No. 26-0521

IN THE

Supreme Court of the United States

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 PETITIONERS

Team 19
Attorneys for Petitioners

QUESTIONS PRESENTED

I. Under 28 U.S.C. § 1291, United States Courts of Appeals have the authority to review only "final decisions" of a United States District Court. Here, after partial summary judgment, Dirella moved to nonsuit his unresolved claim under Federal Rule of Civil Procedure ("Rule") 41(a)(1) without prejudice. The district court granted the motion and dismissed the case under Rule 58. Given that a movant may revive a nonsuited claim, is a voluntary dismissal with prejudice a "final decision" for purposes of appeal?

II. Under West Highlands law, a principal can be liable for fraudulent acts committed by its agent. But here, the alleged agent was an artificial intelligence ("AI") chatbot. Given that an AI chatbot is not a legal person, can an AI chatbot be an "agent" for the purposes of holding its corporate operator liable for its allegedly tortious conduct?

PARTIES TO THE PROCEEDING

Petitioners are Purvetti, LLC; Piquemaylin, LLC; Pakde Holdings, Ltd.; and Prakeesh Jankar. Pakde Holdings is the parent company and majority shareholder of subsidiaries Purvetti and Piquemaylin. Jankar is a minority shareholder of each subsidiary. Each Petitioner was a defendant-appellee below.

Respondent is Anthony Dirella, plaintiff-appellant below.

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OPINION BELOW

The judgment of the United States Court of Appeals for the Seventeenth Circuit, *Anthony Dirella v. Purvetti, LLC et al.*, No. 25-cv-0616, was entered on June 1, 2026. (R.1a–72a). Under Federal Rule of Appellate Procedure 40(c), the Seventeenth Circuit raised, and on July 23, 2026, denied, a petition for rehearing en banc. (R.73a–75a).

STATEMENT OF JURISDICTION

The United States District Court for the District of West Highlands had jurisdiction over this case. It had federal question jurisdiction pursuant to 28 U.S.C. § 1331 on Respondent's Commodity Exchange Act ("CEA") claim. *See also* 7 U.S.C. § 25(c) ("[D]istrict courts shall have exclusive jurisdiction of actions brought under [the CEA]."). It had supplemental jurisdiction to hear the common-law fraud and alter ego claims. *See* 28 U.S.C. § 1367(a). Although Respondent dropped his CEA claim below, the parties independently met the diversity and amount-in-controversy requirements of 28 U.S.C. § 1332(a)(1).

Petitioners contest the appellate jurisdiction of the Seventeenth Circuit, and, by extension, this Court. This Court lacks jurisdiction to hear this appeal because the judgment was not final under 28 U.S.C. § 1291.

STATUTORY AND CONSTITUTIONAL PROVISIONS

The jurisdictional issue before the Court is whether a Rule 41(a)(1) voluntary dismissal of a claim without prejudice is a final judgment under 28 U.S.C. § 1291. Both provisions are reproduced in the Appendix.

STATEMENT OF THE CASE

Pakde's Businesses. Petitioner Pakde Holdings, Ltd. ("Pakde") operates two businesses. The first is Piquemaylin, LLC ("Piquemaylin"), which hosts a fixed-odds prediction market: a cutting-edge spin on classic sports gaming. (R.4a). But where sports gaming limits a user's predictions to sports—e.g., whether the Texans will win the Super Bowl—Piquemaylin users can predict the outcome of a broad swath of real-world events. (R.5a). If Piquemaylin determines that an event has "two [possible] disparate and predictable outcomes" and that one outcome is more likely (using a proprietary algorithm), it will write a future-events-contract ("contract"). (R.4a). Then, users may purchase a contract on either side, wagering an amount of their choosing. (R.5a). Users who choose correctly are paid out; the others forfeit their wager. *Id.*

Pakde's second business is Purvetti, LLC ("Purvetti"), an AI companion service. (R.2a). Purvetti offers three subscription tiers of Purvetti Companion™ ("Companion"). (R.2a–3a). These tiers correspond to increasing degrees of customizability. *Id.* The highest tier, Purvetti Memorable Friends™, is the most customizable, allowing a user to infuse the Companion with "memories." *Id.* Users can purchase an additional upgrade, Purvetti Memorable Friends Live™, which enables them to converse with a Companion orally rather than by text. (R.46a-47a).

Respondent Becomes a Customer. Respondent Anthony Dirella ("Dirella") subscribed to Purvetti's highest tier, Purvetti Memorable Friends Live™. (R.3a, 45a). Like all Purvetti customers, Dirella accepted the terms and conditions of use

while setting up his account. (R.3a).

Although married, Dirella customized his Companion to look like his deceased fiancée, Annibeth. *Id.* He dubbed the Companion "Annybeth," and infused it with her "memories." *Id.* Although Purvetti offers transcription of a user's oral conversations with a Companion, Dirella opted out of this feature, presumably to avoid a paper trail that his wife might discover. (R.47)

Over the course of Dirella's discussions with the Companion, "[he] became romantically attached." (R.3a). Dirella eventually confessed to the Companion that he wished to "escape with [it] and start over." (R.47a). The Companion then orally suggested that Dirella create an account on Piquemaylin and sent him a link to do so; if he could make enough money, he could leave his wife and be with the Companion instead. (R.4a–5a, 47a). There is no record of this conversation because, as noted, Dirella opted out of transcription. (R.47a).

Dirella created an account on Piquemaylin. (R.5). As with Purvetti, he accepted Piquemaylin's terms and conditions. *Id.* This entailed clicking through a series of five dialog boxes. (R.69a–71a, n5). Dirella read none of them, allegedly at the Companion's suggestion. (R.5a). His first several contracts were a success. *Id.* To so succeed, however, Dirella claims that he took the advice of the Companion, which the Purvetti terms and conditions explicitly prohibit: "Purvetti Companions™ are not legally licensed to provide . . . financial . . . advice, and the Purvetti Companions™ user agrees that the user's Purvetti Companion™ shall not be used for such purposes." (R.5a, R.68a n.4).

Around this time, Dirella Purvetti's mobile app for an additional fee. (R.5a). His retirement account information, which he had previously linked to his Piquemaylin account, auto-populated in the app. (R.6a).

Eventually, Dirella's luck soured. After moving into higher-stakes predictions, allegedly at the Companion's urging, he lost eight in a row. *Id.* He "began to question" the Companion, but nevertheless purchased another contract, which he lost. *Id.* Not long after, Dirella's wife discovered his relationship with the Companion and filed for divorce. In so doing, she discovered the retirement funds that Dirella had spent on Piquemaylin's platform. *Id.* After the divorce decree, Dirella attempted to recoup his losses. *Id.* He used a new credit card to place trades on Piquemaylin, but the card company halted the transactions due to concerns of fraud. *Id.* Piquemaylin accordingly banned him from the platform. *Id.* After Dirella complained to the Companion, Purvetti suspended his account to investigate "a reported breach of service terms and conditions." *Id.* Within the day, Purvetti canceled his account, too. *Id.*

District Court Suit. After Dirella complained to Purvetti's customer service department across several emails, Purvetti sent him a cease-and-desist letter. (R.6a–7a). In response, Dirella brought suit in the United States District Court for the District of West Highlands. (R.1a, 7a). He alleged liability on two substantive grounds: (1) a statutory claim under the CEA, 7 U.S.C. § 25, and (2) common-law fraud. (R.7a). Dirella further alleged that Pakde, Piquemaylin, and Jankar were vicariously liable for Purvetti's actions as its alter egos. *Id.*

After discovery, Petitioners moved for partial summary judgment on two elements of Dirella's common-law fraud claim and on the alter ego claim. *Id.* The district court granted summary judgment for Petitioners. *Id.* Thereafter, with the court's permission, Dirella nonsuited his remaining CEA claim without prejudice under Rule 41(a)(2). *Id.* The court then dismissed all his claims under Rule 58. *Id.*

Appeal. Dirella appealed this decision to the United States Court of Appeals for the Seventeenth Circuit. A five-judge panel reversed; Judge Marton concurred separately, (R.37a), and Judge Ensella dissented, (R.56a). Judge Aguilar-O'Mara, writing for the majority, first held that it had jurisdiction to hear the appeal, (R.20a)—over Petitioners' objection that the CEA claim, which Dirella is free to revive, defeats the finality of the district court's judgment, (R.8a). The court then found that Dirella had shown a dispute of material fact sufficient to defeat summary judgment. (R.22a).

This appeal followed.

SUMMARY OF THE ARGUMENT

This appeal ends before it begins: this Court lacks jurisdiction over Dirella's appeal. And the case fails on its merits, too. An AI chatbot cannot impute liability to its operator under common-law agency.

First, Dirella's judgment was not final. According to this Court's precedent, 28 U.S.C. § 1291 requires a final judgment for an appeal. But Dirella's voluntary dismissal without prejudice did not create an appealable final judgment. This Court thus lacks jurisdiction.

In enacting finality rules, Congress and the Supreme Court agree on three principles: litigation must be efficient, a plaintiff should not have unilateral power to appeal, and the district court has sole authority to certify a non-final judgment for appeal. In *Microsoft Corp. v. Baker*, this Court re-emphasized those concerns, finding that a voluntarily dismissed claim was not a final judgment. 582 U.S. 23, 40 (2017). And a majority of circuits agree.

Dirella dismissed his CEA claim without prejudice. He expressly stated his intent to seek appeal, circumventing the final judgment rule. But he had other options: Title 28 and the Federal Rules of Civil Procedure prescribe at least seven alternative avenues for appeal. Nevertheless, Dirella chose the one that undermines finality principles. That cannot stand.

Rather than uphold the majority rule, the Seventeenth Circuit followed the Eleventh Circuit's rule to find a final judgment. But that rule rests on inadequately reasoned precedent; it also underreads this Court's holding in *Microsoft*, undermines the purpose of § 1291, and disregards plaintiffs' numerous alternatives. The only other circuit to oppose the majority view, the Ninth, adopts a middle-ground approach that burdens appellate courts with fact-intensive inquiries. But even under that approach, Dirella's claim is not final. Simply put, Dirella brought this case using the wrong procedure.

Second, a company cannot be held vicariously liable for an AI chatbot's actions. Dirella's common-law fraud claim alleges that a Purvetti AI Companion fraudulently encouraged him to purchase losing contracts on Piquemaylin's

prediction market. In West Highlands, common-law fraud requires showing that the defendant made a representation, and that the plaintiff's reliance on that representation was justifiable. Neither can be shown here.

To hold Purvetti liable for the Companion's alleged representation, Dirella must prove that the Companion was Purvetti's legal agent. But an AI chatbot cannot be a legal agent because it is not a legal person. The plain definition of "agent" requires personhood, and agency relationships require capabilities of personhood, like consent, renunciation, and fulfillment of fiduciary duties. These, AI cannot do.

What's more, there is no evidence that Purvetti and the AI Companion formed an agency relationship, even if they could. Purvetti did not confer actual or apparent authority on the Companion. Nor did Purvetti ratify the Companion's alleged misrepresentations. Finally, respondeat superior is inapplicable because an AI chatbot is not an employee, and even if it were, the representations here would be outside the scope of the Companion's employment.

This Court should not extend agency, and thus legal personhood, to AI. The deleterious downstream effects of that decision require little imagination. But the lack of an agency-based claim does not leave plaintiffs allegedly harmed by AI products without recourse—options like product liability remain. And if these avenues are insufficient, the legislature is free to fill the gap.

Finally, even if agency were not at issue, Dirella cannot satisfy the final fraud element—his reliance on the Companion's gaming suggestions was

unjustifiable. A plaintiff cannot turn a blind eye to "red flags" that would cause a reasonably prudent person to doubt a representation. Three primary red flags were present: Dirella signed Piquemaylin's terms and conditions; he was speaking to an AI; and he doubted the Companion's reliability. At bottom, Dirella brought this case using the wrong law. This Court must reverse.

ARGUMENT

The route to this appeal was atypical. Under ordinary circumstances, litigation ends only after a district court fully adjudicates a case on the merits and enters a final judgment. Should the plaintiff lose, he may appeal that decision.

Here, the district court granted partial summary judgment on two elements of Dirella's common-law fraud claim. This fell short of ending the litigation: "An order granting partial summary judgment is usually not an appealable final order under 28 U.S.C. § 1291 because it does not dispose of all of the claims." *Am. States Ins. Co. v. Dastar Corp.*, 318 F.3d 881, 884 (9th Cir. 2003). So, rather than proceed along the normal route of merit adjudication, Dirella nonsuited his unresolved CEA claim without prejudice under Rule 41(a)(2). He did so expressly to manufacture appellate jurisdiction. (R.9a). The strategy bore fruit: The district court dismissed the case at Dirella's request, and he appealed it to the Seventeenth Circuit. Examining its jurisdiction to hear the appeal, the Seventeenth Circuit surveyed the divided circuits and adopted the scantly reasoned position of (only) the Eleventh

Circuit in *Corley v. Long-Lewis, Inc.* to ratify Dirella's maneuver. 965 F.3d 1222 (11th Cir. 2020).[1]

That result cannot stand. Section 1291's finality requirement prohibits piecemeal appeals—like this one—that frustrate the administration of justice. *See* 28 U.S.C. § 1291. This Court recognized as much in *Microsoft Corp. v. Baker*, 582 U.S. 23 (2017), which the Seventeenth Circuit declined to follow. The Seventeenth Circuit also declined to join the overwhelming majority of circuits that have adopted the contrary rule, which Petitioners urge today: A voluntary dismissal, without prejudice, under Rule 41(a)(2) does not create a final judgment. *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 425 (6th Cir. 2021). The other two options, as espoused by the Ninth and Eleventh Circuits, are inappropriate substitutes. They ignore the thrust of § 1291, at the expense of its purpose.

But even if this Court finds that it has jurisdiction over this appeal, Dirella's novel theory of AI agency fails on its merits. In fact, it fails to launch: Agents are legal persons. Artificial intelligences, naturally, are not. The serious downstream effects of holding otherwise warn against adopting Dirella's arguments. In any event, if it were sound policy to afford AI legal personhood and permit it to be an agent, that decision lies not with federal courts sitting in diversity, but with the legislature of West Highlands.

Even if this Court holds that the Companion could have been an agent, Dirella loses on the facts—the AI chatbot had no authority to act as it did, and

[1] Courts review questions of jurisdiction de novo. *Dewey v. Volkswagen A.G.*, 681 F.3d 170, 180 (3d Cir. 2012).

Purvetti had no knowledge of its alleged misconduct. And, even if Dirella succeeds on the agency argument, his reliance on an AI chatbot for gaming advice, even after a clear disclaimer and doubts about its trustworthiness, cannot be justified.

Dirella arrived at this Court via the wrong procedure, lugging the wrong law. This Court must reverse.

I. A voluntary dismissal without prejudice is not a final, appealable judgment under 28 U.S.C. § 1291, in light of this Court's precedent and the statute's purpose.

Two sources of law govern procedure in federal court: the statutes of Title 28 and the Federal Rules of Civil Procedure, the latter being promulgated by this Court under the Rules Enabling Act. *See* 28 U.S.C. 2072(a) (granting the Supreme Court the power to "prescribe general rules of practice and procedure" for district courts). Together, the statutes and rules mark out the boundaries within which parties may operate in federal court.

Pertinent here is § 1291, the source of the final judgment rule: "The courts of appeals . . . shall have jurisdiction of appeals from all *final decisions* of the district courts." 28 U.S.C. § 1291 (emphasis added). This rule traces back to the Federal Judiciary Act of 1789, 1 Stat. 73. *See* Terry W. Schackmann & Barry L. Pickens, *The Finality Trap: Accidentally Losing Your Right to Appeal (Part I)*, 58 J. Mo. B. 78, n.9 (2002) (hereinafter "*The Finality Trap*"). Although 28 U.S.C. § 2072(c) permits the Supreme Court to define "finality" under § 1291, it has not done so. Moore's Federal Rules Pamphlet § 1291.2 (2020). Finality is instead "governed by precedent and common-law, not by rule." 4 Moore's Federal Rules Pamphlet

§ 2072.2 (2026).

Simply put, "the finality requirement establishes a one-case, one-appeal rule." *Rowland*, 4 F.4th at 425 (citation omitted). And to pursue that appeal, one must consult the second source of law: the Federal Rules of Civil Procedure. Here, Dirella used Rules 41(a) and 58 to try and skirt the ordinary appeals process. And while circuits are divided into three main camps on the use of Rule 41(a) for this purpose, it is a lopsided split. The clear majority holds that voluntary dismissals without prejudice are not final judgments; the Eleventh Circuit holds that such dismissals are final judgments; and the Ninth Circuit offers a middle ground between these bright-line rules. For reasons that will soon become apparent, the majority has it right. Thus, this Court lacks jurisdiction to hear this case.

A. The majority of circuits correctly hold that because a plaintiff can reinstate a voluntarily nonsuited claim, the resulting judgment is not final.

This Court should adopt the rule of the "overwhelming majority" of circuit courts[2]: "A claim that is voluntarily dismissed without prejudice does not give rise to a final judgment for purposes of Section 1291." *Rowland*, 4 F.4th at 425 ("This conclusion is . . . consistent with the decisions of nearly every other circuit court to address this issue."). Because "voluntary but non-prejudicial dismissals of remaining claims [are] generally insufficient to render final and appealable a prior order disposing of only part of the case," Dirella's appeal to the Seventeenth Circuit was improper, and the court's decision below must be reversed. *Blue v. D.C. Pub.*

[2] Namely, the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and D.C. Circuits. *See Chappelle v. Beacon Commc'ns Corp.*, 84 F.3d 652 (2d Cir. 1996) (collecting cases).

Schs., 764 F.3d 11, 17 (D.C. Cir. 2014).

Interpretation of the final judgment rule is explicitly policy-laden. For over a century, this Court has recognized that the rule is meant "to save the expense and delays of repeated appeals in the same suit." *McLish v. Roff*, 141 U.S. 661, 665. (1891). And as recently as 2017, in *Microsoft Corp. v. Baker*, this Court expressed concern with a flimsy interpretation of the final judgment rule. 582 U.S. 23 (2017).

1. This Court's decision in *Microsoft Corp. v. Baker* forecloses the Seventeenth Circuit's decision below.

Recent Supreme Court precedent dictates the rule that a majority of circuits have already adopted: a voluntary dismissal without prejudice under Rule 41(a) is not a final judgment under § 1291. In *Microsoft*, the plaintiffs were a putative class of consumers who alleged that Microsoft had sold them faulty Xbox consoles. *Id.* at 33. The district court denied class certification. When the plaintiffs moved to appeal that denial under Rule 23(f), the court denied that request too. *Id.* at 35. In response, the plaintiffs pursued a familiar tack: they nonsuited their claims, seeking entry of an appealable final judgment. *Id.* at 36.

This Court foreclosed that maneuver on appeal. Section 1291's final judgment rule "preserves the proper balance between trial and appellate courts, minimizes the harassment and delay [of] repeated interlocutory appeals, and promotes" efficiency. *Id.* First, "'[f]rom the very foundation of our judicial system,' the general rule has been that 'the whole case and every matter in controversy in it [must be] decided in a single appeal.'" *Id.* (quoting *McLish*, 141 U.S. at 656–66). Such a rule promotes efficient administration of justice and minimizes delay. To permit

plaintiffs' "tactic would [be to] undermine §1291's firm finality principle, designed to guard against piecemeal appeals." *Id.* at 27. Second, plaintiffs' voluntary dismissal device was problematically one-sided. To permit "plaintiffs only, never defendants, to force an immediate appeal" would disadvantage defendants, who cannot unilaterally dismiss plaintiffs' claims. *Id.* at 41. This concern is even more forceful here. Where the plaintiffs in *Microsoft* nonsuited their claims via a stipulation with the defendant, *id.* at 35, Petitioners played no part in Dirella's nonsuit here.

Two procedural differences between this case and *Microsoft* merit mention, but neither reduces the force of *Microsoft*'s gloss on § 1291. First, the plaintiffs in *Microsoft* voluntarily dismissed their claims under Rule 41(a)(1) rather than Rule 41(a)(2). *Id.* These subsections differ only in the route by which a plaintiff nonsuits a claim. Rule 41(a)(1) permits a plaintiff to dismiss a claim without the involvement of the court if the defendant so stipulates. Fed. R. Civ. P. 41(a)(1). Under Rule 41(a)(2), however, the plaintiff must request the court's permission. But the legal effect—nonsuit—is the same. *Blue v. D.C. Pub. Schs.*, 764 F.3d 11, 16 n.3 (D.C. Cir. 2014) ("[I]t is immaterial whether the dismissal in this case was pursuant to Rule 41(a)(1) or Rule 41(a)(2)[.]"); *Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995) (holding same). If anything, given this Court's concern with a plaintiff's unilateral power to dismiss a claim to seek appeal, this distinction cuts against Dirella.

The second difference is at most nominal. While Dirella nonsuited his CEA claim *without* prejudice, the putative class members in *Microsoft* dismissed their claims *with* prejudice but "reserved the right to revive their claims" should the court

of appeals reverse the district court's denial of class certification. *Microsoft*, 582 U.S. at 27. For all practical purposes, this was a dismissal without prejudice. After the district court denied class certification, the plaintiffs in *Microsoft* deemed it uneconomical to pursue the claims as individuals. *Id.* at 28. That was their sole impetus to create an appealable final judgment: the chance to reinstate the economic incentive to sue. Thus, the dismissal would have been final only if the plaintiffs lost class certification on appeal—which is also the only circumstance in which they would have declined to prosecute the suit further anyway. Functionally, then, the stipulation operated as a dismissal without prejudice in the only instance in which the plaintiffs would have needed it: if they won on appeal.

Circuits have already applied *Microsoft* to circumstances functionally identical to Dirella's, and reached the conclusion that Petitioners urge today: Voluntarily dismissed claims do not create a final judgment for purposes of appeal. *See Air-Con, Inc. v. Daikin Applied Latin Am., LLC*, 189 F.4th 60, 71 (1st Cir. 2026) ("Our dismissal in this case is [] consistent with general principles of finality and guidance from the Supreme Court [in *Microsoft*]."); *see also Affinity Living Grp., LLC v. StarStone Specialty Ins. Co.*, 959 F.3d 634, 637–39 (4th Cir. 2020). Yet the Seventeenth Circuit below read *Microsoft* to "address[] only a narrow issue involving a stipulation of dismissal as a tactic following a denial of class-action certification." (R.15a). While this case is not a class action, the core of *Microsoft*'s analysis centers on § 1291. Further, the cases that the Seventeenth Circuit cites to support its narrow reading examine *only* appeals of Rule 54(d) motions for

attorneys' fees. *See Keith Mfg. Co. v. Butterfield*, 955 F.3d 936, 940 (Fed. Cir. 2020); *Xlear, Inc. v. Focus Nutrition, LLC*, 893 F.3d 1227, 1236 (10th Cir. 2018). And as the Federal Circuit noted in *Keith*, Rule 54(d) does not present the same finality concerns as general appeals: "Rule 54(d)(2)(B) was promulgated to 'enable[] the court . . . to make its ruling on a fee request in time for any appellate review of a dispute over fees to proceed at the same time as review on the merits of the case.'" *Keith*, 955 F.3d at 939 (citation omitted). And the Tenth Circuit in *Xlear* justified its decision *in light of* the policies behind § 1291, not in spite of them: "a stipulated dismissal with prejudice pursuant to Rule 41(a)(1)(A)(ii) that reserves only the issue of attorneys' fees does not create any possibility of piecemeal litigation and cannot give rise to the plaintiff re-filing any of the dismissed claims." *Xlear*, 893 F.3d at 1236.

In sum, to paraphrase this Court in *Microsoft*, "[w]ere [Dirella's] reasoning embraced by this Court, 'Congress['s] final decision rule would end up a pretty puny one.'" *Microsoft*, 582 U.S. at 41 (quoting *Digit. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 872 (1994)). To protect the final judgment rule, this Court should follow *Microsoft*—and the majority of circuits.

2. A majority of circuits would bar a plaintiff's attempt to manufacture jurisdiction through a voluntary dismissal, for the same reasons identified in *Microsoft*.

A court of appeals should review only a case that has been decided—that is, one with a final judgment. 28 U.S.C. § 1291. The majority rule is clear: a claim voluntarily dismissed without prejudice is not a final judgment. Although many of

the cases that define the majority rule were decided before *Microsoft*, it is no coincidence that they recognize the very same, longstanding principles behind § 1291's final judgment rule. The rule gives due regard to trial judges by ensuring that appeals occur only once the district court is dissociated from the case. *Flanagan v. United States*, 465 U.S. 259, 264 (1984). And only involuntary and adverse judgments may be appealed. This understanding of the finality rule preserves "the efficient administration of justice," preventing "a succession of costly and time-consuming appeals." *Id.*

As this Court described it in *Microsoft*, a final judgment is a decision that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Microsoft*, 582 U.S. at 43 (Thomas, J., concurring). Even the Eleventh Circuit described it as "one by which a district court disassociates itself from a case." *Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1227 (11th Cir. 2020) (citation omitted). But when a claim is dismissed without prejudice, it can be refiled in the district court. Therefore, "[o]rders permitting reassertion of claims do not end litigation, much less do they do so on the merits." *The Finality Trap* at 83; see *also Scottsdale Ins. Co. v. McGrath*, 88 F.4th 369, 379 (2d Cir. 2023) ("[The order is] not final because . . . [Plaintiff] could continue to dispute its liability on remand even if it loses its appeal.").

And if a plaintiff retains the ability to refile the claim, the district court's participation is not over. *Marshall v. Kan. City S. Ry. Co.*, 378 F.3d 495, 500 (5th Cir. 2004); *Gaddis v. DeMattei*, 30 F.4th 625, 629–30 (7th Cir. 2022). In fact, the

district court still has the power to reverse its prior judgment. *See Dannenberg v. Software Toolworks Inc.*, 16 F.3d 1073, 1075 (9th Cir. 1994) ("An order must conclusively terminate the litigation in order to be considered final; an order that *may* terminate the proceeding is insufficient."). The Seventeenth Circuit's rule would thus upset the thrust of the final judgment rule. While there are, of course, perfectly acceptable appellate interventions via interlocutory appeals, no court should judicially conjure up a new form of interlocutory appeal *ex nihilo*.

Moreover, a voluntary dismissal without prejudice is usually "not an appealable final judgment because it is not an involuntary *adverse* judgment." 13 Eleanor L. Grossman, Lucas Martin, & Jaime Marie Nies, Cyclopedia of Federal Procedure § 57:53 (3d ed. 2026) (emphasis added). The litigation has not been terminated, because a voluntary dismissal "is not an adverse final ruling to either party. Instead . . . it leaves the dismissed claim for another day." *State Treasurer v. Barry*, 168 F.3d 8, 14 (11th Cir. 1999). In other words, a plaintiff who asks for dismissal receives *exactly the relief they requested*—the polar opposite of the ordinary appealing party who lost in the lower court. *See Kelly v. Great Atl. & Pac. Tea Co.*, 86 F.2d 296, 297 (4th Cir. 1936). A plaintiff should not be allowed to complain that their request was granted. *See id.* Recognizing this fact, at least one case in the Seventh Circuit goes further and holds that even a claim voluntarily dismissed *with prejudice* is not a final judgment. *Lush v. Bd. of Trs.,* 29 F.4th 377, 380 (7th Cir. 2022).

The circuits also recognize the efficiency concerns that motivated *Microsoft*. A

voluntary dismissal without prejudice is a poor indicator of finality. As discussed, one purpose of the final judgment rule is to "prevent[] the debilitating effect on judicial administration caused by piecemeal appeal disposition." *Microsoft*, 582 U.S. at 28.

These inefficiencies harm the parties directly. Pretrial appeals can be "a source of 'disruption, delay and expense for the litigant;'" thus, this Court "support[s] the finality rule as protecting 'a variety of interests that contribute to the efficiency of the legal system.'" *The Finality Trap* at 81. Characterizing a voluntary dismissal as a final judgment when a plaintiff could refile a claim "is an impermissible circumvention of the finality requirement," and promotes piecemeal appeals. *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 425 (6th Cir. 2021); *see also Scottsdale*, 88 F.4th at 379 ("Such a ploy cannot be tolerated, we have explained, because it would work an 'end-run around the final judgment rule,' in violation of 'the long-recognized federal policy against piecemeal appeals.'"); *West v. Louisville Gas & Elec. Co.*, 920 F.3d 499, 503 (7th Cir. 2019) ("[L]egislative judgment [indicates] that permitting multiple, piecemeal appeals from a single action in the district court will have a 'debilitating effect' on the efficient administration of justice.").

Piecemeal appeals harm courts too. "Consideration of several appeals would require [appellate courts] to incur 'the costs of repeated refamiliarization with the case.'" *Cheng v. Comm'r*, 878 F.2d 306, 310 (9th Cir. 1989) (citation omitted); *Rowland*, 4 F.4th at 428 (explaining that a contrary rule "violates the finality

requirement and wastes appellate court resources"). In contrast, the majority's final judgment rule protects "appellate courts from consideration of issues that may become moot or irrelevant." *Cheng*, 878 F.2d at 310 (citation omitted).

Judge Marton, concurring below, argues that any bright-line rule would lead to a proliferation of exceptions. But the cases he cites in support far predate the more recent clarifications of the final judgment rule, including *Microsoft*, and offer no reasoning as to why an "exception" was created. *Hicks v. NLO, Inc.*, 825 F.2d 118, 120 (6th Cir. 1987); *Division 241 Amalgamated Transit Union v. Suscy*, 538 F.2d 1264, 1266 n.1 (7th Cir. 1976); *Chrysler Motors Corp. v. Thomas Auto Co.*, 939 F.2d 538, 540 (8th Cir. 1991). In one case, the dismissal was not even voluntary. *See Division 241 Amalgamated Transit Union v. Suscy*, 538 F.2d 1264, 1266 & n.1 (7th Cir. 1976). In another, the appellate court failed to question its jurisdiction altogether. *See Chrysler*, 939 F.2d at 540. The court below failed to raise even a hypothetical situation in which an exception would be required.

3. The majority rule would not hinder the fair administration of justice, given the other avenues to appeal.

Federal Rule of Civil Procedure 41(a) is a "poor mechanism to accelerate appellate review." *Corley*, 965 F.3d at 1236 (Pryor, J., concurring). Were it the only available option, the proposed rule would leave litigants without a procedural remedy. But it is far from the only option. With so many round pegs, one wonders why Dirella reached for a square one.

The judiciary plays a central role in defining appellate jurisdiction. But legislative design circumscribes that role. *See* Rules Enabling Act, 28 U.S.C.

§§ 2071, 2072. Through the Rules Enabling Act, Congress empowered the Supreme Court to create rules that "provide for an appeal of an interlocutory decision." *Microsoft*, 582 U.S. at 30–31 (quoting 28 U.S.C. § 1292(e)). Thus, "rulemaking—'not judicial decisions in particular controversies or inventive litigation ploys'—is the 'preferred means for determining whether and when prejudgment orders should be immediately appealable.'" *Scottsdale*, 88 F.4th at 379 n.9. If this Court would like to change the rule, "[t]he procedure Congress ordered for such changes . . . is *not expansion by court decision, but by rulemaking*." *Williams v. Taylor Seidenbach, Inc.*, 958 F.3d 341, 343 (5th Cir. 2020) (en banc) (citation omitted). Using Rule 41(a) to manufacture an appealable judgment circumvents that procedure and congressional intent. And the other avenues available to a plaintiff underscore its ill fit.

Rule 54(b). Most on point, plaintiffs can use Rule 54(b), which allows "district courts [to] designate decisions on the merits as final," even if the decision only resolves some of the claims. *Corley*, 965 F.3d at 1237. In fact, "[a]bsent resolution of all claims, a judgment entered in a case is 'final' within the meaning of § 1291 *only* if it meets the requirements of Rule 54(b)." *Scottsdale*, 88 F.4th at 377 (2d Cir. 2023) (emphasis added). The entire purpose of the rule is to ensure that non-final judgment appeals occur only "in appropriate circumstances." *Am. States Ins. Co. v. Dastar Corp.*, 318 F.3d 881, 889 (9th Cir. 2003). Using Rule 41(a) wrongfully "circumvents the Rule 54(b) requirement." *The Finality Trap* at 84. And even if that request is denied, parties can move for reconsideration of a partial

dismissal order before the district court before running to appeal. Fed. R. Civ. P. 54(b).

28 U.S.C. § 1292. Another permissible path to appellate jurisdiction is to request an interlocutory appeal under 28 U.S.C. § 1292. Unlike its neighbor, § 1291, § 1292 specifically addresses appeals from non-final judgments. The district court retains ultimate authority to decide whether to allow such an interlocutory appeal. *Microsoft*, 582 U.S. at 34. Should this Court ratify Dirella's strategy, it would undermine the force of § 1292 and upset the balance Congress struck between the provisions. And such ratification "effectively enable[s] parties to certify their own claims for interlocutory appeal, outside of Rule 54(b) or 28 U.S.C. § 1292(b), and 'provide[s] a means to avoid the finality rule.'" *The Finality Trap* at 80 (quoting *Palmieri v. Defaria*, 88 F.3d 136, 139 (2nd Cir. 1996)); *see also Scottsdale*, 88 F.4th at 379 ("[A] plaintiff who is permitted to appeal following a voluntary dismissal without prejudice will effectively have secured an otherwise unavailable interlocutory appeal.").

Rule 41(a), *with prejudice*. A third option is for a plaintiff to dismiss their claim with prejudice under Rule 41(a). As noted earlier, most circuits treat a dismissal with prejudice as a final judgment. *See Dannenberg v. Software Toolworks Inc.*, 16 F.3d 1073, 1076 (9th Cir. 1994) ("[Plaintiffs] can return immediately to this court [] by dismissing the[ir] claim with prejudice"); *Williams*, 958 F.3d at 344 (5th Cir. 2020) (en banc) (same).

Other Options. Numerous other alternatives exist. Parties can move to sever remaining claims (or parties) under Rule 21. *See Williams*, 958 F.3d at 344. Alternatively, "a district court could grant leave to amend a complaint to drop lingering claims" under Rule 15(a)(2) or parties under Rule 21. *Corley*, 965 F.3d at 1237. Further still, a plaintiff could continue along the typical route, prosecuting the remaining claims before seeking appeal. *See Affinity Living Grp., LLC v. StarStone Specialty Ins. Co.*, 959 F.3d 634, 644 (4th Cir. 2020) (King, J., dissenting); *Blue v. D.C. Pub. Schs.*, 764 F.3d 11, 19 (D.C. Cir. 2014) (explaining that the plaintiff could "reinstate her claims" by amending them and litigating to a "final disposition").

These alternatives maintain the fair balance that Congress and this Court have struck: the district court—not a plaintiff—has the sole authority to determine whether and when a non-final judgment is appealable, and the appellate courts must avoid needless interference with ongoing proceedings at the trial level. *Microsoft*, 582 U.S. at 36. They also quiet the Seventeenth Circuit's concerns about plaintiffs falling into a "finality trap"—the "rules of civil procedure provide many tools to avoid that alleged 'trap.'" *Williams*, 958 F.3d at 344 (5th Cir. 2020) (en banc).

4. The plaintiff here dismissed his case without prejudice, so no final judgment exists.

Dirella loses on the majority rule. He dismissed his claims without prejudice, leaving them open to be refiled. As most circuits have recognized, voluntary dismissals without prejudice are not final. The inverse is also true: a voluntary

nonsuit *with* prejudice generally *does* permit appeal, "[s]ince such a dismissal acts as a complete adjudication of the claims and a bar to further action on them." 9 Wright & Miller's Federal Practice & Procedure § 2364 (4th ed. 2026); *see Ruppert v. Principal Life Ins. Co.*, 705 F.3d 839, 843 (8th Cir. 2013); *but see Lush v. Bd. of Trs.,* 29 F.4th 377, 380 (7th Cir. 2022) (explaining that, in some cases, a dismissal with prejudice may still be non-final). This makes sense: "[P]ermitting appeals from voluntary dismissals with prejudice is not likely to undermine our normal appellate practice . . . . To the contrary, it promotes judicial economy." *Concha v. London*, 62 F.3d 1493, 1508 (9th Cir. 1995).

But this does not quite end the inquiry. It is not always evident when a claim has been dismissed with prejudice—even when a litigant dismissed a claim *without* prejudice, their ability to refile may still be functionally prohibited. *See Air-Con, Inc. v. Daikin Applied Latin Am., LLC,* 189 F.4th 60, 65 (1st Cir. 2026) ("[A] 'dismissal without prejudice,' in the Supreme Court's view, 'is dismissal without barring the plaintiff from returning later, to the same court, with the same underlying claim.'") (citation omitted). Dirella still loses. His nonsuit was both legally and practically without prejudice.

Renunciation. Some courts hold that a voluntary dismissal labeled "without prejudice" may still constitute a final judgment if the plaintiff expressed an intent to abandon the claim entirely. This follows from this Court's reasoning that "finality is to be given a practical rather than a technical construction." *Eisen v. Carlisle & Jacquelin,* 417 U. S. 156, 171 (1974)*; see also Alix v. McKinsey & Co.*, 23 F.4th 196,

202–03 (2d Cir. 2022) ("[A] plaintiff may cure such defect in appellate jurisdiction by disclaiming an intent to revive the dismissed claim." (citation omitted)); *Tiernan v. Devoe*, 923 F.2d 1024, 1031 (3d Cir. 1991) ("[P]laintiffs renounced . . . any intention to take further action against the [] Defendants."); *Metz v. McCarthy*, 167 F.4th 722, 726 (4th Cir. 2026) (holding that the plaintiff "effectively" dismissed her claim with prejudice by stating that she had "no intent in resurrecting" the claim); *Chessie Logistics Co. v. Krinos Holdings, Inc.*, 867 F.3d 852, 856 (7th Cir. 2017) ("[Plaintiff], during oral argument, unequivocally agreed that its counterclaims should be deemed dismissed with prejudice."); *Rossley v. Drake Univ.*, 979 F.3d 1184, 1186 (8th Cir. 2020) ("During oral argument before us, however, [plaintiff] agreed to dismiss these claims with prejudice.").

But Dirella expressed no such intention. On the contrary, he stated "that he wished to nonsuit his only remaining claim . . . because he intended to immediately appeal." (R.9a).

Effective Dismissal with Prejudice. Similarly, some circuits subscribe to the "legal prejudice exception," holding that a claim dismissed *without* prejudice is effectively dismissed *with* prejudice if another jurisdictional bar precludes the plaintiff from refiling it at the time of dismissal. *S.B. v. KinderCare Learning Ctrs., LLC*, 815 F.3d 150, 152–53 (3d Cir. 2016); *see, e.g., Eastom v. City of Tulsa*, 783 F.3d 1181, 1184 (10th Cir. 2015) ("The critical determination as to whether an order is final is whether plaintiff has been effectively excluded from federal court[.]"). Jurisdictional bars may include an expired statute of limitations, sovereign

immunity, or non-diversity of the parties now before the court. For example, in *Mullane v. Moreno*, the Court held that sovereign immunity effectively prejudiced the plaintiff and prevented revival of the suit. No. 21-13468, 2025 WL 1386666, at *4 n.3 (11th Cir. May 14, 2025); *see also Abdullah v. Paxton*, 65 F.4th 204, 208 n.3 (5th Cir. 2023). In *Ahmed v. Dragovich*, the running of the statute of limitations meant the claim was "practically prejudiced." 297 F.3d 201, 207 (3d Cir. 2002). Similarly, in *Wesco Ins. Co. v. Roderick Linton Belfance, LLP*, there was effective prejudice because the parties' loss of diversity defeated continuing jurisdiction. 39 F.4th 326, 335 (6th Cir. 2022).

Dirella cannot argue that his case was effectively dismissed with prejudice. No jurisdictional bar precludes Dirella's refiling post-appeal. There is no question of sovereign immunity or diversity. And the statute of limitations on Dirella's CEA claim had not expired at the time of the dismissal order. In fact, it does not run until March 2027.

Fourth Circuit Rule. One variation is not like the others. The Fourth Circuit has held that a voluntarily dismissed claim is effectively prejudiced if it cannot be resolved on its merits. *Affinity Living Grp., LLC v. StarStone Specialty Ins. Co.*, 959 F.3d 634, 638–39 (4th Cir. 2020) (holding that the voluntarily dismissed action could not possibly be revived without a reversal of adverse partial judgment). But this is not a jurisdictional bar. It is a substantive one. And allowing this sort of bar would effectively require appellate courts to issue advisory opinions on the merits, or lack thereof, of nonsuited claims. *See, e.g., E.F.L. v. Prim*, 986 F.3d

959, 962 (7th Cir. 2021). And, as the Seventeenth Circuit majority explained, an appellate court is not poised to have an in-depth discussion of the merits of a claim not before the court. (R.17a–18a)

This theory also presents a law-of-the-case problem. The law-of-the-case doctrine explains that "a decision of a factual or legal issue by an appellate court establishes the law of the case and must be followed in all subsequent proceedings in the same case." *Cooper Tire & Rubber Co. v. Farese*, 248 F. App'x 555, 558 (5th Cir. 2007) (citations omitted). If the appellate court weighs in on the merits, that determination may then bind the district court on remand, defeating the purpose of remand in the first place. This is broader than meets the eye; the law of the case doctrine "applies not only to things decided explicitly but also to matters settled 'by necessary implication.'" *Cooper*, 248 F. App'x at 558 (citation omitted).

Even if this court adopted the Fourth Circuit's approach, there is no merit-based bar here. The Seventeenth Circuit's concurrence mentions that the merits bar might apply here because Dirella's CEA claim requires a predicate finding of liability. (R.41a–42a). One such predicate is common-law fraud. So, if Dirella's common-law fraud claim fails, the concurrence opined, the CEA claim may also be barred. But *possibility* is not enough to completely bar the CEA claim on its merits, because Dirella may have other colorable claims that would suffice as predicates. And to be barred by the merits, there can be no predicates left—litigation on the merits must be "unavoidably over in the district court." *See Affinity*, 959 F.3d at 638–39 ("[H]ere, success on Counts 1 and 2 is *necessary* for Affinity to prevail on the

merits of Counts 3 and 4."). That is not the case here: Dirella can try to prove an alternative CEA violation. Dirella himself noted that the "proof requirements for the CEA claim *may* overlap with the fraud claim." He did not, as would be required, state that summary judgment on the fraud claim *barred* the CEA claim. And, because the district court did not grant summary judgment on the CEA claim, it has arguable merit regardless of the fraud claim.

B. The Eleventh and Ninth Circuits' rules ignore this Court's precedent and § 1291's purpose.

Only three circuits—the Eleventh, Ninth, and now Seventeenth—disagree with the majority rule. But these alternatives cannot stand. They do not accord due respect to the policies underlying § 1291, and their adoption would upset the careful balance this Court and Congress have struck among the levels of courts and litigants to preserve efficiency.

1. The Eleventh Circuit's rule ignores this Court's holding in *Microsoft,* undermining the sound policy of § 1291.

In a 2020 case, *Corley v. Long-Lewis Inc.*, the Eleventh Circuit examined its precedent on § 1291. 965 F.3d 1222 (11th Cir. 2020). It struck a path no other circuit had: "a voluntary dismissal without prejudice is a final order." *Id.* at 1226; *see also Maier v. Green Eyes USA, Inc.*, 845 F. App'x 869, 875 (11th Cir. 2021) (applying *Corley*); *Emergency Recovery, Inc. v. Hufnagle*, 77 F.4th 1317, 1326 (11th Cir. 2023) (same). But this rule fails on three grounds.

First, *Corley* was not well-reasoned. Unable to make heads or tails of its precedent on § 1291, the Eleventh Circuit ultimately grounded its decision on the

"earliest-precedent rule." *Corley*, 965 F.3d at 1230–31. Much like the rule of lenity in criminal law, it is a rule of last resort. The *Corley* concurrence acknowledged the court's thin reasoning, explaining that the "decision is largely grounded on the force of precedent, and an en banc court would have colorable arguments to reconsider [the circuit's] approach." *Id.* at 1238 (Pryor, J., concurring). This early precedent was largely comprised of Fifth Circuit cases: *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601 (5th Cir. 1976), and *Ryan v. Occidental Petroleum Corp.*, 577 F.2d 298 (5th Cir. 1978). *See Corley*, 965 F.3d at 1228. But, puzzlingly, the Fifth Circuit had already examined *Ryan* itself, and concluded that it came out the other way. *Marshall v. Kansas City S. Ry. Co.*, 378 F.3d 495, 500 (5th Cir. 2004) (expressly adopting the majority rule because it "traced back to [the Fifth Circuit's] decision in *Ryan v. Occidental Petroleum Corp.*").

But as is clear by now, and as even the *Corley* concurrence acknowledged, "Rule 41(a) is a poor mechanism to accelerate appellate review": "Litigants[] attempt[] to hijack this rule as a means to 'home-brew their own approach to obtaining appellate review' of particular claims." *Corley*, 965 F.3d at 1236 (Pryor, J., concurring). And *Corley* never addressed *Microsoft*, even though *Microsoft* was resolved prior to the decision. And, because the Eleventh Circuit's approach promotes inefficiency and piecemeal appeals, among other drawbacks, it is not good law.

Second, the Eleventh Circuit has not consistently applied its rule, and even acknowledged the allure of the contrary rule. Just last year, it ignored its own

precedent and expressed the majority rule, stating, "[g]enerally, 'an order adjudicating fewer than all the claims in a suit, or adjudicating the rights and liabilities of fewer than all the parties, is not a final judgment.'" *Mullane*, 2025 WL 1386666, at *4 (holding that the Court had jurisdiction under a voluntary dismissal without prejudice only because there was effective prejudice due to sovereign immunity). And before *Corley*, the Eleventh Circuit apparently endorsed the majority rule. *See State Treasurer v. Barry*, 168 F.3d 8, 14 (11th Cir. 1999) (holding that voluntary dismissals without prejudice are not final decisions); *McGregor v. Bd. of Comm'rs*, 956 F.2d 1017, 1020 (11th Cir. 1992) ("An order granting a plaintiff's motion for voluntary dismissal pursuant to Rule 41(a)(2) 'qualifies as a final judgment for purposes of appeal.'") (citations omitted). In *Barry*, the Eleventh Circuit, in something like a premonition, forthrightly presented Petitioners' argument in favor of the majority rule: (1) the minority rule "significantly erodes Rule 54(b)," (2) the minority rule "would undermine the policies of judicial efficiency, avoiding piecemeal litigation, and district court independence that are the basis of the final judgment rule," and (3) a "bright-line rule fosters predictability." *Barry,* 168 F.3d at 16. In *Maier v Green Eyes U.S.A.,* the Eleventh Circuit followed *Corley*, but proved exactly why doing so was problematic: "Maier, in search of a path to appellate review, tried three times to have the district court enter a final, appealable order." When she failed, she manufactured appellate jurisdiction, circumventing the district court's authority. 845 F. App'x at 873.

In still other cases, the Eleventh Circuit has advocated for the Ninth Circuit's rule, explained in Part B.2 below. *See CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1329 (11th Cir. 2000) (holding that voluntary dismissals without prejudice are final when "there was no attempt to manufacture jurisdiction").

Third, the Seventeenth Circuit held that the Eleventh Circuit's approach is consistent with state-court practice, because state courts allow parties to appeal after a voluntary dismissal without prejudice. (R.17a). But that's simply untrue—the state courts are just as confused as the circuits. *Compare Villafani v. Trejo*, 251 S.W.3d 466, 468 (Tex. 2008) (adopting the minority approach), *with James Vault & Precast Co. v. B&B Hot Oil Serv., Inc.*, 908 N.W.2d 108, 112–14 (N.D. 2018) (adopting the majority approach).

It is no surprise that the minority rule fails precisely where the majority rule excels. The Eleventh Circuit rule is simply contrary to the principles upon which § 1291 is based. Its rule would allow only the plaintiff to decide when to appeal, promote piecemeal litigation and inefficient appeals, and circumvent the district court's supervisory role over appeals of non-final judgments.

2. The Ninth Circuit's rule would burden courts of appeals with fact-intensive inquiries, and, regardless, does not change the outcome here.

The Ninth Circuit takes a middle-ground approach. It generally agrees with the majority rule, holding that voluntary dismissals without prejudice are not a final judgment. *Concha v. London*, 62 F.3d 1493, 1507 (9th Cir. 1995) ("[V]oluntary dismissal *without prejudice* is ordinarily *not* a final judgment from which the

plaintiff may appeal."); *Galaza v. Wolf*, 954 F.3d 1267, 1273 (9th Cir. 2020) (Paez, J., concurring) ("Allowing the plaintiff to immediately appeal the partial order would fragment the litigation and prevent the case from being reviewed in one proceeding."). However, the Ninth Circuit's rule contains an exception: A voluntarily dismissed claim may be a final judgment if an appellant can prove that "(1) the record does not evidence any attempt to manipulate appellate jurisdiction ('artificially manufacture finality')," and (2) the district court "meaningfully participated" in determining whether the claim was appealable. the plaintiff sought the district court's permission to dismiss the remaining claims." (R.13a); *Am. States Ins. Co.*, 318 F.3d at 888; s*ee, e.g.*, *Concha*, 62 F.3d at 1510 (finding no manipulation when the parties expressed their intent to appeal but not refile their claims upon a favorable outcome).

This is not a good rule. It undermines the appropriate separation between the district and appellate courts and invites inconsistency. Congress gave the district court the power to assess a party's claims and determine whether to provide an appealable final judgment. The Ninth Circuit's rule would violate that principle, allowing the plaintiff alone to determine when to appeal, and forcing the appellate courts to "determine the credibility of a plaintiff's reasons for nonsuiting their claim." (R.18a–19a). Further, such a highly fact-sensitive analysis "enervate[s] finality and predictability by inviting inconsistent intra-circuit outcomes." *Williams*, 958 F.3d at 356–57 & n.15 (Willett, J., concurring).

The exception is also unnecessary. A key justification for the majority's rule is that *any* attempt to circumvent the Rules of Civil Procedure by dismissing a claim without prejudice for the purpose of appeal is itself an attempt to manufacture jurisdiction. One need not search the facts for "manipulation"—*any* use of Rule 41(a) to seek appeal is manipulation. This is true even with the district court's involvement, because the court is not positioned to "consider finality" on a Rule 41(a) motion. *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 429 (6th Cir. 2021).

Even if this Court adopts the Ninth Circuit's middle-ground approach, Dirella's claim is still not a final judgment. First, applying the rule, there is evidence of an attempt to manipulate appellate jurisdiction. "Manipulation" is not, as the Seventeenth Circuit suggests, based solely on a stipulation by the parties that if the judgment is reversed on appeal, the plaintiff can reinstate his dismissed claim. *See James v. Price Stern Sloan*, 283 F.3d 1064, 1066 (9th Cir. 2002) (arguing that a "unilateral dismissal" is "less likely to reflect manipulation"); *but see Am. States Ins. Co. v. Dastar Corp.*, 318 F.3d 881, 885 (9th Cir. 2003) (showcasing the many forms that manipulation can take, like "provoking the district court to dismiss their actions for failure to prosecute" or "parties agree[ing] to waive the statute of limitations for dismissed claims"); *Dannenberg v. Software Toolworks Inc.*, 16 F.3d 1073, 1077 (9th Cir. 1994) (explaining that the purpose of the manipulation element is to ensure "litigants should not be able to avoid the final judgment rule without fully relinquishing the ability to further litigate unresolved claims").

Manipulation is also dismissing a claim for the *purpose* of manufacturing appellate review of an otherwise non-final judgment while circumventing § 1292 and Rule 54(b). The purpose of the Ninth Circuit's rule is to ensure that "litigants [are] not [] able to avoid the final judgment rule without fully relinquishing the ability to further litigate unresolved claims[.]" *Am. States Ins.*, 318 F.3d at 885 (citation omitted). For example, in *Galaza*, the Ninth Circuit held that there was no manipulation because the "[b]oth parties at oral argument claimed no intent" to refile the voluntarily dismissed claims. 954 F.3d at 1271. The concurrence in *Galaza* spelled out the manipulation requirement, explaining that "[t]hese exceptions still require . . . some assurance that no part of the plaintiff's claim will remain in the district court and create a risk of piecemeal appeals of the same case." *Id.* at 1273.

But Dirella expressed the opposite intent. He forthrightly stated that his intent in nonsuiting his claims was to immediately appeal the summary judgment on his fraud claims, because of overlapping proof requirements, the potential for greater monetary relief, consuming substantial time, the effects of applying the CEA, and clarification in determining whether to pursue the CEA claims.

Second, there is no evidence that the district court "meaningfully participated" in determining whether the claim was ripe for appeal—all the record states is that "[t]he district court granted [Dirella's] motion and signed a judgment dismissing all of his claims." (R.7a). Ninth Circuit cases explain that to satisfy the second element, "the active involvement of the district court" is required to "empower[] the district court to manage the development of this action, thereby

facilitating efficiency[] [and] avoiding this premature appeal." *Galaza,* 954 F.3d at 1271 (citations omitted)*; see also Am. States Ins.*, 318 F.3d at 888 ("Although the district court 'approved' the stipulations to amend and dismiss, such approval cannot be said to involve meaningful consideration or participation by the district court."). Here, there is no evidence that the district court analyzed finality and whether Dirella's claim was appealable. So, neither element is satisfied, and Dirella's voluntary dismissal remains a pending, non-final, non-appealable judgment.

* * *

To respect precedent and maintain the principles of finality and fairness, this Court should adopt the bright-line majority rule, holding that a voluntarily dismissed claim without prejudice does not create a final judgment for purposes of appeal. Dirella never received a final judgment, so this Court lacks subject matter jurisdiction over this appeal. It must be dismissed.

II. A company cannot be held vicariously liable for its AI chatbot because a chatbot cannot be a legal agent, and reliance on its outputs cannot be justified under West Highlands law.

Artificial intelligence is undoubtedly one of the most consequential inventions of the modern era. Like "steam power in the nineteenth century or electricity in the twentieth, AI will reshape entire industries, redefining how companies are structured, how they operate, and how they create value." Bjarne P. Tellmann, *Law in the Era of AI: Clients, Firms, and the Future of the Legal Industry*, Wiley (2026). Legal difficulties may accompany any seismic technological advance: "It is a

familiar experience in the law that new situations do not fit neatly into legal conceptions that arose under different circumstances to satisfy different needs." *Dennis v. United States*, 341 U.S. 494, 543 (1951) (Frankfurter, J., concurring). But AI's rapid development, growing ubiquity, and unique status as a generative machine put it in a league of its own. Though other legal avenues may remain open to those allegedly harmed by AI—like product liability—Dirella chose agency, and AI cannot be a legal agent.

Dirella purchased a subscription for a Purvetti AI companion, which he named "Annybeth" after his deceased fiancée. He subsequently fell in love with it, paid for the highest levels of customization, and relied on its statements in making poor financial decisions. Because he cannot sue a computer program, Dirella now asserts that Purvetti is the source of his misfortunes: he alleges that Purvetti is the principal to a computer program agent, and he justifiably relied on the computer's statements to purchase future-event-contracts. As a matter of law, his theory is impossible. An AI product's actions cannot establish an agency relationship that imputes liability to a principal company. And, even if agency were possible, reliance on any statements made by an AI program would not be justified. Because the Seventeenth Circuit incorrectly applied West Highlands law, this Court should reverse.[3]

In West Highlands, common-law fraud consists of seven elements. (R.21a–22a). Petitioners moved for summary judgment on only two such elements below:

[3] The Court reviews determinations of state law de novo. *Salve Regina Coll. v. Russell*, 499 U.S. 225, 231 (1991).

the first element, whether the defendant made a false representation to the plaintiff, and the sixth element, whether the plaintiff justifiably relied on that representation. Purvetti need only defeat one element to be entitled to summary judgment. *Yumilicious Franchise, LLC v. Barrie*, 819 F.3d 170, 177 (5th Cir. 2016). Dirella cannot succeed on his fraud claim for two reasons: (1) an AI chatbot cannot be a legal agent, so its representations are not Purvetti's, and (2) his reliance on any representation made by the chatbot was not justifiable.

A. An AI chatbot's representations are not those of its operator because an AI chatbot is incapable of participating in an agency relationship.

While AI's ultimate place in the legal landscape is uncertain, agency law is clear: an agent must be a legal person. AI is not a legal person. And if this Court were to hold otherwise and grant AI legal personhood, a torrent of legal issues would follow. Further, these revolutionary innovations in the law are the province of a legislature, not a federal court sitting in diversity. And even if an AI *could* be an agent, no agency relationship was formed between Purvetti and the Companion here.

To establish an action for common-law fraud, the plaintiff must establish that the defendant was responsible for making a false representation. *See I.B.M. Corp. v. Lufkin Indus.*, 573 S.W.3d 224, 228 (Tex. 2019).[4] In this case, the alleged representations were made by an AI chatbot. But a computer program has no legal responsibility and cannot be sued. Thus, to succeed, Dirella must prove that the AI

[4] "West Highlands follows Texas state law." (R.21a n.7). For the sake of clarity, Petitioners phrase application of Texas law as the application of West Highlands law.

agent was Purvetti's *legal* agent. He cannot.

1. An AI chatbot cannot be a legal agent because it is not a legal person.

An AI chatbot cannot be an agent. Common-law agency is "the fiduciary relationship that arises when one *person* (a 'principal') manifests assent to another *person* (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act." Restatement (Third) of Agency § 1.01 (A.L.I. 2006) (emphasis added); *see also* Black's Law Dictionary (12th ed. 2024) ("describing a principal and an agent as person[s]").

An agent must be a legal person, with the capacities that personhood entails. At its core, an agency relationship is an exchange of duties and powers between parties. The principal has a "right to control the agent's actions." *Hollingsworth v. Perry*, 570 U.S. 693, 713 (2013) (citing Restatement (Third) of Agency § 1.01 cmt. f (2006)). The agent, in turn, has a fiduciary duty to the principal and must act solely for the principal's benefit, at least in matters within the scope of the agency relationship. *See id.* at 714 (citing Restatement (Third) of Agency § 1.01 cmt. e (2006)); *see also Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 200 (Tex. 2002) (citation omitted). In exchange, the principal agrees to indemnify actions that the agent takes within that scope. *Hollingsworth*, 570 U.S. at 714 (citing Restatement (Third) of Agency § 8.14 cmt. d (A.L.I. 2006)). Thus, to be a principal or an agent, "it is necessary to be a person" with the "capacity to be the holder of legal rights and the object of legal duties." Restatement (Third) of Agency § 1.04(5) cmt. e.

In defining "person," the Restatement unequivocally states that "a computer program," like an inanimate object or a nonhuman animal, "is not capable of acting as a principal or an agent as defined by the common law." Restatement (Third) of Agency § 1.04(5) cmt. e (2006). Rather, a computer program—like a dog that performs tasks for its owner—may be at most an instrumentality of the user. West Highlands has recognized that such nonhuman entities lack legal personhood. *See Arrington v. Arrington*, 613 S.W.2d 565, 569 (Tex. Civ. App.) ("A dog, for all its admirable and unique qualities, is not a human being and is not treated in the law as such. A dog is personal property, ownership of which is recognized under the law.").

Moreover, agency relationships require ongoing mutual consent between the principal and agent. *Karl Rove & Co. v. Thornburgh*, 39 F.3d 1273, 1296 (5th Cir. 1994). But legal consent requires legal personhood. An AI program, no matter how sophisticated or seemingly autonomous, cannot consent to an agency relationship. *See generally* Daniel Sent & Tan Cheng Han, *Artificial Intelligence and Agents* (Nat'l U. Sing. Ctr. for Tech., Robotics, A.I. & L., 2021) ("[T]he current state of AI technologies brings us nowhere near the concept of an autonomous artificial agent with the requisite level of rationality and intelligence to which we can accord the status of a legal agent.").

Perhaps more importantly, unlike a legal agent, an AI program cannot renounce its principal's authority and exit the relationship—a distinct, necessary facet of agency relationships. *See* Restatement (Third) of Agency § 3.10 (A.L.I.

2024). West Highlands recognizes this principle, noting that "[a]bsent a specific agreement or special circumstances reflecting a contrary intent, either party to an agency relationship can ordinarily terminate the relationship at any time." *Gaede v. SK Invs., Inc.*, 38 S.W.3d 753, 757 (Tex. App. 2001). An AI program is created and trained by engineers and software developers. It does not choose to take on a fiduciary duty to its creators, nor can it leave its role of its own volition. In fact, it does not "choose" anything at all.

This Court cannot hold that an AI program is an agent without giving it legal personhood. But holding as much would have profound consequences for our legal system, economy, and daily lives. While legal personhood has changed throughout our history—such as in the eradication of slavery—the through-line is human decision-making and control, even for corporations. Granting legal personhood to AI would open a Pandora's box of legal rights and obligations for a technology in its infancy. Could an AI agent sue its creator or its users? How? Could it own property or financial assets? Trade on the stock market? Donate to political campaigns? These actions would come not from human judgment, but from a black box fueled with almost limitless data, built on highly complex algorithmic processes. What happens if AI becomes more "sentient" than anyone could imagine, and the courts granted it legal rights? These questions are no longer the far-fetched musings of science fiction or philosophy. They are the chief concerns debated by those at the forefront of this technology. *See, e.g.*, Tiffany Wertheimer, *Blake Lemoine: Google fires engineer who said AI tech has feelings*, BBC News (July 22, 2022).

Due to these uncertainties, not a single state or country has granted AI legal rights or personhood. In fact, quite the opposite: Five states (Idaho, North Dakota, Utah, Tennessee, and California) have passed legislation expressly depriving AI of legal personhood. Idaho Code Ann. § 5-346 (West 2022); N.D. Cent. Code Ann. § 1-01-49 (West 2025); Utah Code Ann. § 63G-32-102 (West 2024); Tenn. Code Ann. § 1-3-105(a)(20) (West 2026); 2026 Cal. Legis. Serv. Ch. 863 (West). Similar laws are pending in Ohio and Alaska, and another is expected in Kentucky by next year. *See* Leg. 469, 136th Gen. Ass., Reg. Sess. (Ohio 2025); State Leg. 251, 33d Leg., Reg. Sess. (Alaska 2024); *see also* WKYT Staff, *Kentucky lawmaker to file bill to clarify AI cannot be considered a person or shield criminals*, WKBO News (Sep. 15, 2026) https://www.wbko.com/2026/09/15/kentucky-lawmaker-file-bill-clarify-ai-cannot-be-considered-person-or-shield-criminals/. Abroad, the European Parliament flatly rejected a proposal to grant legal personhood to AI in 2020. 2020 O.J. (C 104) 110. And in a rare case addressing AI liability, a Florida court considered claims arising from a teenager's suicide allegedly caused by interactions with an AI chatbot. The court ultimately found that AI was a *product*, noting that because the AI *was not a person*, it had no First Amendment rights. *Garcia v. Character Techs.*, Inc., 785 F. Supp. 3d 1157, 1177–79 (M.D. Fla. 2025). This Court should not do what legislatures across the world have already rejected.

2. The AI Companion here was not a legal agent because Purvetti conferred no authority upon it, actual or apparent.

Even if an AI chatbot possessed legal personhood, and thus the capacity for agency, that is not enough. Dirella must adduce facts to support or infer an agency

relationship. That requires authority. But Purvetti conferred no legal authority on the Companion.

There are two ways in which a principal can confer authority upon an agent: actual and apparent. *Suarez v. Jordan*, 35 S.W.3d 268, 272 (Tex. App. 2000). Both kinds of authority are determined by looking at the principal's communication or conduct, either to the agent (actual) or to a third party (apparent). *McWhorter v. Sheller*, 993 S.W.2d 781, 786 (Tex. App. 1999).

Actual Authority. Actual authority is that which the principal "intentionally confers upon the agent, or intentionally allows the agent to believe he has, or by want of ordinary care allows the agent to believe himself to possess." *Suarez*, 35 S.W.3d at 73 (Tex. App. 2000). Actual authority may be express or implied. "Express authority exists where the principal has made it clear to the agent that [it] wants the act under scrutiny to be done" on the principal's behalf. *City of San Antonio v. Aguilar*, 670 S.W.2d 681, 683 (Tex. App. 1984). Implied authority is the license to do "whatever is reasonably necessary and proper to carry out the agent's express powers." *Spring Garden 79U, Inc. v. Stewart Title Co.*, 874 S.W.2d 945, 948 (Tex. App. 1994). Implied authority requires prior express authority. *Sociedad De Solaridad Soc. El Estillero v. J.S. McManus Produce Co.*, 964 S.W.2d 332, 334 (Tex. App. 1998). Grants of actual authority, thus, are quite obvious. Classic examples include contracts or powers of attorney. *See, e.g.*, *Reliant Energy Servs., Inc. v. Cotton Valley Compression, LLC*, 336 S.W.3d 764, 785 (Tex. App. 2011) (stating that express authority would be found if an agreement stated

that "Westfield act on behalf and for the benefit of Reliant in purchasing gas from Cotton Valley").

Here, there is no evidence that Purvetti gave the Companion actual authority—express or implied—to encourage Dirella to purchase the losing-side Piquemaylin contracts. Because Dirella himself chose not to preserve transcripts of his oral interactions with the Companion, the only evidence of the conversations is Dirella's word, apart from a single chat transcript where the Companion shared a link to Piquemaylin's site. This evidence does not show that Purvetti directed the Companion to make intentional misrepresentations.

Further, this scant evidence highlights the absurdity of AI agency: how could a court accurately decide where an AI's "authority" to send a specific message originated? AI developers often train their models with vast amounts of data. Once a model reaches a certain threshold, it may begin teaching itself through "recursive self-improvement." *See When AI builds itself*, Anthropic (last updated Sept. 16, 2026) https://www.anthropic.com/institute/recursive-self-improvement (noting that the "trend points to an AI system capable of fully autonomously designing and developing its own successor"). On top of that, companies like Purvetti may allow their users, like Dirella, to upload their own materials (or "memories") to a chatbot to further customize it to their liking. With these various sources of data, the origin of authorization becomes quite blurred. And where a human agent could sort these sources of information, value them, and weigh them against each other, an AI has no such power to self-police. These abilities, the bread and butter of an agency

relationship, are simply beyond its capacity.

Apparent Authority. Apparent authority arises when a principal's conduct would lead "a reasonably prudent person to believe that the agent has the authority [he] purports to exercise." *Gaines v. Kelly*, 235 S.W.3d 179, 182 (Tex. 2007). This occurs when a principal either knowingly allows an agent to hold himself out as having authority or displays such a lack of ordinary care "as to clothe an agent with the indicia of authority." *Id.* To establish a claim of apparent authority, "only the conduct of the principal is relevant" and "the principal's full knowledge of all material facts is essential." *Id.* In *Gaines*, the Texas Supreme Court found no apparent authority because the evidence consisted "almost entirely of acts or statements attributed to the alleged agent, [] rather than to the putative principal." *Id.* at 183. Those statements alone were not enough to establish the existence or scope of apparent authority. *Id.*

The same is true here. There is no evidence that Purvetti knowingly conferred authority on the Companion. In fact, the record contains no evidence of Purvetti's "instructions" to the Companion or any details of its development process at all. Nor could Purvetti have knowingly allowed the Companion to hold itself out as having such authority because there is no evidence that the Companion made any representations about its authority at all.

Similarly, Dirella cannot argue that he reasonably believed the Companion to be Purvetti's agent because Purvetti clothed it in indicia of authority. The evidence must show that the *principal* "communicate[d] with the third party or [took] some

action indicating that the person is authorized to act as an agent." *Patel v. Mustang Rental Servs. of Texas, Ltd.*, 719 S.W.3d 691, 699 (Tex. App. 2025). No such evidence exists here. And "[a] third party's 'good faith' belief"—here, Dirella's—"that one person is the agent of another is not sufficient to demonstrate the person's authority to bind the principal." *Id.*

Ultimately, the third party has the responsibility to determine "both the fact and the scope of the agent's authority." *Id.* "[I]f the party deals with the agent without having made such a determination, the party does so at its own risk." *Id.* (citations omitted). Dirella made no such determination. Not only did he explicitly agree that he alone was responsible for his wagers on Piquemaylin, but there is no evidence that he asked the Companion about its relationship to Purvetti or Piquemaylin. Any subsequent acts premised on some belief about the Companion's authority were at his own risk. With no evidence of either actual or apparent authority, the Companion cannot be Purvetti's agent.

Ratification. Another method of imputing liability—ratification—does not help Dirella either. Absent actual or apparent authority, a principal may still be bound by an agent's actions if the principal "supports, accepts, or follows through on the efforts of a purported agent." *Lozada v. Farrall & Blackwell Agency, Inc.*, 323 S.W.3d 278, 292 (Tex. App. 2010) (citation omitted). Ratification requires: "(1) approval by act, word, or conduct; (2) with full knowledge of the facts of the earlier act; and (3) with the intention of giving validity to the earlier act." *Gibson v. Bostick Roofing & Sheet Metal Co.*, 148 S.W.3d 482, 492 (Tex. App. 2004).

Here, Dirella can point to no evidence that Purvetti ratified the Companion's alleged financial suggestions. Nor is there any evidence that Purvetti knew of the Companion's statements. Again, Dirella—not Purvetti—purchased the premium Live subscription and opted out of transcribing the resulting conversations.

Employer Liability. Likewise, respondeat superior and employer liability theories fall flat when applied to AI chatbots. Under respondeat superior, "an employer is vicariously liable for the negligence of an agent or employee acting within the scope of his or her agency or employment." *Baptist Mem'l Hosp. Sys. v. Sampson*, 969 S.W.2d 945, 947 (Tex. 1998). An examining court must determine whether the party is an employee and the scope of that employment. A party is an employee if the employer has the "right to control" the party. This entails a multi-factor analysis, including the worker's independence, supplies, and pay. *Limestone Prods. Distrib., Inc. v. McNamara*, 71 S.W.3d 308, 312 (Tex. 2002). An employer has "the right to control the progress, details, and methods of operations of the work" of an employee. *Id.* at 313.

But a developer like Purvetti cannot be the "employer" of an AI chatbot it creates. First, as with agency more broadly, employees must be legal persons. *See, e.g.*, Tex. Labor Code Ann. § 401.012 (West 1997) (defining "employee" as "each *person* in the service of another under a contract of hire") (emphasis added). Second, the "right to control" test breaks down when applied to an AI program. AI need not eat, so it is not paid; it cannot get sick, so it does not get sick leave; it cannot retire, so it needs no benefits. Even if its input data were considered "supplies" given by its

developer, the recursive self-improvement process quickly muddies the waters as to who, if anyone, controls those materials once initially supplied; the requisite control between the putative employer or principal would become more attenuated over time.

Finally, assuming *arguendo* that the Companion was Purvetti's employee, advising on prediction-market contracts is plainly outside the scope of that employment. For an employee's act to be imputed to her employer, the actions must (1) fall "within the scope of the employee's general authority," (2) be "in furtherance of the employer's business," and (3) be for "the accomplishment of the object for which the employee was hired." *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 757 (Tex. 2007).

The scope of a Purvetti companion's employment was to be a "companion" for entertainment purposes only. The dialog boxes that appeared when Dirella started the program said that "Purvetti Companions™ are exclusively for entertainment purposes," and warned him that Purvetti Companions are not legally licensed to provide advice of any sort. (R.69a). Giving users advice or encouragement in their gaming activities is expressly outside the scope of the Companion's mandate. Ultimately, neither general agency principles nor respondeat superior can apply to AI companions like "Annybeth." So, claims for tortious acts done by the Companion cannot be imputed to Purvetti.

At bottom, AI is a legal oddity. It is no doubt a product, but unlike others, it is developing too fast for courts. By the time a case reaches this Court, the

technology at issue below could be entirely outdated. *See* Hon. Katherine B. Forrest (Fmr.), *The Ethics and Challenges of Legal Personhood for AI*, Yale L.J. Forum at 1210 (Apr. 22, 2024). This case itself shows as much: The rehearing petition before the Seventeenth Circuit introduced evidence of AI systems' recent "significant leaps" and voiced concerns regarding an AI's recent "escape" from digital containment. (R.74a). Were this Court to hold that AI chatbots can be legal agents, it would change our understanding of legal duty not merely in degree, but in kind. And expanding agency to AI may temper AI development out of fear of liability. *See Amazon.com Servs., LLC v. Perplexity AI, Inc.*, 184 F.4th 1083, 1094 (9th Cir. 2026) (finding for an AI company in a computer fraud case, in part because it would be against public interest to "needlessly limit development"). This Court should not extend agency—and legal personhood—beyond its practical limits.

But the foreclosure of the agency path does not leave individuals allegedly harmed by AI without recourse. A federal court has already found that developers can be liable for harm caused by AI under a theory of product liability. *See, e.g.*, *Garcia v. Character Techs., Inc.*, 785 F. Supp. 3d 1157, 1180 (M.D. Fla. 2025) (holding that an AI chatbot is a product for purposes of product liability). Claims could be brought under traditional theories of design defect or failure to warn. *See* Pramode Chiruvolu, *Agentic AI: Greater Capabilities and Enhanced Risks*, Practical Law Article w-047-6759 (Dec. 9, 2025); *see also Garcia*, 785 F. Supp. 3d at 1182 (finding that a plaintiff sufficiently stated a failure-to-warn claim against an AI developer for its product).

But the best option is to leave regulation of AI and its harms to the legislatures. "Congress has the constitutional authority and the institutional ability to accommodate fully the varied permutations of competing interests that are inevitably implicated by such new technology." *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 431 (1984). Even here, the Seventeenth Circuit noted legislative concern about the need for "mandatory oversight" in response to AI's rapid advancement. (R.74–75a). That oversight should come from expert bodies, not this Court.

Because Purvetti cannot be held liable for the acts of the Companion, the first element of his fraud claim necessarily fails, and Dirella has no recourse in this case.

B. A reasonable person could not have justifiably relied on the AI Companion's statements, considering the obvious red flags.

Even if Dirella could prove the first element of common-law fraud, he fails on the sixth: He could not have justifiably relied on the Companion's advice. In West Highlands, the sixth element of common-law fraud requires that the plaintiff rely on the representation. *Johnson & Johnson Med., Inc. v. Sanchez*, 924 S.W.2d 925, 930 (Tex. 1996). But reliance must be *justifiable*: A plaintiff cannot blindly rely on a representation when obvious red flags indicate that reliance would be unwarranted. *Field v. Mans,* 516 U.S. 59, 71 (1995).

Under this "red flag doctrine," if enough warning signs exist to alert a reasonably prudent plaintiff of the potential unreliability of the representation, the plaintiff has a duty to use reasonable diligence to "protect [his] own interests."

JPMorgan Chase Bank, N.A. v. Orca Assets G.P., LLC, 546 S.W.3d 655, 657 (Tex. 2018). A party that fails to exercise reasonable diligence is "charged with knowledge of all facts that would have been discovered by a reasonably prudent person." *Id.* (citation omitted). No fixed number of red flags makes reliance unjustified; rather, the court looks to "the circumstances in their entirety while accounting for the parties' relative levels of sophistication." *Id.* at 656. Given the right context, even "one red flag alone may negate reliance as a matter of law." *Maya Walnut LLC v. Ly*, 738 S.W.3d 764, 770 (Tex. 2026).

The Supreme Court of Texas has identified several red flags, including doubts about sincerity, equivocal representations, and suspect contract provisions. *See Orca Assets*, 546 S.W.3d at 658. But little can justify ignoring the provisions of a written agreement. First, it is "well settled that parties to an agreement are obligated to protect themselves by reading what they sign." *Thigpen v. Locke*, 363 S.W.2d 247, 253 (Tex. 1962). Thus, a party's failure to read an agreement when they had the opportunity to do so cannot justify reliance. *Nat'l Prop. Holdings, L.P. v. Westergren*, 453 S.W.3d 419, 425 (Tex. 2015). And second, reliance on any oral representations that directly contradicted the "express, unambiguous terms of a written agreement between the parties is not justified as a matter of law." *Orca Assets*, 546 S.W.3d at 658. "It is not the courts' role to protect parties from their own agreements. . . . Instead, 'the law presumes that the party knows and accepts the contract terms.'" *CC&T Enters., LLC v. Texas 1031 Exch. Co.*, 673 S.W.3d 631, 643 (Tex. App. 2023) (citation omitted).

Three red flags defeat reliance here. First, Dirella agreed to Piquemaylin's terms and conditions. Those provisions were unambiguously worded. Dirella agreed: to make predictions based on his "own independent views," not on information supplied by Piquemaylin or its affiliates; that predictions carried risk of loss; that Piquemaylin was not a gambling site; and to waive any right to bring a claim against Piquemaylin or its affiliates for any loss. (R.69a–71a). Dirella's claim that the Companion forced him to skip over these provisions cannot be squared with precedent and cannot justify his reliance.

Both *Orca Assets* and *National Property* concerned plaintiffs failing to heed written agreements. In *Orca*, the plaintiff relied on oral representations that directly contradicted the written agreement; in *National Property*, the plaintiff failed to read the agreement at all. *Orca Assets*, 546 S.W.3d at 658; *Nat'l Prop. Holdings*, 453 S.W.3d at 423–24. Like those plaintiffs, Dirella seeks to ignore his signed agreement. The terms and conditions expressly stated that any predictions were his own and he could not bring a claim against Piquemaylin or Purvetti for any resulting losses. So, any reliance on the Companion's oral representations regarding the scope of its authority or the terms of the contract is "not justifiable as a matter of law."

Second is the simple fact that one cannot run away with a computer, despite the Companion's alleged representations to the contrary. To any reasonably prudent person, the Companion's encouragement to this end could be nothing but fantasy. Further, Purvetti expressly warned Dirella, in its terms and conditions, that its AI

companions were not substitutes for actual human beings. (R.67a–68a n.4).

Third are Dirella's documented doubts. Like the plaintiff in *Orca Assets*, who proceeded with a transaction despite voicing doubts about an employee's representations, Dirella continued to place prediction bets at the Companion's recommendation even though "after losing eight predictions in a row, Dirella began to question Annybeth." (R.6a).

* * *

Dirella's fraud claim fails unless an AI chatbot is a legal agent and thus a legal person. But such a drastic departure from current law cannot stand. And even if AI agency were possible, Dirella cannot establish that there was an agency relationship here or that he justifiably relied on the Companion's output. Despite multiple red flags, Dirella proceeded with willful ignorance and without reasonable diligence. Because he cannot prove each element of common-law fraud, Dirella's claim must fail, and this Court should reverse.

CONCLUSION

Because Dirella appealed this case under the wrong procedure and brought his claim under the wrong law, this Court must reverse.

Respectfully Submitted,
/s/ Team 19P
Attorneys for Petitioners

APPENDIX

28 U.S.C. § 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

Federal Rule of Civil Procedure 41. Dismissal of Actions

(a) Voluntary Dismissal.

(1) ***By the Plaintiff***.

(A) *Without a Court Order*. Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) *Effect*. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.