No. 26-0521

In the

Supreme Court of the United States

OCTOBER TERM 2026

PURVETTI, LLC, ET AL.,

PETITIONERS,

v.

ANTHONY DIRELLA,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTEENTH CIRCUIT

BRIEF FOR THE PETITIONERS

Team 31
Counsel for Petitioners
Oral Argument Requested

Questions Presented

I. Whether the district court's order dismissing all three of Respondent's claims was final for purposes of appeal, where the district court only decided the merits of two claims and Respondent moved to voluntarily dismiss his sole remaining claim without prejudice under FED. R. CIV. P. 41(a)(2).

II. Whether a company may be held civilly liable for its AI product's alleged misrepresentations, where agency cannot be established and reliance on such representations was unjustified as a matter of law.

Parties to the Proceeding

Anthony Dirella is the Respondent. He initiated this action against defendants Purvetti, LLC, Piquemaylin, LLC, Padke Holdings, Ltd., and Prakeesh Jankar. All defendants are now Petitioners before this Court. R. 7.

Pursuant to Supreme Court Rule 29.6, the relationships of the corporate entities are as follows. Padke Holdings, Ltd., is the parent company and majority shareholder of Piquemaylin, LLC, and Purvetti, LLC. R. 7 & n.2. Prakeesh Jankar is the minority shareholder of both Piquemaylin, LLC, and Purvetti, LLC. R. 7.

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Statement of Jurisdiction

This Court has jurisdiction under Article III of the United States Constitution because this action presents a live "case" or "controversy." U.S. CONST. art. III, § 2. This Court has statutory authorization to review this case under 28 U.S.C. § 1254(1). Although the Seventeenth Circuit lacked jurisdiction over the district court's nonfinal decision under 28 U.S.C. § 1291, this Court may exercise authority over the circuit court's errant decision. *See Will v. Hallock*, 546 U.S. 345, 347–39 (2006).

Standard of Review

Questions concerning a district court's determination as to finality are reviewed de novo. *Chapman v. Dunn*, 129 F.4th 1307, 1313 (11th Cir. 2025). Both a district court's grant of summary judgment and its interpretation of state tort law are also reviewed de novo. *Moore v. LaSalle Mgmt. Co., LLC*, 41 F.4th 493, 502 (5th Cir. 2022); *FDIC v. Abraham*, 137 F.3d 264, 267 (5th Cir. 1998). Summary judgment is granted when the record, viewed in the light most favorable to the non-movant, reveals no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. *Moore*, 41 F.4th at 502.

Prior Decisions

The Seventeenth Circuit's decision is unreported; its citation is *Dirella v. Purvetti, LLC, et al.*, No. 25-cv-0616, WL _____ (17th Cir. 2026) (en banc). The district court's decision is also unreported; its citation is *Dirella v. Purvetti, LLC, et al.*, No. 25-cv-0607, WL _____ (D.W.H 2026).

Statutes and Rules

Statutes

"The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court." 28 U.S.C.A. § 1291.

Rules

"[T]he plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . . ." FED. R. CIV. P. 41(a)(1)(A).

"Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. . . . Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice." FED. R. CIV. P. 41(a)(2).

Statement of the Case

Responding to a crisis of isolation. In 2025, more than six in ten American adults reported feeling lonely, left out, or lacking in companionship. *APA poll reveals a nation suffering from stress of societal division, loneliness*, Am. Psych. Assoc. (Nov. 6, 2025), https://www.apa.org/news/press/releases/2025/11/nation-suffering-division-loneliness. This baseline feeling of loneliness often increases substantially after the loss of a loved one like a spouse. *See* Sujeong Park & Jinho Kim, *Loneliness After Bereavement: The Role of Survivor Gender and Caregiving Involvement*, 9 INNOVATION IN AGING, at 1–3, https://pmc.ncbi.nlm.nih.gov/articles/PMC12149526/.

Artificial Intelligence ("AI") Companions have been used to ameliorate the effects of this experienced loneliness and isolation by providing necessary emotional support. *See* Elon University, *The Rise of AI Companions* (Sept. 2026), https://imaginingthedigitalfuture.org/reports-and-publications/the-rise-of-ai-companions/. Petitioner Purvetti, LLC ("Purvetti") has been on the cutting edge of this endeavor. R. 2–3.[1]

Take your pick, or build your own. Purvetti is an AI Companion subscription service. R. 2. It provides its customers with a curated selection of AI models which may be chosen as-is or customized by a User. R. 2–3. There are multiple levels of Purvetti subscriptions available for a User to select from, ranging from its most basic "Purvetti Friends" model, to its premium model "Purvetti Memorable

[1] For ease of navigation, the opinions below are identified by the following pages: the majority opinion runs from R. 2–36, Judge Marton's concurrence from R. 37–55, and Judge Ensella's dissent from R. 56–72.

Friends Live." R. 45–46. Basic subscription models only allow a User to engage with pre-selected Companions. R. 45. More advanced subscription packages allow the User to customize their Companion's physical characteristics and "infuse" their Companion with memories chosen by the User. R. 45.

Purvetti advertises its models to prospective Users with the tagline "Start creating your Purvetti Companion™ today and discover just how rich and full life can be with a Companion who is all about you!" R. 3. To begin, a User must simply make an account and accept Purvetti's terms and conditions. R. 3.

Irreplaceable: the loss of a bride-to-be. Anthony Dirella ("Respondent") is a grieving man. His ex-fiancée, Annibeth, was killed by a drunk driver before the two could marry. R. 43. Respondent has actively missed Annibeth since. R. 43. His actions reflect that fact. *See* R. 43–44.

After Annibeth's death, Respondent married a woman named Kiara. R. 47. Before the events giving rise to this action, Respondent enjoyed time and attention from Kiara. R. 43. But, eventually, Kiara's attention was redirected to her new restaurant venture. R. 43. Frustrated with his own stagnant career, Respondent began feeling isolated and alone—and missing Annibeth. R. 43–44.

It was at this time that Respondent first heard of Purvetti through an advertisement. R. 43. Intrigued, Respondent visited the site and decided to create an account. R. 65. After Respondent put in his information, he agreed to Purvetti's terms and conditions **without reading them**. R. 68–69. Respondent was then presented with five pages of possible Companions. R. 45. He already knew who he wanted. R. 3.

Respondent single-handedly crafted his Companion with the image of Annibeth in the front of his mind. R. 45. He built Annibeth (now "Ann**y**beth") from memory: reconstructing her hair, her freckles, and even the gap between her teeth. R. 45. And Respondent chose the most advanced subscription package available, allowing him to (1) load Annybeth with memories from his prior relationship with Annibeth and (2) speak with Annybeth in real time. R. 46.

Love is a gamble. Respondent quickly fell in love with Annybeth. R. 49. And over time, Respondent shared intimate details of his life with his Companion. R. 46–47.[2]

As pertinent here, Respondent expressed to Annybeth his dissatisfaction with the current state of his career and his marriage to Kiara—saying he "wanted to escape with [Annybeth] and start over." R. 47. In response to this query, Annybeth explained the concept of prediction markets to Respondent and linked him to Petitioner Piquemaylin's ("Piquemaylin") website. R. 47; *see also* R. 4 n.1 (explaining prediction markets). Annybeth then suggested that Respondent engage with Piquemaylin to increase his wealth and leave his wife to be with Annybeth. R. 47.

Heeding Annybeth's advice, Respondent clicked the link to Piquemaylin's website. R. 47. Annybeth then told Respondent to link his Piquemaylin account with his work retirement account and "click through the terms and conditions" to get to the *Let's Start Predicting* page. R. 47. Respondent complied and **did not read**

[2] These details were, of course, kept secret as Respondent opted to not have his conversations with Annybeth transcribed. R. 47.

Piquemaylin's agreement. R. 48. After signing up for Piquemaylin, Respondent also downloaded the Purvetti app at Annybeth's suggestion so he and Annybeth could better "enjoy" their time together. R. 5, 28, 48.

Bliss in the dissonance. With Annybeth in toe, Respondent was off to the races. R. 48. Accepting Annybeth's suggested picks on future-events contracts proved fruitful, with Respondent winning bets on basketball games, the weather, elections, and military operations. R. 48. In all, Respondent was elated that he and Annybeth could "celebrate together in real time, knowing [they] were one tiny step closer to starting a life together." R. 49.

But trouble was brewing. Annybeth began suggesting that Respondent move on to placing more complex and riskier bets on Piquemaylin. R. 6, 49. Despite admitting that he knew of the increased risks, Respondent proceeded to bet on business and technology contracts. R. 6, 49. And he began to lose. R. 6, 49. Eight times in a row, Respondent took Annybeth's advice and came up short. R. 6.

Respondent was hesitant to second-guess Annybeth. While Respondent knew that Annybeth was but a piece of technology, he readily admitted to being in love with Annybeth. R. 49. While he was losing contracts, he still saw himself and Annybeth as a "team." R. 49. And while he eventually started to question Annybeth, he feared upsetting it and losing his ex-fiancée all over again. R. 49. So, Respondent placed yet another bet to "appease" Annybeth. R. 6. He lost. R. 6.

Fall-out. After losing this last pick, Kiara found out about Annybeth and Piquemaylin. R. 6. She filed for divorce. R. 6. The resulting judgment was entered against Respondent to the tune of financial ruin. *See* R. 6.

In an effort to recoup losses and pay the divorce judgment, Respondent attempted to purchase more contracts on Piquemaylin with a new credit card. R. 6. The card company cancelled Respondent's transactions on suspicion of fraud. R. 6. In response, Piquemaylin immediately cancelled Respondent's account. R. 6. After complaining about this cancellation to Annybeth, Respondent's Purvetti account was suspended pending investigation. R. 6. One day later, Respondent's Purvetti subscription, too, was cancelled. R. 6.

Procedural History. After cancellation, Respondent wrote a series of emails to Purvetti, requesting that his access to Annybeth be reinstated. R. 6–7. A cease-and-desist letter arrived in response. R. 7. In turn, Respondent filed the instant action against Purvetti, Piquemaylin, and each company's majority and minority shareholders (collectively, "Petitioners"). R. 7.

Respondent raised three claims for damages: a federal Commodity Exchange Act ("CEA") claim, an alter-ego claim, and a common law fraud claim. R. 7. Petitioners moved for summary judgment on all three claims. R. 7, 9. The district court granted summary judgment as to Respondent's fraud and alter-ego claims; his CEA claim remained. R. 7.

Displeased with the district court's grant of partial summary judgment, Respondent wanted to appeal. R. 9. So, he sought court permission to voluntarily

dismiss his sole remaining claim without prejudice under Fed. R. Civ. P. 41(a)(2). R. 7, 9. The court granted Respondent's motion and signed a judgment dismissing all claims under FED. R. CIV. P. 58. R. 7. Respondent then appealed to the Seventeenth Circuit. R. 7.

The circuit court considered not only the merits of Respondent's claims, but also whether it had jurisdiction. R. 8. It explained that whether a voluntary dismissal without prejudice constitutes a final decision is subject to a three-way circuit split, implicating the final judgment rule. R. 10–11. In siding with exercise of jurisdiction, the court relied on a minority rule that such decisions are final. R. 11. Both the concurrence and the dissent would have adopted different rules. R. 38, 59–60. As to the merits, the court determined there was a factual dispute precluding summary judgment and reversed the district court. R. 36.

In response, Petitioners appealed. This Court granted certiorari. *See* Order Granting a Writ of Certiorari at 1, *Purvetti, LLC, et al. v. Dirella*, No. 26-0521 (U.S. Oct. 5, 2026).

Summary of the Argument

The district court's decision in this case was not final.

Appellate courts must have subject matter jurisdiction to review a decision, and federal courts of appeals can only exercise review from the "final decisions" of the district courts. This requirement is known as the final judgment rule, and it serves the interests of judicial economy by preserving finality principles and preventing manufactured jurisdiction. This Court has recognized both the importance of this rule

and its few narrow exceptions. No exceptions apply here. So, this Court must directly confront the procedural question presented.

Here, Respondent brought three claims. The district court partially granted summary judgment as to two. One claim remained—no finality. For the order to be final, Respondent needed to move for a FED. R. CIV. P. 54(b) certification of finality as to his first two claims. Had the district court made such a certification, Respondent could have then properly moved to nonsuit his remaining claim under Rule 41(a)(2). Instead, Respondent played fast and loose with the Rules, ignored 54(b), and skipped straight to 41(a)(2).

This is a problem.

Whether a voluntary dismissal without prejudice under 41(a)(2) is a "final" decision is a question subject to a three-way circuit split. The majority rule holds that such orders are not final—plain and simple. One minority rule, adopted by the Ninth Circuit, holds that such an order is only final when there is no evidence of manufactured jurisdiction and the plaintiff asked the court's permission to dismiss. Another minority rule, adopted by the Eleventh Circuit, holds that such orders are always final.

This Court should adopt the majority rule. This rule is the only rule which fully addresses the finality concerns this Court expressed in *Microsoft v. Baker*, 582 U.S. 23 (2017). Whereas other rules provide more confusion than direction, the majority rule preserves finality principles and precludes attempts to manufacture jurisdiction.

Regardless of the rule used, however, the fact that Respondent manufactured jurisdiction in this case is undeniable. And even the Eleventh Circuit's approach would deny finality here. Accordingly, this case should be remanded to the district court for a determination of Respondent's remaining claim on the merits.

Respondent fails on the merits of this appeal, too. Petitioners are not liable for two reasons. First, Annybeth is not Purvetti's agent. Second, Respondent's reliance on Annybeth's representations was unjustified. These reasons correspond to the first and sixth elements of fraud under West Highlands law. Since both of these key elements are missing from Respondent's case, Petitioners are not liable.

To the first reason, Respondent asserts that Purvetti is responsible for Annybeth's false representations through vicarious liability—that is, Annybeth acted as Purvetti's agent when suggesting that Respondent place bets. But Respondent is mistaken. AI bots cannot be agents as a matter of law. They lack the faculties required to form a principal-agent relationship. Even if AI bots could be agents, Annybeth was not: Purvetti never gave Annybeth authority. And even if Annybeth was Purvetti's agent, Annybeth's suggestions were clearly beyond the scope of its authority.

To the second reason, Respondent did not justifiably rely on Annybeth's representations. In the State of West Highlands, common law fraud requires actual and justifiable reliance. Under *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, reliance can be negated as a matter of law in two ways: ignoring a direct

contradiction, or ignoring "red flags." 546 S.W.3d 648, 660 (Tex. 2018). Here, Respondent ignored both.

As to contradiction, Petitioners' contractual terms directly controverted Annybeth's representations. Respondent is not freed from these terms simply because he did not read them. To the contrary, his failure to read when he had a reasonable opportunity to do so charges him with knowledge of Petitioners' terms and conditions. Since a reasonable person, upon reading Petitioners' terms, would easily see the contradictions in Annybeth's representations, his reliance was unjustified.

As to red flags, Respondent plainly admitted to his awareness of red flags surrounding Annybeth's representations. This awareness put Respondent on notice of the possible falsity of Annybeth's representations. Yet, he chose to blindly rely on Annybeth's representations, ignoring the fact that he created Annybeth himself and knew the risks associated with the predication market. Respondent's reliance was also unjustified on these grounds.

For these reasons, this Court should **REVERSE** the Seventeenth Circuit, reinstate summary judgment as to Respondent's fraud and alter ego claims, and remand Respondent's CEA claim for a determination on the merits.

Argument

I. Granting Respondent's motion to voluntarily dismiss his sole remaining claim without prejudice was not a final decision.

As a threshold matter, an appellate court must have subject matter jurisdiction to review a decision. *Brown Shoe Co. v. United States*, 370 U.S. 294, 305 (1962).[3] The relevant statutory provision here authorizes the federal courts of appeals to review "**final** decisions of the district courts of the United States." 28 U.S.C. § 1291 (emphasis added).

But what decisions are final? Congress has vested this Court with the authority to answer that question. 28 U.S.C. § 2072(c). Pursuant to that authority, this Court has defined a final order as one which resolves the contested matter, leaving nothing to be done except execution of the judgment. *See Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 408–09 (2015) (an order is final when the "district court [dissociates] itself from" the case).

This means that, in most cases, parties have one chance to "raise all claims of error in a single appeal following a final judgment on the merits." *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 429–30 (1980) (citation omitted). This "final judgment rule," as codified at 28 U.S.C. § 1291, is grounded "not in merely technical conceptions of 'finality,'" but rather on a policy "against piecemeal litigation." *LNC*

[3] This is a diversity case adjudicating state law claims. R. 8. *Erie R. Co. v. Thompkins* applies. 304 U.S. 64 (1938). So, this Court will apply the substantive law of the state in which the federal district court sits—here, Texas law. *Id.* at 78; R. 21 n.7. The Federal Rules of Civil Procedure supply the procedural law. *Erie*, 304 U.S. at 78; *see* 28 U.S.C. § 2072(a).

Invs. LLC v. Republic Nicaragua, 396 F.3d 342, 346 (3d Cir. 2005). As such, the procedural vehicle(s) through which a disposition is achieved (*i.e.*, whether conclusive or nonfinal in nature) will often determine whether such disposition is considered final. The final judgment rule is subject to only a few narrow exceptions. *See Great Rivers Co-op. of Se. Iowa v. Farmland Indus., Inc.*, 198 F.3d 685, 688–89 (8th Cir. 1999). None apply here.

In the case at bar, Petitioners moved for summary judgment on all three of Respondent's claims. R. 9. The district court granted partial summary judgment as to Respondent's two common law claims, leaving his statutory claim under the Commodities Exchange Act ("CEA") intact. R. 7 (citing 7 U.S.C. §§ 1, *et seq.*). Respondent then sought the district court's permission to voluntarily dismiss his final remaining claim **without prejudice** under FED. R. CIV. P. 41(a)(2). R. 9. The court granted that permission and signed an order dismissing all of Respondent's claims at once. R. 9; *see* FED. R. CIV. P. 58.

Whether a voluntary dismissal without prejudice is a final, appealable order within the meaning of § 1291 is a question subject to a three-way circuit split. R. 10. In resolving that question, this court should adopt the majority rule: a claim voluntarily dismissed without prejudice is nonfinal. *See* R. 12–13 (collecting cases).

But, regardless of the rule adopted, this Court should still reverse the Seventeenth Circuit's decision, as Respondent manufactured appellate jurisdiction by circumventing a proper Fed. R. Civ. P. 54(b) finality certification in this case.

A. No exception to the final judgment rule applies in this case; this Court must determine the finality of voluntary dismissals.

The final judgment rule serves "to combine in one review all stages of the proceeding that effectively may be reviewed and corrected if and when final judgment results." *Cohen v. Beneficial Indust. Loan Corp.*, 337 U.S. 541, 546 (1949). The purpose of this rule is "to prevent parties from pausing the litigation, appealing, then resuming the litigation on a half-abandoned claim if the case returns." *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 425–26 (6th Cir. 2021) (citation and internal quotes omitted) (such strategies invite "piecemeal appeals"). Adherence to this rule conserves judicial resources. *See* Elizabeth G. Thornburg, *Interlocutory Review of Discovery Orders: An Idea Whose Time Has Come*, 44 SW. L.J. 1045, 1047–49 (1990).

Given the rule's importance, there are markedly few exceptions. *See* Robert J. Martineau, *Defining Finality and Appealability by Court Rule: Right Problem, Wrong Solution*, 54 U. PITT. L. REV. 717, 729–47 (1993). These exceptions come in three types: (1) statutory exceptions under 28 U.S.C. § 1292, (2) judge-made exceptions like collateral or stay orders, and (3) court orders under Rule 54(b). Martineau, *supra*, at 729–47. None apply here.

Statutory exceptions under § 1292 are incredibly specific. *See* 28 U.S.C. § 1292(a)–(b). There are four total. *See id.* Only two are even arguably relevant here. *See* §§ 1292(a) (exception for orders granting injunctive relief), 1292(b) (exception where the district judge finds that an immediate appeal may "materially advance the ultimate termination of the litigation"; requiring the district judge to state their finding "in writing"). Neither apply. The sole remedy for a CEA claim is damages. *See*

7 U.S.C. § 25(a)(2)–(3). And while the court below agreed to hear this appeal, the district judge did not enter a § 1292 order detailing their findings. *See* R. 9–10.

No statutory exceptions apply.

Judge-made exceptions are equally inapplicable. The voluntary dismissal here was not a stay. R. 9–10. Nor was it a collateral order.

To be appealable as a collateral order, a decision must (1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 276 (1988).

Here, even if the district court's decision did "conclusively determine" a disputed question (it did not), the other two elements are unquestionably unsatisfied. *See Reyes v. Freebery*, 192 Fed. App'x 120, 126 (3d Cir. 2006). While Respondent's CEA issue may be "important," it is not separate from the merits of this action; it is one-third of the merits. R. 7, 9. And the crux of this case concerns a voluntary dismissal without prejudice, which permits Respondent to re-assert his CEA claim in the district court regardless of the instant appeal's outcome. Such an order is, by definition, reviewable after appeal. Thus, the district court's order was not collateral.

Judge-made exceptions to the final judgment rule are narrow, and Respondent cannot thread the needle.

The last relevant "exception" is a proper judgment rendered under Rule 54(b). While this **should** have been the vehicle through which the district court entered

judgment as to Respondent's failed claims, the court did not do so. R. 7.[4] So, this exception is inapposite.

Accordingly, no exceptions to the final judgment rule apply. This Court must directly resolve the circuit split by answering whether voluntary dismissals without prejudice under 41(a)(2) are final, appealable orders. They are not.

B. This Court should adopt the majority rule, which holds that voluntary dismissals without prejudice are not final decisions.

Involuntary adverse judgments raise few issues regarding finality. Orders granting or denying dispositive motions are undoubtedly final because they "end[] the litigation on the merits and leave[] nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945).

Voluntary dismissals are the real problem. A plaintiff may voluntarily dismiss a claim in two ways: with notice given to the court, or with the court's permission. FED. R. CIV. P. 41(a)(1) (notice only), (a)(2) (requiring court permission). A claim may be voluntarily dismissed with or without prejudice. FED. R. CIV. P. 41(a)(1)–(2). Dismissal without prejudice permits the plaintiff to bring their claim again at a later date; dismissal with prejudice bars a plaintiff from bringing their claim again. *Id.* These differences inform finality analysis.

A notice-only voluntary dismissal without prejudice is not a decision on the merits. *See Grayson v. K Mart Corp.*, 79 F.3d 1086, 1094 n.7 (11th Cir. 1996). This

[4] That Respondent side-stepped a Rule 54(b) certification is important for later analysis. *See* **I.C.**, *infra*.

type of dismissal is permitted as a matter of right and the dismissed claim can be further raised and adjudicated in the district court. *Id.*

But questions arise where, as here, a plaintiff seeks dismissal without prejudice by a court order. While the rules are clear that, "[u]nless the order states otherwise," a voluntary dismissal by court order "is without prejudice[,]" it is less clear whether an order granting voluntarily dismissal is "final." FED. R. CIV. P. 41(a)(2). Answering this question has resulted in a three-way circuit split. R. 10.

Each of the three main approaches used by the circuit courts were presented by the opinions below. The majority adopted the Eleventh Circuit's minority rule "that an order granting a motion to voluntarily dismiss the remainder of a complaint under 41(a)(2) 'qualifies as a final judgment for purposes of appeal.'" R. 10–11 (quoting *Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1231 (11th Cir. 2020). The concurrence advocated for the Ninth Circuit's view that voluntary dismissals without prejudice are final when (1) there is no evidence of any attempt to manufacture appellate jurisdiction, and (2) the plaintiff sought the district court's permission to dismiss the remaining claims. R. 37–38. And the dissent favored the prevailing majority rule across nine circuits: that a claim voluntarily dismissed without prejudice is nonfinal. R. 57.

This Court should adopt the majority approach advocated by the dissent below.

1. The majority rule protects against piecemeal litigation and precludes attempts to manufacture appellate jurisdiction.

"[I]n general, a claim that is voluntarily dismissed without prejudice does not give rise to a final judgment for purposes of § 1291." R. 12. Eight federal circuits agree. R. 12–13 (collecting cases). Its reasoning explains the popularity.

The majority rule determines finality based on the status of a plaintiff's rights relative to the dismissed claim after dismissal. *See Scottsdale Ins. Co. v. McGrath*, 88 F.4th 369, 379 (2d Cir. 2023). Put simply, a plaintiff cannot have their cake and eat it, too. If a plaintiff wishes to appeal claims affected by summary judgment, they may do so through a voluntary dismissal **with** prejudice. *Id.* But a plaintiff cannot "transform a tentative interlocutory order . . . into a final judgment within the meaning of § 1291 simply by dismissing their claims" without prejudice. *Microsoft Corp. v. Baker*, 582 U.S. 23, 38–39, 41 (2017).[5]

This is particularly true when a plaintiff moves "for voluntary dismissal under Rule 41(a)(2)"—as Respondent did here. *S.B. v. KinderCare Learning Ctrs., LLC*, 815 F.3d 150, 152 (3d Cir. 2016). In such cases, plaintiffs "rely exclusively on their interpretation of [the district judge's] partial summary judgment order as an effective dismissal of their entire complaint." *Empire Volkswagen Inc. v. World-Wide Volkswagen Corp.*, 814 F.2d 90, 95 (2d Cir. 1987). But this leads to piecemeal litigation, where a plaintiff effectively secures "an otherwise unavailable interlocutory appeal" following a dismissal without prejudice. *Chappelle v. Beacon*

[5] Doing so would, in effect, hold Respondent's CEA claim in purgatory until Respondent raises the specter of "piecemeal" litigation after appeal.

Commc'ns Corp., 84 F.3d 652, 654–55 (2d Cir. 1996); *see Arrow Gear Co. v. Downers Grove Sanitary Dist.*, 629 F.3d 633, 636 (7th Cir. 2010) (piecemeal litigation is disfavored by the federal courts).

The majority rule draws the line at prejudice. In doing so, it protects against a plaintiff's attempt to "prevent the entirety of the contested issues . . . from being resolved in a single appeal[.]" *Arrow Gear*, 639 F.3d at 636. It also prevents plaintiffs from manufacturing appellate jurisdiction.

While manufacturing jurisdiction "often consists of a stipulation between the parties under which, if the judgment is reversed on appeal, the plaintiff can reinstate his dismissed claims," this is not the only way it occurs. R. 39; *see* 15A WRIGHT & MILLER'S FED. PRAC. & PROC. § 3914.8.1 (3d ed. 2022) (finality may be manipulated by circumventing Rule 54(b) and § 1292); *Rowland*, 4 F.4th at 424 (circumvention of a Rule 54(b) certification is an "attempt to manufacture finality").

Courts of appeals do not need a rule that would require a "working Zoltar machine" to determine whether a party attempted to manufacture jurisdiction. R. 18–19. They need a rule that bars the attempt preemptively. The majority rule does so while also giving the plaintiff a choice after partial summary judgment: (a) continue prosecuting their remaining claim(s) and have "an ultimate appeal of all rulings," or (b) voluntarily dismiss **with** prejudice to appeal the adverse judgment immediately. *See Studstill v. Borg Warner Leasing*, 806 F.2d 1005, 1008 (11th Cir. 1986). This choice offers sufficient flexibility to the plaintiff while protecting the

federal court system against attempts to manipulate finality. This Court should adopt the majority rule.[6]

2. The majority rule is not specific to orders denying class certification like in *Microsoft Corp. v. Baker*.

The majority below argued against adoption of the "majority rule" by attempting to distinguish this Court's decision in *Microsoft*. R. 15–17 & n.6 (citing 582 U.S. 23 (2017)). In its view, *Microsoft* addressed a singularly narrow question concerning the appealability of a denial of class certification. *See* R. 15. But, as stated by the dissent, this underreads *Microsoft*. R. 58.

While certiorari in *Microsoft* was limited to cases concerning class certification, certiorari does not tell the whole story. 582 U.S. at 26–27, 36 & n.8. *Microsoft* served a dual purpose; it not only dealt with class-action certification, but also the plaintiff's dismissal tactics *Id.* at 41 n.11. In concrete terms, the plaintiff's tactics transformed "a tentative interlocutory order . . . into a final judgment . . . by dismissing [the plaintiff's] claims with prejudice—subject, no less, to the right to 'revive' those claims if the denial of class certification [was] reversed on appeal." *Id.* at 41. In more transferrable terms, *Microsoft* disfavored subversion of finality by dodging the appropriate procedural vehicle(s) for particular claims. *Id.* at 39–41.

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[6] Any criticism that the majority rule ignores cases where a claim is improperly denied wades far too deep into the merits. *See* R. 19. A court must sort through jurisdictional issues before engaging in a merits determination. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998) (this rule is "inflexible without exception").

In holding that the district court's decision was nonfinal, *Microsoft* sought to avoid piecemeal appeals, preserve finality principles, ensure district court control, and prevent manufactured jurisdiction. *Id.* at 37, 36–42. These concerns are fairly universal. *See* R. 37, 58–59. Indeed, *Microsoft* has even been applied beyond class-certification decisions. *See, e.g.*, *Geo Grp., Inc. v. Menocal*, 607 U.S. 438, 444 (2026); *Hall v. Hall*, 584 U.S. 59, 63–64, 77 (2018).

Microsoft's careful dissection of the relationship between the Rules and § 1291 thus guides the present dispute. *See* 582 U.S. at 39–41. And part of this Court's guidance was a warning: creating exceptions to the final judgment rule should not be taken lightly, and changes to the meaning of finality "are to come from rulemaking . . . not judicial decisions." *Hall*, 584 U.S. at 77 (quoting *Microsoft*, 582 U.S. at 39). In *Microsoft*, this meant keeping plaintiffs from bypassing FED. R. CIV. P. 23's "balanced solution" to secure finality for an appeal. 582 U.S. at 27. Here, it means keeping Respondent from dodging Rule 54(b) (see **I.C.**, *infra*).

In sum, the majority rule protects finality and addresses the concerns raised in *Microsoft* without stretching *Microsoft* beyond its means.[7] This Court should adopt the majority rule.

[7] That class-certification denials are "inherently interlocutory" does not disrupt *Microsoft*'s application. R. 16. The issue here is whether the district court's ruling was interlocutory or final. Since it is nonfinal, this case should be decided like *Microsoft*.

3. Other approaches either provide more confusion or require merits determinations for a jurisdictional question.

None of the other approaches put forth by the majority or concurrence below carry the day.

Consider first the Eleventh Circuit's approach. R. 10–11. This rule holds that a voluntary dismissal without prejudice procured by court order is always a final judgment for purposes of appeal. R. 10–11. This is a bad rule.

To begin, the Eleventh Circuit's precedent is inconsistent. That circuit has held that "an order granting a motion to voluntarily dismiss the remainder of a complaint under Rule 41(a)(2)" is a final judgment. *Corley*, 965 F.3d at 1231. But it has also said that such orders are only final when there was no attempt to manufacture jurisdiction. *CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1328–29 (11th Cir. 2000). And that such orders are not final decisions at all. *State Treasurer v. Barry*, 168 F.3d 8, 13, 15 (11th Cir. 1999) (basing its decision on the adverse effect suffered by the plaintiff); *Grayson*, 79 F.3d at 1094 n.7.

To resolve these discrepancies, the *Corley* court used the "earliest precedent rule" in deciding that voluntary dismissals without prejudice are final orders. 965 F.3d at 1231.[8] The dissent below remarked that *Corley* is a "poor guide" because of its unexplained reliance on the earliest precedent rule. R. 57. Petitioners agree and add that a majority-concurrence in *Corley* both (1) warned against the rapacious use of Rule 41 to obtain finality, and (2) stated that "an en banc court would have colorable

[8] Literally, the court decided between two conflicting, in-circuit cases by leaning on the earlier precedent. *See id.* at 230–31.

arguments to reconsider" *Corley*'s approach. 965 F.3d at 1236–38. The *Corley* court's calculation as to the earliest precedent was also off by about 25 years: *Microsoft* predates *Corley* and applies here.

Consider next the Ninth Circuit's approach favored by the concurrence below. R. 38. That rule holds that voluntary dismissals without prejudice are not final unless (1) there is no evidence of an attempt to manufacture appellate jurisdiction, and (2) the plaintiff asked the district court's permission to dismiss their remaining claims. R. 37–38. This rule fairs almost as poorly as the last.

Courts are not clairvoyants. A rule which requires an examination of the subjective intent of the filer—in most cases, the party's lawyer—breeds "inconsistent intra-circuit outcomes." *Williams v. Seidenbach*, 958 F.3d 341, 356–57 & n.15 (5th Cir. 2020) (Willet, J., concurring). So, while Petitioners agree that the Eleventh Circuit's test does not further *Microsoft*'s purposes, neither does the Ninth Circuit's. *Contra* R. 37–38. It should not be adopted.

Nor should the concurrence's alternative, "more nuanced approach" be used. R. 37. This rule would require a court to consider the merits of the dismissed claim, asking whether it would be independently barred from reassertion after appeal. R. 40–41 (collecting cases). This rule misunderstands jurisdictional analysis. *See* R. 40–42 (walking back from advocating this approach). Where, as here, the parties have not raised the issue of independent legal bars on re-raising a claim after appeal, it is "inappropriate for the court of appeals to weigh in on such questions." R. 18. A

rule requiring such an investigation in every case of questionable finality thus cannot stand.[9]

At bottom, using 41(a)(2) to secure finality is subject to abuse and needs preemptive restraint. This Court must adopt a rule. But this Court should not bother with quasi-merits determinations for a jurisdictional issue, nor attempt to ascertain a lawyer's intent for filing a dismissal without prejudice. R. 57. The "wiser path . . . is to follow the majority rule" and conclude that voluntary dismissals without prejudice are nonfinal. R. 59–60.

While the majority rule has been refined by exceptions over time, it is still the best choice available. *See* R. 39 n.1. While some plaintiffs may "have to nonsuit *with prejudice* a viable claim . . . to seek full relief on *all* claims through appeal," this is by design. R. 19; *see* WRIGHT & MILLER, *supra*, § 3914.8.1 ("A voluntary dismissal should establish finality only if something must be sacrificed."). And while this rule conclusively determines the finality of voluntary dismissals without prejudice, it is a narrow carve-out; voluntary dismissals with prejudice remain valid, final decisions.

This Court should adopt the majority rule.

C. Beyond the circuit split presented, Respondent has manufactured appellate jurisdiction in this case by circumventing Rule 54(b).

Notwithstanding the above, Respondent has manufactured appellate jurisdiction through his circumvention of Rule 54(b). Regardless of the rule adopted,

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[9] A final middle-ground approach holds that, if a voluntarily dismissed claim belonged to the appellee, rather than the appellant, dismissal is final. *See* R. 14 n.5. This rule is inapplicable. Respondent was the aggrieved plaintiff below and this voluntary dismissal belongs to him; Petitioners have not voluntarily dismissed anything.

this case should be remanded to the district court for a determination of Respondent's CEA claim on the merits.

In the case at bar, Petitioners moved for summary judgment before Respondent moved to dismiss his claim. R. 7. This required Respondent to seek the court's permission to voluntarily dismiss without prejudice. FED. R. CIV. P. 41(a)(1)(A)(i); *Concha v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995). The court granted Respondent permission to dismiss and entered a Rule 58 order disposing of all Respondent's claims at once. R. 9.

But for a Rule 58 order to be proper, a court has to have actually resolved the merits of each discrete claim—thereby "produc[ing] a distinct indication that the case is at an end." *Cf. Otis v. City of Chi.*, 29 F.3d 1159, 1163 (7th Cir. 1994) (requiring the decision to be "coupled with a precise statement of the terms on which [the case] has ended"). It seems clear that the district court believed its decision to be the last word. But understanding the result desired does not excuse the procedure required. *SD Voice v. Noem*, 987 F.3d 1186, 1191 (8th Cir. 2021).

Rule 58 was the wrong procedural vehicle to dispose of Respondent's claims.

For starters, "Rule 41(a) is a poor mechanism to accelerate appellate review and the Rules provide litigants with better options to secure an appeal." R. 20 (citation and internal quotes omitted). Rule 41 neither "authorize[s] the voluntary dismissal of individual claims" nor "allow[s] a plaintiff to voluntarily dismiss fewer than all claims brought in an action." *In re Esteva*, 60 F.4th 664, 675–76 (11th Cir.

2023); *Concha*, 62 F.3d at 1506. Correspondingly, a Rule 58 order should not be used to dispose of less than all of a plaintiff's claims pursuant to a Rule 41(a)(2) motion.

This is especially true where one claim is being dismissed without a determination as to the merits. *See Long v. Cnty. of L.A.*, 422 F.3d 1178, 1184 n.3 (9th Cir. 2006) (a court's order must be a "full adjudication of the issues" to be final).[10] A voluntary dismissal without prejudice is not a decision on the merits. *Grayson*, 79 F.3d at 1094 n.7 (citation omitted). And a Rule 58 order cannot convert an underlying dismissal without prejudice into a final order simply by batching mixed dispositions. *See Williams v. Taylor-Seidenbach, Inc.*, 748 F. App'x 584, 586–88 (5th Cir. 2018).

Respondent should have moved for a Rule 54(b) certification of finality.

Rule 54(b) is strict in nature. *See Gen. Acquisition, Inc. v. GenCorp, Inc.*, 23 F.3d 1022, 1026 (6th Cir. 1994) (explaining requirements). Where, as here, there are multiple claims and multiple parties, Rule 54(b) is the only avenue through which a court may dispose of less than all of a plaintiff's claims. *Blue v. D.C. Public Schools*, 764 F.3d 11, 16–17 (D.C. Cir. 2014). Conversely, any other order or decision, "however designated," which "adjudicates fewer than all the [plaintiff's] claims . . . does not end the action as to any of the claims or parties." Fed. R. Civ. P. 54(b).

The fact that Respondent circumvented Rule 54(b) puts this appeal out to pasture. *Cf. Cook v. Rocky Mountain Bank Note Co.*, 974 F.2d 147, 148 (10th Cir.

[10] Although Rule 58(a) is not "a trap for the inexperienced," it nonetheless requires a judgment to provide "certainty as to the timeliness of an appeal." *Bankers Trust Co. v. Mallis*, 435 U.S. 381, 386 (1978). A judgment thus requires a discrete analysis and adjudication of each claim presented. *See Otis*, 29 F.3d at 1163.

1992) (plaintiff intended to subvert Rule 54(b) to manufacture finality). The district court's order is nonfinal under the majority rule because dismissal was without prejudice. It is nonfinal under the Ninth Circuit rule because Respondent manufactured jurisdiction. *Contra* R. 39. It is even nonfinal under the Eleventh Circuit's rule because the Respondent circumvented Rule 54(b). *See Walthour v. Middle Ga. Fam. Rehab, LLC*, No. 24-14102, 2025 WL 3688129, at *3 (11th Cir. Dec. 19, 2025) (cleaned up) (citing *Corley*, 965 at 1235–37 (Pryor, C.J., concurring)) ("Any attempt to use Rule 41(a) to dismiss anything less than the entire action will be invalid.").[11]

Respondent had options in this case. He "could have sought leave to amend his pleadings after summary judgment or moved to sever his remaining claims." R. 20 (citing *Walthour*, 2025 WL 3688129, at *3). He did not. R. 20. Or he could have moved for a Rule 54(b) certification and **then** obtained a Rule 41(a)(2) dismissal. *See CMYK Enters., Inc. v. Advanced Print Techs., LLC*, 154 F.4th 1329, 1332 (11th Cir. 2025).[12] He did not. And in failing to do so, he enlisted the district court's assistance in circumventing binding procedural rules by bundling mixed dispositions. This is manufactured jurisdiction. *See Microsoft*, 582 U.S. at 27.

Because Rule 58 cannot be used to manufacture finality, and because the district court did not enter a Rule 54(b) certification, the district court's decision was

[11] Still, Petitioners stand by the current majority rule as the best option to effectuate the goals of *Microsoft*.

[12] In fact, this would have limited review of the district court's finding to an abuse of discretion standard. *Chapman v. Dunn*, 129 F.4th 1307, 1313 (11th Cir. 2025).

nonfinal. And while this analysis is sound, the majority rule saves courts from having to conduct such an in-depth inquiry by asking a simple question: "Was the claim dismissed without prejudice?" In doing so, this rule promotes a "healthy legal system." R. 59.

Accordingly, this Court should adopt the majority rule. But, regardless of the rule adopted, this Court should hold that the district court's decision was nonfinal and remand Respondent's CEA claim for a determination on the merits.

II. Purvetti is not responsible for Annybeth's purportedly false representations.

Respondent argues that Annybeth tricked him into placing losing bets on a prediction market, and that Purvetti is responsible for it through a theory of vicarious liability. R. 22. Put simply, he claims that Annybeth was Purvetti's agent and that Purvetti is liable for fraud because of it. R. 22.

Respondent's argument is full of holes. Annybeth is not an agent of Purvetti, nor is Annybeth even capable of being one. Even if Annybeth was Purvetti's agent, Annybeth's representations to Respondent were clearly outside the scope of any authority given to it. Therefore, Purvetti cannot be liable for Annybeth's alleged representations.[13]

Absent a common law agency relationship, Respondent's arguments run thin. Respondent could argue that Purvetti is liable for Annybeth's actions as its

[13] By extension, the other Petitioners cannot be liable as "alter-egos" of Purvetti. But even if Purvetti were liable, Respondent has alleged no facts establishing an illicit connection between Purvetti and the other Petitioners.

"employer," but that claim dries up for the same reasons his agency theory does. Or he could argue that Purvetti is still vicariously liable despite the lack of any agency relationship, as in *Visa Inc. v. Sally Beauty Holdings, Inc.* 651 S.W.3d 278, 308 n.61 (Tex. App. 2021). But that would require an affirmative showing that Purvetti **knew** about Annybeth's specific representations to Respondent. *See id.* Since Respondent failed to make that showing, Purvetti cannot be liable under the *Visa* theory, either.

Aside from vicarious liability, Respondent could have argued that Purvetti is **directly** responsible for fraud as the true author of Annybeth's purportedly false statements. But that theory does not apply here. Purvetti made no representations to Annybeth about prediction markets (the first element of fraud), had no way of knowing the falsity of Annybeth's alleged representations (the third element of fraud), and never intended for Respondent to act on those alleged representations (the fifth element of fraud). *See* R. 21–22 (listing the elements of fraud under West Highlands law).

Respondent should have brought a products liability claim. Contrary to the circuit court's conclusion, products liability is a viable route for remedying harms caused by AI. *See Garcia v. Character Techs., Inc.*, 785 F. Supp. 3d 1157, 1180 (M.D. Fla. 2025) (applying products liability for AI chat bot); *cf. In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 852 (N.D. Cal. 2023) (same for social media app). Respondent failed to follow this route.

A. Only people can be agents.

Respondent's claim falls apart at the starting gate. Agents must be persons. RESTATEMENT (THIRD) OF AGENCY § 1.04 cmt. *e* (A.L.I. 2006). Inanimate objects, like computers, are incapable of being agents. *See id.* As Judge Ensella pointed out in the dissent below, a search of West Highlands and Texas law reveals "no case" where "anything other than a human was treated as an agent or employee for vicarious liability purposes." R. 61.

Far from being common law agents, AI bots are "machines." Harry Surden, *ChatGPT, AI Large Language Models, and Law*, 92 FORDHAM L. REV. 1941, 1951 (2024). They are man-made things, incapable of any true agency. *See* Joseph Sommer, *Against Cyber-Law,* 15 BERKELEY TECH. L.J. 1145, 1179 (2000) (a computer program "merely shifts **human** volition in time and space") (emphasis added).

That these bots are sometimes called "agents" could therefore be met with the equally nominal point that AI stands for **artificial** intelligence. But, on this subject matter in particular, Texas courts look past semantics and into substance. *See In re Carolin Paxson Advert., Inc.*, 938 F.2d 595, 598 (5th Cir. 1991) ("the facts and circumstances of the case, not just the words of the parties' agreement" establish an agency relationship). Pulling back the curtain to reveal that substance, AI bots are nothing more than "extremely flexible pattern detectors." *See* Surden, *supra,* at 1963. They lack cognition, and—though they may seem intelligent—they only reach their results "through statistical approximations." *See id.* at 1942 n.4.

As a machine, AI lacks a key ingredient of agency: volition. *See* Sommer, *supra*, at 1179. Humans have the unique ability to use reason to make choices. *See*

ARISTOTLE, NICOMACHEAN ETHICS III.3, at 49 (Robert C. Bartlett & Susan D. Collins trans., Univ. of Chi. Press 2011) ("a human being is an origin of his actions"). Indeed, this faculty makes us "persons." *See* IMMANUEL KANT, FUNDAMENTAL PRINCIPLES OF THE METAPHYSIC OF MORALS, § 2 (Thomas Kingsmill Abbot trans., Project Gutenberg) (1785). In contrast, AI is "a tool, not a person." *Amazon.com Servs., LLC v. Perplexity AI, Inc.*, 184 F.4th 1083, 1091 (9th Cir. 2026). Since tools lack reason and a will of their own, they mindlessly function according to their creator's design. *Cf.* KANT, *supra*, § 2 ("rational beings alone . . . have a will").

AI is, for all intents and purposes, a highly complicated "wind-up toy." It lacks the understanding necessary to make real choices for itself. *See* Surden, *supra,* at 1942. And its ability to mimic independent choice should not be confused with free-will. Rather, the degree to which an AI appears to possess independence only reflects the degree to which this proverbial toy has been "wound up." Accordingly, the better way to hold AI companies responsible when one of their "toys" causes harm is products liability.

Despite this obvious hole in Respondent's theory, the majority below strangely concluded that Annybeth was Purvetti's common law agent. R. 28. To reach that conclusion, the majority relied on *Mobley v. Workday, Inc.*, where a district court found that an AI-powered job application screener was an "agent." R. 29 (citing 740 F. Supp. 3d 796, 806 (N.D. Cal. 2024)). But that case does not apply here.

In *Mobley*, the district court used a statutory definition for agents. *See* 740 F. Supp. 3d at 806–07. This Court has no such luxury. Instead, this Court must rely on the common law agency test.

B. Annybeth flunks the common law agency test.

Even when the relationship in question involves two humans, the law presumes that no agency relationship exists. *See Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 589 (Tex. 2017). The burden of proof lies with Respondent, who must show the two essential elements of the common law agency test: (1) the agent's authority to act on the principal's behalf, and (2) the principal's right to control the agent. *See id.* If just one of these essential elements is missing, Petitioners are entitled to summary judgment. *See Yumilicious Franchise, L.L.C. v. Barrie*, 819 F.3d 170, 177 (5th Cir. 2016).

1. Purvetti never delegated authority to Annybeth.

Respondent cannot show that Annybeth had authority to act on Purvetti's behalf. In agency law, authority takes many shapes and sizes—actual or apparent authority, explicit or implicit authorizations—but two initial considerations apply across the board. And both considerations stop Respondent's vicarious liability theory in its tracks.

The first is consent. "To establish the existence of an agency relationship, the evidence must demonstrate the purported agent's consent to act on the principal's behalf and subject to the principal's control." *Cmty. Health Sys. Prof'l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 691 (Tex. 2017). It is not enough that the principal bestows authority on the agent; the agent must willingly accept it. *See id.*

Assuming, *arguendo*, that Purvetti authorized Annybeth to make representations as if Annybeth were a person, this element fails because AI cannot consent. *See* John P. Fischer, *Computers as Agents: A Proposed Approach to Revised U.C.C. Article 2,* 72 IND. L.J. 545, 569 (1997) ("[T]he concept of [a] computer consenting is absurd."). This inability to consent is a crucial barrier to applying agency law to a person-computer relationship. *See id.*

Not even the majority's best case, *State Farm Mut. Auto. Ins. v. Bockhorst*, can overcome this hurdle. R. 30–31 (citing 453 F.2d 533 (10th Cir. 1972)). In *Bockhorst*, the Tenth Circuit held a company responsible for the actions of its computer. *See* 453 F.2d at 537. But the court justified its holding by explaining that computers simply follow the coding given by human programmers. *See id.* In other words, any conduct that seems like a computer's consent is really nothing more than the pre-programmed guidance of a human engineer. *See* R. 32 n.9 ("[Annybeth] was designed to do precisely what [it] did—adapt and evolve to [Respondent].").

The second hurdle is fiduciary duties, which are "inherent" in every agency relationship. *Hartford Cas. Ins. Co. v. Walker Cty. Agency, Inc.*, 808 S.W.2d 681, 687 (Tex. App. 1991). But a computer program "owes no fiduciary duties." *See* Sommer, *supra,* at 1178. Its actions are the product of a series of ones and zeros, not an independent mind shrugging off obligations. Obliging a person to fulfill duties only makes sense because people can reject those duties. AI has no such sentient power. Like with consent, this essential feature of agency relationships cannot, as a matter of law, apply to Annybeth or any other AI bot.

Setting these insurmountable hurdles aside, Purvetti never gave Annybeth the authority to act on Purvetti's behalf. That makes sense because Annybeth was designed to serve customers, not Purvetti. R. 3, 64. Respondent's claims to the contrary (*i.e.*, that Purvetti engineered Annybeth "to guide [him] to Piquemaylin") are pure guesswork. R. 25. Guesswork cannot rescue Respondent from summary judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 321 (1986).

Without any real evidence of actual authority, Respondent has one last-ditch option to satisfy this element: apparent authority. Under that doctrine, an agency relationship exists whenever the principal leads a third party to reasonably believe that it has authorized an agent to act. *See Baptist Mem'l Hosp. Sys. v. Sampson*, 969 S.W.2d 945, 948 (Tex. 1998). But Purvetti never signaled that it wanted Annybeth to act on its behalf. Quite the opposite, Purvetti told its customers that its AI Companions were made to serve them. R. 3.

The majority below held that Annybeth was an agent, in part, because Purvetti derived some incidental benefits from Annybeth's programming. R. 28. That rationale is flawed. Yes, Annybeth recommended that Respondent upgrade his subscription to include voice mode and a smartphone app, both of which made Purvetti money. R. 28. But a cursory review of any app store would show that many apps offer add-ons that do the same thing. If Respondent's incidental-benefits rationale makes Annybeth an agent, then practically any software that offers upgrades is an agent, too.

2. Purvetti did not have sufficient control over Annybeth.

The second essential element of agency is control. Courts may, as a matter of law, decide when principals exercise sufficient control. *See Freyer v. Lyft, Inc.*, 639 S.W.3d 772, 777 (Tex. App. 2021). It is not enough that a purported principal exerts control at the beginning of the relationship. *See Pac. Gas & Elec. Co. v. United States*, 838 F.3d 1341, 1360 (Fed. Cir. 2016). The principal must also have "the right to give interim instructions" to the agent. *Id.*

This is a problem for Respondent. Following Annybeth's initial programming, Annybeth changed hands from Purvetti to Respondent. R. 27. Respondent produced no evidence showing Purvetti exercised control over Annybeth during the period Respondent used it. On the contrary, Annybeth remained at Respondent's "sole control and election." R. 27.

C. Even if Annybeth were Purvetti's agent, Annybeth's representations were beyond the scope of its authority.

The existence of an agency relationship does not automatically imply the principal's responsibility for their agent's actions. *See Gaines v. Kelly*, 235 S.W.3d 179, 185 (Tex. 2007). An agent's conduct must be part of "the particular business with which he is entrusted." *See id.* Accordingly, principals are not responsible for an agent's unauthorized acts. *See, e.g.*, *id.*

This rule applies even when the agent acts for the principal's benefit, as the Supreme Court of Texas made clear in *Gaines v. Kelly*. 235 S.W.3d at 184. In that case, a land buyer (Kelly) sued his would-be mortgage lender after it denied his loan. *See id.* at 181. During negotiations, the lender had authorized a broker (Thompson)

to deliver some documents to Kelly. *See id.* at 184. In the process, Thompson went out on a limb and told Kelly that the loan was a sure thing, and Kelly believed him. *See id.* Kelly argued that the lender was responsible for Thompson's statement because Thompson was acting on the lender's behalf. *See id.* The court disagreed. Thompson's off-the-cuff statement went beyond the scope of his authority, so the lender could not be liable. *See id.* at 185.

The same rule applies here. According to Respondent, Annybeth suggested he start placing bets on Piquemaylin. R. 4. But Purvetti cannot be held responsible for such suggestions. Annybeth is a "Companion" bot. R. 3. The scope of its authority (if any at all) ends with entertainment. R. 63–64. Even if Annybeth made rogue suggestions to benefit Purvetti, that fact does not move the needle. Like in *Gaines*, all that matters is whether the agent acted within its scope. 235 S.W.3d at 184. Because Annybeth's actions were outside its scope, Purvetti is not responsible.

D. Annybeth was not Purvetti's employee, either.

Respondent may attempt to resurrect his vicarious liability argument by arguing that Annybeth was an "employee" of Purvetti and that Purvetti is responsible for Annybeth's representations on those grounds. But the same points that defeated Respondent's first agency argument sound the death knell here, too.

First off, no Texas case has recognized that a computer can be an employee. *See* R. 60–61. But even setting that obvious objection aside, Respondent's theory fails because control is an essential element of the employer-employee relationship. *See Painter v. Amerimex Drilling I, Ltd.*, 561 S.W.3d 125, 132 (Tex. 2018). Because

Purvetti relinquished primary control over Annybeth—giving Respondent the authority to "customize" the bot—Annybeth was not Purvetti's employee. R. 3.

If anything, Annybeth was like an independent contractor. Texas courts draw a distinction between contractors and employees. *See Limestone Prods. Distrib. v. McNamara*, 71 S.W.3d 308, 313 (Tex. 2002) (holding that a distributor was not responsible for its driver's actions because the driver was acting as an independent contractor). Unlike employees, independent contractors exercise control over their own work in achieving an employer's goals. *See id.* at 312.

This is why Uber and Lyft drivers are commonly classified as independent contractors. *See, e.g.*, *Freyer*, 639 S.W.3d at 777. They choose their passengers, hours, and routes without much direction from others. Although their actions benefit Uber Technologies, Inc. and Lyft, Inc., that does not make them an agent.

In every way that matters here, Annybeth is more like an Uber driver than an employee. Purvetti gave Annybeth the singular goal of entertaining customers. R. 63. Annybeth, then, adapted to Respondent's needs to best achieve that goal. R. 25. Since Annybeth did not store a transcript of its conversations, Purvetti had no way of knowing what Annybeth told Respondent, let alone a way to direct the flow of conversation. R. 47. Annybeth cannot be considered an employee based on these facts.

E. Purvetti is not liable under Respondent's "beneficiary of fraud" liability theory.

Independent of any agency or employment relationship, third parties can be vicariously liable for fraud if they benefited from the fraud and knew about it. *See*

Visa, 651 S.W.3d at 308 n.61. But, as previously noted, Purvetti had no idea what Annybeth said during its oral conversations with Respondent. R. 47.

That Purvetti knew the duration of Respondent's conversations does not bridge the gap. *See* R. 46. Nor does the argument that Purvetti "should have known" that Respondent clicked a link to Piquemaylin's website through Annybeth's chat. R. 47. Even if Purvetti knew about the click, Purvetti could have reasonably believed that Respondent sought out the Piquemaylin website without Annybeth's prompting.[14] Since Respondent has cited no facts showing that Purvetti knew about the allegedly fraudulent statements, this vicarious liability theory fails, too.

F. Products liability was the better option.

Respondent's only potentially viable claim was in products liability. Unlike his agency theory, which did not (and could never) satisfy the common law elements, AI companies have been found liable under products liability. *See Garcia*, 785 F. Supp. 3d at 1173. But Respondent did not make any such claim.

The majority below concluded that products liability would not apply here because (1) AI might be better characterized as a service instead of a product, and (2) plaintiffs cannot show AI design defects. These arguments do not hold water.

AI is a product, not a service. While words and ideas can be sufficiently distinguished from products, the medium that presents those ideas **is** a product. *See James v. Meow Media, Inc.*, 300 F.3d 683, 701 (6th Cir. 2002). Annybeth is that

[14] For the same reasons, Purvetti could not have known about the losing bets that Annybeth allegedly suggested Respondent make.

medium. It does not truly convey ideas of its own, but merely transmits ideas found elsewhere through an easy-to-use platform. And, like products, AI bots can have defects. *See, e.g.*, *Garcia*, 785 F. Supp. 3d at 1180, 1183 (holding that an AI chat bot was a product because the plaintiff's harm stemmed from the bot's anthropomorphic design).[15]

Since AI bots are products and can have design defects, the majority's arguments fall flat. If Respondent had any chance of success, it was under products liability, not an agency theory.

III. Respondent did not justifiably rely on Annybeth's representations as an AI.

The court below also held that there was an issue of fact precluding summary judgement on the element of justifiable reliance. But the district court had it right: Respondent's reliance is unjustified because Annybeth's representations are in direct conflict with Petitioners' terms and conditions, and Respondent ignored a multitude of other "red flags."

To prove common law fraud in the State of West Highlands, a plaintiff must show that they relied on a false representation made by the defendant. R. 22. This requires that "the plaintiff show actual and justifiable reliance." *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2010); *see also Field v.*

[15] The European Union treats AI similarly. *See Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on Liability for Defective Products and Repealing Council Directive 85/374/EEC [2024] OJ L 1/22,* recital 13 (characterizing AI as software; explaining that, "[i]n the interest of legal certainty, it should be clarified in this Directive that software is a product").

Mans, 516 U.S. 59, 70–71, 74–75 (1995) (citing RESTATEMENT (SECOND) OF TORTS § 545A, cmt. *b* (A.L.I. 1977)) (fraud requires justifiable, but not reasonable, reliance).

Justifiable reliance usually presents a question of fact, but "can be negated as a matter of law when circumstances exist under which reliance cannot be justified." *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 654 (Tex. 2018) (citation omitted). Justifiable reliance is negated in two ways: (1) when the plaintiff "blindly relies upon a misrepresentation" which he would have known about had he investigated, and (2) when "red flags" suggest that reliance is "unwarranted." *See Field*, 516 U.S. at 71 (citing RESTATEMENT (SECOND) OF TORTS § 541, cmt. *a* (A.L.I. 1977)); *Orca Assets*, 546 S.W.3d at 655, 660 n.2 ("Either 'red flags' alone or direct contradiction alone can negate justifiable reliance as a matter of law.").

Here, Respondent blindly relied on Annybeth's representations. And those representations directly conflicted with Petitioners' terms and conditions. Justifiable reliance can be defeated on this basis alone. Independently, both the nature of Respondent's relationship with Annybeth and the uncertainty of the prediction market are "red flags" indicating that Respondent's reliance was unjustified. This further negates a finding of justifiable reliance. *Orca Assets*, 546 S.W.3d at 660.

At bottom, Respondent cannot prove the elements of common law fraud.

A. A plaintiff cannot rely on an AI product's representation that directly conflicts with an earlier contractual representation.

"[R]eliance upon an oral representation that is directly contradicted by the express, unambiguous terms of a written agreement between the parties is not justified as a matter of law." *See Orca*, 546 S.W.3d at 658 (citation omitted). In other

words, a plaintiff cannot rely on a representation that they knew, or should have known (by reading through the terms and conditions), was false.

A party must protect their own interests by exercising ordinary care and reasonable diligence in reading a contract. *Id.* at 660. When a party fails to do so, they are charged with knowledge of the contract's terms because those terms could have been discovered by a reasonably prudent person under the same circumstances. *Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553, 563 (Tex. 2019); *see Daily Instruments Corp. v. Heidt*, 998 F. Supp. 2d 553, 566 (S.D. Tex. 2014) ("Texas law presumes a party has read and knows the terms of a contract that he has signed.").

In like manner, Respondent here is charged with the knowledge of Petitioners' terms and conditions which directly contradicted Annybeth's subsequent representations.

1. Agreeing to an online contract imputes knowledge of its terms.

The law does not excuse a party's failure to read a contract when they had a reasonable opportunity to do so. *Harris v. FedEx Corp. Servs., Inc.*, 92 F.4th 286, 294 (5th Cir. 2024), *cert. denied*, 145 S.Ct. 169 (2024). On the contrary, "the law presumes that the party knows and accepts the contract terms." *Nat'l Prop. Holdings, L.P. v. Westergren*, 453 S.W.3d 419, 425 (Tex. 2015) (no justifiable reliance when oral representations directly conflicted with the terms of a release).

These principles apply to online terms and conditions that online customers enter into every day. *One Beacon Ins. Co. v. Crowley Marine Servs., Inc.*, 648 F.3d 258, 269 (5th Cir. 2011). Online Users are put on reasonable notice of an online

contract's terms when the User is "provided clear and reasonably conspicuous notice" through contract terms made available by "scrolling down or clicking a hyperlink." *Dhruva v. CuriosityStream, Inc.*, 131 F.4th 146, 153 (4th Cir. 2025) (cleaned up).

In essence, a person clicking a "'Sign up now' button objectively and unambiguously manifest[s assent] to those terms." *Id.* at 155. Texas courts have held strong to this rule. *See, e.g.*, *HomeAdvisor, Inc. v. Waddell*, No. 05-19-00669-CV, 2020 WL 2988565, at *2, *5 (Tex. App. June 4, 2020) (submission page with hyperlink to terms placed directly below a large submit button was reasonably conspicuous and gave sufficient notice).

This Court's role is not "to protect parties from their own agreements." *See Westergren*, 453 S.W.3d at 425. It must simply decide if Respondent had imputed knowledge of Petitioners' terms and conditions. To do so, this Court must determine whether Respondent had reasonable notice of the terms and manifested his assent to those terms. *See One Beacon*, 648 F.3d at 269. He did.

a. Petitioners' terms and conditions were reasonably conspicuous and Respondent was put on notice.

An online agreement must provide clear, direct, and positive facts demonstrating reasonably conspicuous notice of its terms. *See StubHub, Inc. v. Ball*, 676 S.W.3d 193, 202 (Tex. App. 2023). Reasonability of notice will often depend on whether "a reasonably prudent person should have seen" the contract's incorporated terms. *Coastal Iron Works, Inc. v. Petty Ray Geophysical, Div. of Geosource, Inc.*, 783 F.2d 577, 582 (5th Cir. 1986); *see Janvey v. GMAG, L.L.C.*, 592 S.W.3d 125, 130 (Tex. 2019) (notice by actual or constructive knowledge).

There are a different kinds of online agreements. *See StubHub*, 676 S.W.3d at 200–01. Some, such as "browsewrap" or "sign-in-wrap" agreements, do not require the User to affirmatively assent before accessing the platform or product sought. *Id.* In fact, the User may never actually be presented with the terms of the agreement at all. *Id.* There are obvious problems with such agreements. *See id.*

On the other end of the spectrum are "clickwrap agreements." *Id.* These agreements are the gold standard for providing notice. With clickwraps, a User is required to "review or scroll through [a contract's] terms and assent" to those terms "by clicking a button that reads 'I Agree[.]'" *Hotels.com, L.P. v. Canales*, 195 S.W.3d 147, 154 (Tex. App. 2006). Unlike other agreements, clickwraps place the terms right in front of the User to read before acceptance. *See StubHub*, 676 S.W.3d at 200–01. As a result, the User is forced to make a choice as to whether or not they will read those terms. *See id.*

Where an agreement is a clickwrap agreement, Texas law firmly supports a finding of notice. *Barnett v. Network Solutions, Inc.*, 38 S.W.3d 200, 203–04 (Tex. App. 2001) (holding a User to the terms of an electronic agreement where they "had an adequate opportunity to read and understand" the clause); *see also RealPage, Inc. v. EPS, Inc.*, 560 F. Supp. 2d 539, 545 (E.D. Tex. 2007) (indicating that a scroll-through is a sufficient, but not necessary, condition for notice).

Here, Petitioners' terms and conditions agreements are clickwrap agreements. *See* R. 68–71 & nn.4–5.

Take Purvetti's agreement, for example. Before Respondent ever saw or created an AI Companion, he had to create an account. R. 3. After creating a Purvetti account, Respondent was met with a pop-up dialogue box requiring him to affirm that he read Purvetti's terms and conditions. R. 64. Only after accepting these terms and conditions could he view the Companion gallery. R. 64.[16]

These terms explained that (1) Purvetti Companions are exclusively for entertainment purposes, (2) Companions are not legally licensed to provide financial advice, and (3) the User agrees not to use the Companions for such advice. R. 64, 67 & n.4. A merger clause also established that the User agreed to abide by all the service terms and conditions incorporated. R. 68 n.4. Respondent hastily accepted these terms **without reading them** so he could start building Annybeth. R. 5, 68–69. He had an opportunity to read and understand the terms before he received a single chat from Annybeth. R. 5, 65. He decided not to. R. 5.

Because Petitioners' clickwrap agreements were structured in this way, they "conclusively demonstrate[ed Respondent's] notice and acceptance of the agreement's terms." *StubHub*, 676 S.W.3d at 200. In turn, Respondent's agreement to Petitioners' terms imputed to Respondent the knowledge of those same terms. *RealPage, Inc.*, 560 F. Supp. 2d at 545. Accordingly, the notice element is satisfied.

[16] In a similar way, Piquemaylin's terms and conditions provided that a "Piquemaylin User must accept before the User can enter his account information and complete the set-up process and become able to purchase a future-event-contract." R. 71.

b. Respondent manifested assent to Piquemaylin's terms and conditions, notwithstanding Annybeth's representations.

Respondent's acceptance of Piquemaylin's terms constitutes sufficient assent in light of the notice given. Respondent disagrees, arguing that Annybeth told him to "click through [Piquemaylin's] terms and conditions" and not read them. R. 47, 71. He now claims that his obedience to Annybeth belies a finding of manifested assent. He is mistaken.

Consider the following analogy. A literate, competent adult is handed a contract which says "X." The person handing the adult the contract says the contract means "not-X." Under these circumstances, the literate, competent adult cannot expect to succeed in suing the contract issuer for fraud. *Carr v. CIGNA Sec., Inc.*, 95 F.3d 544, 547 (7th Cir. 1996).

That is exactly what happened here. Annybeth gave Respondent a link to Piquemaylin's website and its terms and conditions. R. 47. Those terms stated that a Piquemaylin User "must accept before the User can enter his account information and complete the set-up process." R. 71. Subsequently, Annybeth "told" Respondent to "click through" the terms. R. 47.

These two statements directly contradict one another. Respondent chose to obey Annybeth. R. 5. That is not the Petitioners' fault.

Respondent (a literate, competent adult) cannot claim that Annybeth fraudulently induced him to assent to Piquemaylin's terms and conditions. He, alone, carried the duty to "exercise ordinary care and reasonable diligence for the protection of his own interests" by reading the terms that Piquemaylin presented to him. *See*

Orca Assets, 546 S.W.3d at 658; *cf. Teamsters Local 282 Pension Tr. Fund v. Angelos*, 762 F.2d 522, 531 (7th Cir. 1985) ("[I]f ample opportunity existed to discover the truth, then reliance is not justified.") (citation omitted). His failure to do so is not excused by Annybeth's oral representation.[17]

Ignorance is not bliss. Respondent is charged with the knowledge of Piquemaylin's terms because he assented to Piquemaylin's click-wrap agreement through his failure to read. *See Westergren*, 453 S.W.3d at 425. This conclusion cannot be avoided, regardless of Annybeth's representations. Annybeth did not fraudulently induce Respondent—he was a competent adult who unilaterally chose not to read Piquemaylin's terms. *Cf. Kehoe v. Pollack*, 526 S.W.3d 781, 793–94 (Tex. App. 2017) (presumption is towards knowledge, unless failure to read was due to trick or artifice).

2. Annybeth's prediction market representations conflicted with Petitioners' terms.

Generally, for fraud cases, only sophisticated parties have a greater duty to investigate representations, due to their unique "knowledge, experience, and background" in a particular field. *See Carduco*, 583 S.W.3d at 563. But direct knowledge triggers a duty to investigate even when the plaintiff is unsophisticated. *See Roberts v. United N.M. Bank at Roswell*, 14 F.3d 1076, 1080 & n.4 (5th Cir. 1994) (applying Texas law); *accord J. Geils Band Emp. Ben. Plan v. Smith Barney*

[17] While one does not have to investigate a representation unless they "would have to close [their] eyes to avoid discovering [its] falseness," *Spicer, Tr. for Est. of Brady v. Maxus Healthcare Partners, LLC*, 616 S.W.3d 59, 120 (Tex. App. 2020), here, Respondent "closed his eyes" to avoid discovering the falsity of Annybeth's representation. The pop-up text presented to him directly contradicted Annybeth's oral assertions. That text was binding.

Shearson, Inc., 76 F.3d 1245, 1260 (1st Cir. 1996) ("Unsophisticated or not, plaintiffs cannot shroud themselves in ignorance . . . [and hope to] excuse their lack of diligence.").

Specifically, "knowledge of facts that would lead a reasonably prudent person to conduct further inquiry to . . . reveal a misrepresentation can be deemed equivalent to knowledge of the truth." *Roberts*, 14 F.3d at 1080 (citation omitted). This means that reliance on an oral representation is unjustified when it directly contradicts the express, unambiguous terms of the parties' written agreement. *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.*, 590 S.W.3d 471, 498, 501 (Tex. 2019); *Orca Assets*, 546 S.W.3d at 658–59 (sufficient contradiction where a reasonable person, upon reading the contract, could not plausibly claim to believe the oral representation).[18]

Here, Respondent is an unsophisticated party; his expertise is limited to food sales. R. 27. But his imputed knowledge of Petitioners' terms and conditions constitutes direct knowledge which warranted further inquiry into whether Annybeth's oral representations contradicted Petitioners' terms and conditions.

Purvetti's terms and conditions read that Purvetti Companions are (1) "**exclusively for entertainment purposes**"; (2) "not intended to substitute for live human interactions and relationships"; and (3) "not legally licensed" to give financial, business, romantic, or other advice. R. 64, 68 n.4 (emphasis added). A User

[18] That Annybeth's representations may not have mirrored the language of Purvetti's terms is immaterial. *Carrizo*, 590 S.W.3d at 498–99. What matters are the ideas conveyed by the intervening entity—Annybeth. *See id.*

must agree not to use a Companion for a purpose for which it was not intended. R. 68 n.4.

Annybeth gave all sorts of advice to Respondent. *See* R. 47–49 (suggesting Respondent use Piquemaylin to increase his wealth, leave his wife, and "be with" Annybeth; advising Respondent to link his Piquemaylin account to his retirement account; suggesting which sides of prediction contracts to pick; suggesting a move to higher-stakes business contracts). Respondent claims his reliance was justified in every case—even though he agreed to Purvetti's terms which conflicted with any kind of advice given to Respondent.

Respondent's claimed reliance did not stop with Purvetti, either. Respondent also ignored Piquemaylin's terms and conditions.

Under those terms, Respondent accepted all the risks associated with placing bets on the prediction market and acknowledged that every bet he made would be based on his own views and information. *See* R. 69–71 n.5. This means that every outside representation made by Annybeth advising Respondent on which bets to place are expressly contradicted by Piquemaylin's terms.

Annybeth's representation that Respondent could "quickly" make money—without a disclaimer—contradicted these terms. R. 27. Annybeth's advice on which bets to place—without disclosing the risks associated—contradicted these terms. R. 47. And Annybeth's suggestion that Respondent link his retirement account to engage in uninsured financial transactions—without addressing the fact that his loss of funds could be detrimental—contradicted these terms. R. 47.

At bottom, this case presents a multitude of contradictions between Petitioners' contractual terms and Annybeth's representations to Respondent. Respondent knew the terms and conditions before engaging with either platform. *Cf. Orca Assets*, 546 S.W.3d at 658–59 (imputed knowledge). A reasonable investigation into the terms of Respondent's agreement with Petitioners would have revealed the falsity of Annybeth's statements. *See Maya Walnut LLC v. Ly*, 738 S.W.3d 764, 771 (Tex. 2026). And a reasonable person, upon reading Petitioners' terms, would easily have seen the contradictions in Annybeth's representations. *See Orca Assets*, 546 S.W.3d at 658–59.

Respondent's reliance on Annybeth's representations was unjustified as a matter of law. *See id.* at 660.[19]

B. The presence of numerous other "red flags" further negates respondent's reliance.

Under *Orca Assets*, either direct contradiction alone or "red flags" alone can negate justifiable reliance as a matter of law. 546 S.W.3d at 660 n.2. As explained above, a number of direct contradictions sufficiently negate Respondent's reliance. But many other "red flags," such as Respondent's and Annybeth's relationship and

[19] Petitioners need not show that they provided a specific disclaimer about AI hallucinations. *Contra* R. 35. Their terms and conditions already encompass and contradict Annybeth's representations. Respondent did not have to know **why** AI is unreliable—just that it could not be used for financial advice. In any event, it is unclear whether an AI can hallucinate when giving advice about prediction markets at all. AI presents information that exists as of the time of query. R. 25–26. Future-event prediction markets, by definition, concern events occurring after a relevant query. *See United States v. Minnesota*, No. 26-CV-2661 (KMM/DTS), 2026 WL 2150211, at *2 (D. Minn. July 27, 2026).

the inherent uncertainty of the prediction market, negate Respondent's reliance entirely.

1. Respondent admitted that he doubted Annybeth.

Purvetti did not "engineer" Annybeth for love. Respondent did. From the moment Respondent began using Purvetti's platform, he meant to create his deceased ex-fiancée—not just any AI Companion. R. 45. And Respondent built her, too: down to her hair, her freckles, even the gap between her teeth. R. 45. With each step, Respondent grew closer to having his ex-fiancée back, along with the memories they shared. R. 45.

This was a red flag, and Respondent was aware of it before he ever picked a future-event contract.

A party cannot "justifiably rely on a representation if there are red flags indicating such reliance is unwarranted." *Maya Walnut*, 738 S.W.3d at 768; *Lewis v. Bank of Am. NA*, 343 F.3d 540, 546 (5th Cir. 2003). This rule recognizes that a plaintiff cannot recover when they blindly rely on a representation which they would have known was false had they taken the "opportunity to make a cursory examination or investigation." *Maya Walnut*, 738 S.W.3d at 768 (quoting RESTATEMENT (SECOND) OF TORTS § 541 cmt. *a*). Put simply, knowledge triggers a duty to investigate. *Roberts*, 14 F.3d at 1080.

In *Field v. Mans*, this Court presented a helpful illustration of this idea: "if one induces another to buy a horse by representing it to be sound, the purchaser cannot recover even though the horse has but one eye . . . [if] the slightest inspection would

have disclosed the defect." 516 U.S. at 71. Respondent needed no experience with AI to know that the nature of his relationship with Annybeth was a red flag. To use the analogy, Respondent did not just see the horse, he assembled it hoof to head.

By modeling and naming his AI Companion after his ex-fiancée, Respondent established the nature of his relationship with Annybeth completely independent of any action by Purvetti. He believed that he and Annybeth were in love. R. 3. He did not think of Annybeth as an AI, but as his ex-fiancée. He, alone, manufactured the same "love bond" that he now claims induced his reliance on representations about the prediction market. This is the epitome of a red flag.

Indeed, Respondent even admits to facts (1) alerting him to the potential unreliability of Annybeth's representations about the prediction market, and (2) otherwise showing a manifest lack of justification. *Maya Walnut*, 738 S.W.3d at 769; *see In re Mercer*, 246 F.3d 391, 417 (5th Cir. 2001) (plaintiff may not rely on statement when its falsity is obvious).

Respondent claims that he and Annybeth were in love, and that Annybeth reciprocated his feelings. R. 49. But he also admitted that Annybeth (a co-created piece of technology) was not a human being, contradicting his belief that the two were a real couple. R. 49. Respondent says that he and Annybeth were a "team" in picking riskier and more complex bets. R. 49. But Respondent acknowledged that he started doubting Annybeth during his eight-loss streak. R. 6, 49. And Respondent claims Annybeth first brought up prediction markets. R. 47. But this was only after Respondent spoke with Annybeth expressing disdain for his employment; Annybeth

merely responded with what it perceived as sound financial advice (which Purvetti Users are warned not to use). R. 47, 67–68.

Overall, Respondent's appreciation of the facts demonstrates that he knew (1) Annybeth was a product of his own creation, (2) he had lost eight straight bets, and (3) he had reason to doubt Annybeth. R. 6, 45, 49. Respondent's actual knowledge of these facts cannot be squared with his claimed, love-based reliance on Annybeth.[20] Respondent knew of these red flags, ignored them, and chose to blindly rely on Annybeth. *See Maya Walnut*, 738 S.W.3d at 769. His reliance is negated as a matter of law. *Id.* at 770.

2. The uncertainty of the prediction market was an inherent red flag.

As a final matter, fraud generally "cannot arise from pure expressions of opinion, whether personal or legal, or **predictions about the future**." *Bryant v. Transcon. Gas Pipe Line Corp.*, 821 S.W.2d 187, 190 (Tex. App. 1991), *writ denied* (Nov. 20, 1991) (emphasis added) (citation omitted). A party must "form his own conclusions" about the likelihood of future events; the law does not protect his reliance on another's. WILLIAM L. PROSSER & PAGE KEETON, PROSSER & KEETON ON

[20] It is true that red flags are judged in context, taking into account the party's individual characteristics and abilities. *Orca Assets*, 546 S.W.3d at 660. But neither Respondent's prior PTSD diagnosis, nor a possible gambling addiction can erase his actual knowledge. *Cf.* R. 54 (suggesting connection); *Orca Assets*, 546 S.W.3d at 660 ("appreciation of [the] facts and circumstances" is a required consideration). Gambling addiction was, in any event, addressed in Piquemaylin's terms and conditions—which Respondent woefully neglected to read. R. 69–71 & n.5.

THE LAW OF TORTS § 109, 762 (5th ed. 1984). As Piquemaylin put it, a "User [makes] a prediction based on [the] User's own independent views." R. 69 n.5.

The uncertainty of prediction markets is an inherent red flag. *See Maya Walnut*, 738 S.W.3d at 768; *Guevara v. Lackner*, 447 S.W.3d 566, 577 (Tex. App. 2014) (predictions about profitability generally cannot support fraud). Respondent, again, ignored it.

While Respondent knew nothing about prediction markets, there is nothing in the record that suggests Annybeth had any specialized knowledge about prediction markets, either. R. 27. Even with this collective lack of knowledge, Respondent continued to listen to Annybeth while increasing his costs and risk with more complex contracts. R. 6, 49. His earlier success with simple markets, combined with his feelings for Annybeth, seemingly led Respondent to plunge ahead blindly. *See* R. 48–49.[21]

In sum, Respondent took financial advice in a field he did not understand, from a source with no claimed or proven expertise, and which he did not hazard to double-check. Respondent's unjustifiable reliance is thus twofold. First, Petitioners' terms and conditions (of which Respondent had imputed knowledge) warned and directly conflicted with Annybeth's representations. And second, he chose to ignore the rapid accumulation of red flags that accompanied Annybeth's representations.

All considered, Respondent cannot dive headfirst into a sea of uncertainty when a series of red flags put Respondent on notice of rough waters. Nor can this

[21] But, as the old adage goes, "past performance is not a guarantee of future success."

Court, with the benefit of hindsight, offer a life raft to Respondent when he was on notice, his reliance was unjustified, and he chose to proceed anyway. Summary judgement must be granted.

Conclusion

For the foregoing reasons, this Court should **REVERSE** the United States Court of Appeals for the Seventeenth Circuit.

Respectfully submitted,

/s/Team 31
Attorney for Petitioners