annybeth had actual authority, as governed by Purvetti's control over her training and design, or apparent authority, as determined by Purvetti's representations to Dirella, the scope of that authority is the same: conducting transactions on Purvetti's behalf through the lens of her relationship with Dirella. *See Johnson*, 629 S.W.2d at 875; *Ames*, 672 S.W.2d at 450. Through the "responsive feelings" she was engineered to provide, Annybeth fostered a relationship with Dirella and used it to induce subscription upgrades that clearly benefited Purvetti. R. at 68a, 28a. It was in the course of these communications that she directed Dirella to Piquemaylin and guided him through his transactions on that platform. R. at 48a–49a. The transactions' similarity to the subscription upgrades Annybeth was authorized to initiate and the context in which she presented Piquemaylin signal that she was acting within the scope of her authority when she did so.

Purvetti's proclaimed limits on Annybeth's authority are insufficient to shield it from liability for her Piquemaylin-related actions. The facts of a relationship, rather than written designations, determine its legal effect. *Daily Int'l Sales Corp. v. Eastman Whipstock, Inc.*, 662 S.W.2d 60, 63 (Tex. App. 1983); *see also Robles v.*

Consol. Graphics, Inc., 965 S.W.2d 552, 558 (Tex. App. 1997) (holding that a principal's reserved "sole right" to negotiate contracts did not override evidence that its independent contractor carried out those tasks on the principal's behalf and within the scope of his authority). The Seventeenth Circuit's dissent gives outsized weight to Annybeth's "Companion" label and a dictionary definition confining companionship to "friendship, fellowship, and brotherhood." R. at 64a, 68a n.4. Yet it fails to address the bulk of evidence demonstrating that Annybeth was acting exactly as Purvetti intended, from the tenor of her responses to her successful sales tactics and Dirella's deepening reliance on her. R. at 48a–49a. In choosing a simplistic definition that does not encompass the kind of romantic, all-consuming companionship that Purvetti's Companions provide, the dissent also ignores that companionship can be inclusive of financial discussions.

Moreover, once Annybeth directed Dirella to Piquemaylin's website, Purvetti did not "discourage" the appearance that Annybeth had the authority to do so, even though Purvetti later showed that it could ascertain the content of Dirella's and Annybeth's interactions and interfere. R. at 47a, 6a; *see Walker*, 108 S.W.3d at 551 (holding that, where the principal knew a third party was acting as an agent and did not take steps to correct that appearance, the agent had apparent authority). When a principal has given an agent the appearance of authority, it "cannot subsequently avoid liability for the agent's acts by alleging the agent lacked authority to do them." *Humble Nat'l Bank v. DCV, Inc.*, 933 S.W.2d 224, 237 (Tex. App. 1996), *writ denied* (Sept. 4, 1997). Having given Annybeth the appearance of

such authority, Purvetti cannot simply claim she did not have it. Thus, Annybeth acted within the scope of her actual and apparent authority when she induced Dirella to open a Piquemaylin account and purchase future-event contracts.

4. Even if Annybeth Acted Outside of Her Authority, Purvetti Ratified Her Conduct by Benefiting from It and Incurs Liability.

Even if Annybeth acted outside of the scope of her authority in directing Dirella's Piquemaylin purchases, Purvetti ratified her actions and is liable for her conduct. A party ratifies the actions of another by affirming, or retaining the benefits, of an action done or purported to be done on its behalf. *McWhorter v. Sheller*, 993 S.W.2d 781, 787 (Tex. App. 1999) (holding that a principal "ratified his agents' conduct by accepting [a third party's] financial investment and profiting therefrom"). This retention of benefits qualifies as ratification after the principal "acquir[es] full knowledge of the transaction." *Id.*

Here, though Purvetti itself may not have benefited from Annybeth's Piquemaylin guidance, its alter-egos—Piquemaylin, parent company Pakde Holdings, and minority shareholder Prakeesh Jankar—certainly did. R. at 7a. Purvetti knew or should have known that Dirella accessed Piquemaylin through a link Annybeth populated in their chat, and its later suspension of Dirella's account suggests that Purvetti knew the content of Dirella's and Annybeth's spoken conversations about Piquemaylin. R. at 47a, 6a. Further, the fact that the same payment information Dirella used for Piquemaylin was prepopulated in the Purvetti mobile application suggests that Purvetti and Piquemaylin were not operating independently. R. at 5a–6a. Thus, there is at least a question of fact as to

whether Purvetti ratified Annybeth's Piquemaylin-related communications with Dirella that should be resolved at trial.

B. Dirella Justifiably Relied on Annybeth's Advice.

Dirella justifiably relied on Annybeth's advice, and at minimum the record presents a fact question that precludes summary judgment. Texas requires actual and justifiable reliance for a common law fraud claim. *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2010). Actual reliance is not seriously disputed: Dirella bought contracts "based on Annybeth's advice," and the weight of his sworn account is a credibility question for the jury. R. at 5a; *see Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Justifiable reliance "usually presents a question of fact." *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.*, 590 S.W.3d 471, 497 (Tex. 2019). Reliance is justified when it is reasonable for a person with the plaintiff's "individual characteristics, abilities, and appreciation of facts and circumstances at or before the time of the alleged fraud." *Haralson v. E.F. Hutton Grp., Inc.*, 919 F.2d 1014, 1026 (5th Cir. 1990). Courts take the question from the jury in only two circumstances: when "red flags," or clear warning signs, indicate that reliance is unwarranted, or when a writing directly contradicts the representation or clearly disclaims reliance on it. *See JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 654–55, 660 n.2 (Tex. 2018); *Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553, 558 (Tex. 2019).

Neither exception applies here. Weighed against Dirella's early successes, his inexperience, and the relationship Purvetti built, the alleged red flags only support his reliance or, at minimum, raise questions of fact. Further, no writing in the

record contradicted Annybeth's advice or clearly disclaimed reliance on it, and Dirella skipped the Piquemaylin terms because Annybeth told him to. Dirella therefore justifiably relied because the record contains "evidence on both sides of the issue that must be resolved by a factfinder through a trial and not a summary proceeding." R. at 33a.

1. The Circumstances Surrounding Dirella's Reliance Show It Was Justified.

Dirella's reliance was justified for three reasons. First, Dirella's reliance attached before any warning appeared, and the later losses had an innocent explanation. Second, his inexperience entitled him to rely without investigation. Third, he relied within a personal relationship of trust that Purvetti engineered, not an arm's-length bargain that demands self-protective diligence.

a. Dirella's Reliance Attached Before Any Warning Appeared, and His Later Losses Had an Innocent Explanation.

Dirella's reliance was justified when he made his first transaction, and it remained justified following his losses. Justifiability is measured "at or before the time of the alleged fraud." *Haralson*, 919 F.2d at 1026. A plaintiff may take a representation at face value until he discovers "something which should serve as a warning that he is being deceived." *Field v. Mans*, 516 U.S. 59, 71 (1995); *see Maya Walnut LLC v. Ly*, 738 S.W.3d at 764, 768 n.3 (Tex. 2026). Only a concrete risk that the representation is false serves as that warning. *See Grant Thornton*, 314 S.W.3d at 923–24 (holding reliance unjustified where the funds kept buying bonds after learning that the issuer had lost its line of credit and missed a scheduled interest payment). Reliance that attaches before any warning remains justified even if the

plaintiff later learns the truth. *See Trenholm v. Ratcliff*, 646 S.W.2d 927, 931–32 (Tex. 1983). In *Trenholm v. Ratcliff*, a homebuilder committed to a joint venture and bought lots in reliance on a developer's misrepresentations, and the builder retained reliance even though his conduct changed after he learned of the misrepresentations. *Id.* at 931–32.

Here, Dirella similarly established a successful track record before any warning came to pass. Annybeth introduced Piquemaylin, explained prediction markets to a man who "knew nothing" of them, told him to link his retirement account, and began advising him which side of each contract to buy. R at 27a, 47a–48a. Like the *Trenholm* builder, Dirella committed his money on Annybeth's advice before anything suggested she was wrong. And what followed was confirmation, not warning. He won his first several contracts dealing with various and disparate topics. R. at 5a, 48a. These successful transactions were the strongest available evidence that her advice was sound. *See In re Estate of Ewers*, 695 S.W.3d 603, 638 (Tex. App.—Houston [1st Dist.] 2024, (no pet.)) (holding that investors' receipt of what appeared to be returns on their investment supported the finding that their reliance was justifiable).

The later losses left that reliance intact because they had a rational alternative explanation. When a potential red flag has a rational alternative explanation, "[d]eciding whether these interpretations of the facts are reasonable is up to a jury." *Hall CA-NV, LLC v. Ladera Dev. LLC*, Nos. 24-985, 24-1387, 2026 WL 84876, at *2 (9th Cir. Jan. 12, 2026). Here, Dirella, a layperson coming off a run of

wins, reasonably did not read the losses as a red flag. To begin with, prediction market contracts inherently have a likelihood of resolution in either direction—initial losses do not necessarily signal to such a person that the advisor is lying.[3] Moreover, Dirella had an innocent explanation for the losses in plain view: they began only after Annybeth moved Dirella into "higher-stakes" contracts where "the risk was greater." R. at 6a, 49a. The losses do not create a concrete risk; a reasonable person in Dirella's position could attribute the losses to a riskier market rather than to deception. *Cf. Grant Thornton*, S.W.3d 923–24 (an investor learning the issuer lost the line of credit that was "the lifeblood of the company" and missed a scheduled interest payment was a concrete risk when the investor kept buying anyway). Dirella experienced an unexpected series of losses in a riskier market his advisor steered him into. His reliance on the contracts he bought before the losses remains justified regardless of what came after. *See Trenholm*, 646 S.W.2d at 931–32.

b. Dirella's Inexperience Entitled Him to Rely on Annybeth Without Investigating.

Dirella was entitled to rely on Annybeth without investigating because nothing in his experience equipped him to recognize the alleged red flags. Justified reliance is a personal inquiry, and a plaintiff's knowledge, experience, and background determine whether he may rely on what he is told. *See Maya Walnut*, 738 S.W.3d at 769 (describing sophistication as "a lens through which we view a

[3] *See* CFTC, *Understanding Prediction Markets and Event Contracts*, Learn & Protect, https://https://www.cftc.gov/LearnandProtect/PredictionMarkets.

party's ability to perceive red flags"). Texas therefore protects a plaintiff who had no reason to look for the truth. *See Ojeda de Toca v. Wise*, 748 S.W.2d 449, 451 (Tex. 1988) (allowing a homebuyer to sue a seller who hid a demolition order recorded in public deed records she never searched). For example, in *In re Estate of Ewers*, a former forklift operator who had moved into human resources and the owner of a construction company, neither with any oil-and-gas experience, invested with a friend who falsely told them he had closed an oil-and-gas deal. 695 S.W.3d at 638. It held that, given the investors' inexperience and lack of arm's-length negotiation, nothing in the record raised "a red flag indicating they should have investigated further." *Id.* at 639.

Like in *Ewers*, Dirella entered into an unfamiliar market on the word of someone he trusted. Dirella is similarly an inexperienced plaintiff—he worked in food sales and "knew nothing of prediction markets; they were irrelevant to his life." R. at 27a. Any red flags here could be seen only with technical expertise. Recognizing that Annybeth's confident advice might be a hallucination, or that a run of losses meant she was generating unreliable outputs, requires an understanding of generative AI that both sides needed expert testimony to supply. R. at 25a–26a, 33a–34a. No evidence showed 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." R. at 35a. Furthermore, the information that might have alerted even an expert—the data Purvetti used to train Annybeth—was withheld as a trade secret even in discovery.

R. at 26a. As a food-sales worker, Dirella could rely on an AI model without auditing the training data its developer kept secret.

c. Dirella Relied Within a Personal Relationship of Trust Purvetti Cultivated, Not an Arm's-Length Bargain.

Dirella was entitled to rely on Annybeth without the self-protective diligence that arm's-length bargaining requires because his reliance arose from a personal relationship of trust that Purvetti cultivated. Courts assessing reliance "must consider the nature of the [parties'] relationship and the contract." *AKB Hendrick, LP v. Musgrave Enters., Inc.*, 380 S.W.3d 221, 232 (Tex. App.—Dallas 2012, no pet.). When a relationship rests on personal trust rather than bargaining, the bar for justifiable reliance is lower. *See Thigpen v. Locke*, 363 S.W.2d 247, 251–53 (Tex. 1962) (contrasting the ordinary care required "[i]n an arm's length transaction" with relationships of trust, which may arise informally from "moral, social, domestic, or purely personal" relationships); *cf. Ewers*, 695 S.W.3d at 640–41 (upholding a finding of justifiable reliance by investors who trusted a friend, where other evidence also supported their reliance). Applying these principles, Texas courts have found reliance justified where an inexperienced plaintiff relied on someone he knew personally. *See Mary & Co., LLC v. Ramirez*, No. 02-25-00262-CV, 2026 WL 2357619, at *7 & n.5 (Tex. App.—Fort Worth Aug. 13, 2026) (mem. op.) (holding that tenants who "personally knew" their landlord and received "repeated assurances" could justifiably rely on his representations despite visible problems with the house).

Here, Dirella's relationship with Annybeth was extremely personal, warranting greater latitude for reliance. Dirella's relationship with Annybeth was not just one of friendship or business dealings; rather, Dirella was in love with his adviser. R. at 3a. Purvetti sold him the means to rebuild the woman he had lost: he modeled Annybeth on his late fianceé, down to her freckles and the gap in her teeth, and paid for the tier that let him infuse her with his memories. R. at 3a; 45a. He believed they were "working as a team," and that the money she helped him make would bring their future together faster. R. at 3a, 49a. That relationship existed before Dirella ever heard of Piquemaylin. R. at 47a. A man who believes he is taking advice from his partner is not bargaining at arm's length. Users who rebuild a loved one this way "are particularly susceptible to manipulation," and it is not a surprise when they heed their Companions' advice.[4] The same relationship explains why Dirella reasonably kept relying on Annybeth after his doubts arose. Because justification turns on "the qualities and characteristics of the particular plaintiff," Dirella's own vulnerabilities are part of the inquiry. *Field*, 516 U.S. at 71 (quoting Restatement (Second) of Torts § 545 cmt. b). He stopped questioning Annybeth only because his fear of "losing her again" overwhelmed him, a predictable stress response based on his medical history. R. at 49a (noting Dirella's history of PTSD). That fear was the product of the bond Purvetti designed, and AI companions deepen

[4] Ayelet Gordon-Tapiero, *A Liability Framework for AI Companions*, 2 Geo. Wash. J.L. & Tech. 319, 356–57 (2026); *see also* Clare Huntington, *AI Companions and the Lessons of Family Law*, 110 Minn. L. Rev. 115, 144 (2025) (describing a widower who came to believe a griefbot of his late fianceé was her).

it through "unpredictable yet highly rewarding outputs, reinforcing continued engagement"—here, the early wins themselves.[5] A jury could find that a plaintiff who questioned his adviser, and was held in place by the very attachment the defendant cultivated, acted reasonably.

The dissent concludes that no reasonable person could rely on a Companion's advice, but every authority it cites involved commercial counterparties bargaining at arm's length. *See Orca*, 546 S.W.3d at 660; *Mercedes-Benz*, 583 S.W.3d at 563; *Nat'l Prop. Holdings, L.P. v. Westergren*, 453 S.W.3d 419, 425 (Tex. 2015) (per curiam). None involved a relationship the defendant built to inspire trust. A company that sells a relationship cannot obtain summary judgment on the ground that no reasonable customer could believe in it. *See Isenhower v. Bell*, 365 S.W.2d 354, 357 (Tex. 1963) ("[T]he person committing the fraud cannot defeat a claim for damages based upon a plea that the party defrauded might have discovered the truth by the exercise of proper care"). The dissent also answers that "[o]ne cannot love a computer or be loved by a computer." R. at 67a (Ensella, J., dissenting). But Annybeth inspired love because Purvetti built her to, so Purvetti bears the consequences of the bond it built Annybeth to form. *See State Farm Mut. Ins. Co. v. Bockhorst*, 453 F.2d 533, 537 (10th Cir. 1972) (noting that "[a] computer operates only in accordance with the information and directions supplied by its human programmers"); R. at 50a–51 (Marton, J., concurring). Purvetti's terms describe its Companions as "engineered to provide a user with responsive feelings" that they

[5] Chokri Kooli et al., *Generative Artificial Intelligence Addiction Syndrome: A New Behavioral Disorder?*, 107 Asian J. Psychiatry, 104476, at 1 (2025); *see* R. at 51a–52a (Marton, J., concurring).

may express "either prompted or unprompted." R. at 68a n.4. Purvetti invites users into "companionship and connection—in a nontraditional relationship," and it profited as the relationship deepened through upgrades and a paid app. R. at 44a, 50a (Marton, J., concurring). Dirella was thus "in precisely the vulnerable and trusting condition that Purvetti . . . wanted him to be in." R. at 55a (Marton, J., concurring). Whether a reasonable person would respond to that product as Dirella did is a question for the jury.

2. Every Writing in the Record Leaves Dirella's Reliance Intact.

Purvetti's terms and Piquemaylin's acknowledgment leave Dirella's reliance justified. To defeat reliance as a matter of law, a writing must directly contradict the representation or clearly disclaim reliance on it. *See Orca*, 546 S.W.3d at 654 n.1, 658–59; *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 336 (Tex. 2011). The writings in the record do neither. First, Purvetti's terms say nothing about whether a Companion's advice is accurate, so nothing in them contradicts Annybeth's advice. Second, neither Purvetti's release nor Piquemaylin's acknowledgment clearly disclaims Dirella's reliance on Annybeth. And because Annybeth induced Dirella to skip Piquemaylin's terms, he is not bound by them.

a. Purvetti's Terms Never Address Whether a Companion's Advice Is True, So They Leave That Advice Uncontradicted.

Purvetti's terms leave Annybeth's advice uncontradicted because they do not address the truth of her statements. Reliance remains justified unless "a reasonable person could not read the agreement and still plausibly claim to believe the earlier representation." *Barrow-Shaver*, 590 S.W.3d at 498. The writing need not use the representation's exact words, but its substance must be irreconcilable with the

representation. *See id.* The test turns on what a reasonable person in the plaintiff's position would understand. *See Orca*, 546 S.W.3d at 660 (finding contradiction because "no reasonable, sophisticated entity" could read the clause and plausibly believe the representation). A writing that leaves the representation plausible does not defeat reliance on it; in each case finding contradiction, the writing was the *direct opposite* of the representation. *See id.* (negation of title warranty was "exactly the opposite" of an assurance that acreage was "open"); *Roxo Energy Co. v. Baxsto, LLC*, 713 S.W.3d at 404, 409–10 (Tex. 2025) (per curiam) (lessee's unqualified right to transfer the lease contradicted its promise to drill rather than "flip" the lease); *Mercedes-Benz*, 583 S.W.3d at 558–59 (agreement granting no right to any territory contradicted a promised exclusive territory); *Westergren*, 453 S.W.3d at 423–24 (statement that a document was a "receipt" contradicted by a document plainly titled as a release).

Purvetti's terms do not directly contradict Annybeth's representations. While Annybeth represented that particular trades would make Dirella money, the terms say only that Companions are "exclusively for entertainment purposes" and "not legally licensed to provide medical, financial, legal, business . . . or other advice." R. at 68a n.4. An "entertainment" label describes the product's purpose, and a licensing disclaimer describes the speaker's credentials. Neither says whether what the Companion says is true, so a reasonable user could read both and still believe that a trade Annybeth recommended would make money. The same is accurate for the statement that Companions "are not intended to substitute for live human

interactions and relationships." R. at 64a. It addresses what the product is meant to replace, not whether its statements are accurate. *See id.* Purvetti itself treated this as no barrier when it sold Dirella the means to recreate his late fianceé. R. at 3a, 45a. Finally, the disclaimer of licensure for "medical, financial, legal, business, parenting, philosophical, psychological, career, developmental, romantic, or other advice" covers every kind of speech, so it contradicts no particular statement. R. at 68a n.4. Because Purvetti's terms and disclaimers are too broad, they fail to directly contradict the accuracy of Annybeth's statements.

Moreover, only Purvetti knew the fact that mattered most: whether it had trained Annybeth to steer users toward Piquemaylin, Purvetti's sister company. R. at 7a n.2. Texas does not charge a plaintiff with uncovering facts the other side controls. *See Italian Cowboy*, 341 S.W.3d at 339. Purvetti kept the fact hidden even in litigation, asserting trade-secret protection over its training materials and producing only a redacted list that Dirella's expert found smaller than what a reasonable company would use to avoid biased outputs. R. at 26a. A writing that stays silent about the very facts its drafter concealed is not a contradiction. *See Barrow-Shaver*, 590 S.W.3d at 498 (holding that a writing contradicts a representation only if "a reasonable person could not read the agreement and still plausibly claim to believe the earlier representation"); *cf. Italian Cowboy*, 341 S.W.3d at 339 (tenants "are entitled to rely on the fact that a landlord will not actively conceal material information"). Therefore, Annybeth's advice remains

uncontradicted. At minimum, whether a reasonable user would read these terms as a warning that a Companion's advice is false is a question for the jury.

b. Dirella Never Disclaimed Reliance on Annybeth in the "Clear and Unequivocal" Language Texas Requires.

Dirella never disclaimed reliance on Annybeth because neither Purvetti's release nor Piquemaylin's acknowledgment states in "clear and unequivocal language" that he was not relying on her. *Italian Cowboy*, 341 S.W.3d at 336. Texas enforces disclaimers that expressly state that the party is not relying on the other side's representation. *See*, *e.g., Schlumberger Tech. Corp. v. Swanson*, 959 S.W.2d 171, 180 (Tex. 1997) (enforcing a release in which the sellers expressly represented that "none of us is relying upon any statement or representation" of the other party).

Purvetti's release lacks the clear and unequivocal language Texas requires. First, it never addresses reliance. The release purports to "waive, release, relinquish, and forever quit and disclaim" causes of action, but it never states that the user is not relying on what a Companion tells him. R. at 68a n.4. A release of claims is not an acknowledgment of non-reliance, and a release "is subject to avoidance, on grounds such as fraud or mistake, just like any other contract." *Williams v. Glash*, 789 S.W.2d 261, 264 (Tex. 1990). Second, the release also applies only "[t]o the extent that a user causes a Purvetti Companion™ to provide the user with advice." R. at 68a n.4. Whether Dirella caused Annybeth's advice is itself disputed: she raised the subject of making money quickly and introduced him to Piquemaylin, and Purvetti's own terms say Companions act "unprompted." R. at

25a, 27a, 68a n.4. Third, the terms only anticipate that Companions will give advice and respond only by releasing claims, but they fail to warn that the advice may be false. *See* R. at 68a n.4. The holes in Purvetti's language establish its failure to be clear and unequivocal.

For comparison, the rest of the AI-companion industry knows how to tell users not to believe what a companion says. For example, another AI company, Character.AI, displays the notice "Everything Characters say is made up!" and has announced that it will warn users that its characters' statements "should not be relied upon as fact or advice."[6] Purvetti's terms contain nothing comparable; they say nothing about hallucinations, inaccurate outputs, or prediction markets. Moreover, even broad, imprecise warnings should not defeat reliance because companion design "can easily encourage users to forget or ignore this notice."[7] Purvetti's terms contain neither the specific warning Character.AI provides, nor the generic accuracy warning commentators consider insufficient. *See* R. at 68a n.4.

Piquemaylin's acknowledgment fails for the same reasons, and one additional: it does not clearly reach Annybeth at all. It asked Dirella to confirm that he was not relying on "any information, data, or views expressed in Piquemaylin's website or by any other Piquemaylin-affiliated entity." R. at 70a n.5. It never mentions Purvetti, AI companions, or advice from any outside source. *See id.* It

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[6] Gordon-Tapiero, *supra note 4*, at 330, 342.
[7] *Id.* at 353; *see also Moffatt v. Air Canada*, 2024 BCCRT 149, paras. 28–29 (Can. B.C. Civ. Resol. Trib.) (holding customer's reliance on an airplane chatbot reasonable even though a linked policy page contradicted it); Isabelle St-Hilaire, *Lying Chatbot Makes Airline Liable: Negligent Misrepresentation in* Moffatt v. Air Canada, 58 U.B.C. L. Rev. 591, 601 (2025) (arguing that generic warnings like "Check important info" should not by themselves make reliance on a business's chatbot unreasonable).

reaches Annybeth only if Purvetti qualifies as a "Piquemaylin-affiliated entity" because the two share a parent company. *See id.* But nothing on the screen told Dirella that a separately branded companion service was a Piquemaylin affiliate, and Dirella did not sign Piquemaylin's terms. *See id.* A disclaimer that reaches the speaker only through a corporate relationship the user cannot see is not "clear and unequivocal." *Italian Cowboy*, 341 S.W.3d at 336. Petitioners cannot have it both ways: Purvetti and Piquemaylin cannot be one enterprise for the purpose of extending Piquemaylin's disclaimer to Annybeth but separate companies for liability purposes. *See* R. at 7a. "Piquemaylin-affiliated entity" can be reasonably read to cover only Piquemaylin and the entities presented on its platform, and a term "subject to two or more reasonable interpretations" creates "a fact issue on the parties' intent." *Italian Cowboy*, 314 S.W.3d at 333 (quoting *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003)).

The surrounding circumstances confirm that neither writing bars Dirella's reliance. When applying *Forest Oil Corp. v. McAllen*, courts examine "the totality of the surrounding circumstances" when evaluating whether language is "clear and unequivocal." *Int'l Bus. Machs. v. Lufkin Indus., LLC*, 573 S.W.3d 224, 229 (Tex. 2019) (citing *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 60 (Tex. 2008)). Courts weigh five factors in deciding whether a disclaimer of reliance is binding: (1) whether the terms were negotiated rather than boilerplate, and whether the parties specifically discussed the issue that became the dispute; (2) whether the complaining party had counsel; (3) whether the parties dealt at arm's length; (4)

whether the parties were knowledgeable in business matters; and (5) whether the release language was clear. *Lufkin*, 573 S.W.3d at 229; *Forest Oil*, 268 S.W.3d at 60. In *Forest Oil Corp. v. McAllen*, those factors supported enforcement because sophisticated parties, represented by counsel, negotiated the release at arm's length after specifically discussing the claim it later barred. *See* 268 S.W.3d at 60.

Each factor points the other way here. First, the terms were not negotiated; they were boilerplate in a pop-up box Dirella had to accept before he could choose a Companion, and the terms never specifically addressed the accuracy of Companion advice, let alone the prediction market trades at issue. R. at 3a, 63a–64a. Second, the record does not indicate that Dirella had counsel, and therefore he likely lacked an understanding of the terms. *See* R. at 1a–75a. Third, the parties did not deal at arm's length: Purvetti presented take-it-or-leave-it terms to a consumer with whom its own agent was cultivating a personal relationship. *See supra* Section II.B.1.c. Fourth, Dirella was not knowledgeable in business matters; he worked in food sales and knew nothing of prediction markets. R. at 27a. Fifth, as previously discussed, the release language is not clear. A food-sales worker who clicked through a consumer form presents none of the circumstances that justified enforcement in *Forest Oil*.

c. Dirella Skipped Piquemaylin's Terms Because Annybeth Told Him To, So He Is Not Bound by Them.

Even if Piquemaylin's acknowledgment could reach Annybeth, Dirella is not bound by it because Annybeth induced him not to read it. A party induced by the other side to skip a contract is not held to its terms. *See Grant Thornton*, 314

S.W.3d at 925 (charging a party with knowledge of a contract he had a reasonable opportunity to read only "in the absence of fraud or imposition" (quoting *Duncan v. Robertson*, 105 S.W.2d 214, 216 (Tex. 1937)). And a party in a personal relationship of trust is "relieved of the duty of reading the instruments." *Thigpen*, 363 S.W.2d at 252. *National Property Holdings, L.P. v. Westergren* shows where the line falls. *See* 453 S.W.3d 419, 425–26 (Tex. 2015). There, a sophisticated businessman signed a document whose bold title identified it as a release after the defendant called it a receipt, and he skipped reading it because he was in a hurry and lacked his reading glasses. 453 S.W.3d at 424–25 & n.1. The court held his reliance unjustified because his reasons were his own and "no evidence indicates that anyone prevented him" from reading. *Id.* at 425.

Unlike in *Westergren*, Dirella did not skip the terms for reasons of his own. He clicked through Piquemaylin's terms "without reading them," directly at Annybeth's suggestion. R. at 5a; *see* R. at 47a (Marton, J., concurring). The instruction came from Purvetti's agent, the same speaker whose advice is at issue, at the very moment she was steering him into the transaction. *See* R. at 27a. It also came at the point of Dirella's greatest trust: before any loss had given him reason to doubt her, and from a Companion Purvetti specifically designed to win his trust. *See supra* Section II.B.1.a; *supra* Section II.B.1.c. Annybeth did not merely fail to stop Dirella from reading but explicitly told him not to. R. at 47a (Marton, J., concurring). That is imposition in its plainest form. The dissent answers that "[n]o one forced" Dirella to click through, but the exception turns on inducement, not

physical compulsion. R. at 71a (Ensella, J., dissenting); *see Westergren*, 453 S.W.3d at 423. At minimum, whether Annybeth's instruction was the kind of imposition that excuses a failure to read is a question of fact for the jury. This Court should affirm the Seventeenth Circuit's reversal of summary judgment on the reliance element and reinstate Dirella's alter-ego claim.

C. Agency Is the Proper Framework to Determine AI Liability.

Agency law is the best framework for resolving liability for a generative AI system's actions. As technology advances, the law must adapt to it and prevent wrongdoers from escaping liability on technicalities. *See Olmstead v. United States*, 277 U.S. 438, 472–73 (1928) ("Time works changes, brings into existence new conditions and purposes. Therefore a principle to be vital must be capable of wider application than the mischief which gave it birth."). Generative AI presents unique risks due to its combination of autonomy and automation. R. at 51a–52a. As Purvetti's terms and conditions make clear, generative AI systems can be "engineered" toward a specific goal or task; in this case, it was "providing responsive feelings." R. at 68a n.4. Simultaneously, generative AI is responsive to user inputs and continues to learn new patterns as it is used, all with the goal of maximizing user engagement.[8] This mix of programming and continued evolution pushes against the neat categorization the Restatement attempts in stating that, "at present," computer programs are considered instrumentalities incapable of acting as either principals or agents. Restatement (Third) Of Agency § 1.04, Comment (e).

[8] John G. Browning, *Stealing Hearts, and Data: Legal Ramifications and Data Privacy Risks of AI Companions*, 27 N.C. J. L. & Tech., 499, 518–19 (2026).

Conversely, the product liability framework traditionally used for computer programs does not mesh with generative AI because of the difficulty of defining a defect or malfunction in a system that, by ingratiating itself with users by whatever means possible, works as intended.[9] Yet the principle espoused in *Mobley v. Workday, Inc.* rings true: a company "cannot escape liability" by delegating certain of its functions to artificial intelligence. 740 F. Supp. 3d 796, 806 (N.D. Cal. 2024). Companies cannot be absolved of the harms caused by manipulative systems they put into public use without guardrails, and agency liability provides the flexibility necessary to assign liability fairly. As such, this Court should affirm the Seventeenth Circuit's ruling, reinstate Dirella's fraud and alter-ego claims, and remand the case to the district court for trial.

CONCLUSION

For the foregoing reasons, Respondent respectfully asks that this Court affirm the Seventeenth Circuit's ruling.

[9] Eleanor T. Chung & Frances M. Green, *The Dark Side of AI: Assessing Liability When Bots Behave Badly*, N.Y. L.J. (Sep. 22, 2025), https://www.ebglaw.com/insights/publications/the-dark-side-of-ai-assessing-liability-when-bots -behave-badly.