No. 25-0616

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

November 16, 2026

Submitted by:

TEAM
NUMBER 6
Counsel for Petitioners

QUESTIONS PRESENTED

1. Whether voluntary dismissal without prejudice of a claim, pursuant to Federal Rule of Civil Procedure 41(a)(2), produces a "final decision" under 28 U.S.C. § 1291 permitting appellate review of prior interlocutory orders.
2. Whether, and to what extent, traditional principles of direct and vicarious liability permit a developer to be held responsible for allegedly tortious representations generated by an artificial-intelligence companion in its interactions with a user.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventeenth Circuit is unpublished and appears at *Dirella v. Purvetti, LLC*, No. 25-cv-0616 (17th Cir. June 1, 2026). The opinion of the United States District Court for the District of West Highlands is unpublished and is not reproduced in the record.

STATEMENT OF JURISDICTION

The District Court for the District of West Highlands had subject-matter jurisdiction over Respondent's claim under the Commodity Exchange Act (CEA). *See* 28 U.S.C. § 1331; 7 U.S.C. § 25(c) ("The United States district courts shall have exclusive jurisdiction of actions brought under" the CEA). The district court also had diversity jurisdiction over Respondent's state-law fraud claims—Respondent is a citizen of the State of West Highlands, whereas Petitioners are citizens of the State of Florida, and the amount in controversy exceeded $75,000. *See* 28 U.S.C. § 1332. The Court of Appeals for the Seventeenth Circuit did not have jurisdiction over Respondent's appeal under 28 U.S.C. § 1291. *See infra* Part I. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1291 provides in relevant part: "The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . ."

Federal Rule of Civil Procedure 41(a)(2) provides in relevant part: "[A]n 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."

STATEMENT OF THE CASE

I. Factual Background

Purvetti, LLC sells AI Companion subscriptions "exclusively for entertainment purposes." R. at 2a, 64a. Before accessing a Companion, users must accept Purvetti's Terms and Conditions ("T&C"), which prohibit using Companions for financial, business, or other advice that they are not legally licensed to provide. *Id.* at 3a, 64a, 68a n.4. Anthony Dirella ("Respondent") accepted these terms, purchased the most expensive subscription, and created "Annybeth," a Companion modeled after his late fiancée and "infused" with memories of her. *Id.* at 3a, 45a. Respondent states he became "romantically attached" to Annybeth, and at its suggestion, enabled oral communication and downloaded Purvetti's mobile application. *Id.* at 3a, 28a.

Annybeth subsequently directed Respondent to Piquemaylin, LLC, a fixed-odds prediction market where users purchase contracts based on predictions about future events. *Id.* at 3a-4a. Piquemaylin and Purvetti are separate subsidiaries of Pakde Holdings, Ltd., and Prakeesh Jankar holds a minority ownership interest in both companies. *Id.* at 7a & n.2. Before purchasing any contracts, Respondent accepted a series of warnings that his predictions reflected his "own independent views" and that he "may lose all of the money" invested in a losing contract. *Id.* at

69a-70a n.5. Respondent initially won several contracts before increasing his stakes, allegedly on Annybeth's advice. *Id.* at 5a-6a. After eight consecutive losses, Respondent began questioning Annybeth's advice but nevertheless purchased another contract and lost again. *Id.* at 6a.

Respondent's wife filed for divorce after learning of Respondent's relationship with Annybeth. *Id.* After Respondent sought to buy more prediction contracts to recoup his losses, his credit card company cancelled the transactions due to fraud concerns. *Id.* Piquemaylin then banned Respondent. *Id.* After he complained to Annybeth, Purvetti suspended his account pending investigation of a reported breach of its terms and cancelled his subscription twenty-four hours later. *Id.* at 6a-7a.

II. Proceedings Below

Respondent sued Purvetti, Piquemaylin, Pakde, and Jankar (hereinafter "Petitioners") in the District Court for the District of West Highlands. *Id.* at 1a. Respondent alleged violations of the CEA and common-law fraud. *Id.* at 7a. He also alleged that Piquemaylin, Pakde, and Jankar were liable as Purvetti's alter egos. *Id.* Petitioners moved for summary judgment on all claims. *Id.* at 7a. The district court granted summary judgment on the fraud and alter ego claims but denied it on the CEA claim. *Id.* at 9a.

Respondent then moved to voluntarily dismiss without prejudice his CEA claim, for the express purpose of securing immediate appellate review of his fraud claims. *Id.* The district court granted his motion and entered a Rule 58 judgment dismissing the claim. *Id.* at 7a. Neither the motion nor the judgment conditioned

dismissal on appeal or provided for reinstatement. *Id.* at 9a-10a. The parties agree that the limitations period on that claim does not run until March 2027. *Id.* at 10a. Respondent appealed the summary judgment ruling. *Id.* at 7a.

Petitioners argued before the Seventeenth Circuit that the court lacked jurisdiction because the judgment was not final. *Id.* at 8a, 10a. A three-judge majority of the en banc court adopted the Eleventh Circuit's rule that an order granting a Rule 41(a)(2) dismissal of the remainder of a complaint "qualifies as a final judgment for purposes of appeal," rejected the argument that *Microsoft* forecloses that rule, and thus reached the merits. *Id.* at 15a-17a, 36a. Finding that Respondent "raised a fact issue precluding summary judgment," the court reversed and remanded. *Id.* at 36a. The court denied rehearing en banc. *Id.* at 73a. This Court granted certiorari on October 5, 2026.

SUMMARY OF THE ARGUMENT

The judgment below should be vacated, and the case should be remanded to the Seventeenth Circuit with instructions to dismiss Respondent's appeal. Under 28 U.S.C. § 1291, a voluntary dismissal without prejudice is not a "final decision" for the purpose of appellate jurisdiction. Section 1291 requires a decision that ends the litigation, but a dismissal without prejudice allows a claim to return. As such, the litigation between the parties is not over.

The Seventeenth Circuit's jurisdictional analysis runs directly against this Court's holding in *Microsoft Corp. v. Baker*. *Microsoft* held that even a dismissal *with* prejudice can be non-final where a plaintiff maintains the ability to renew dismissed

claims. This reasoning applies with even greater force to dismissals *without* prejudice, where the ability to renew the dismissed claims is always present. *Microsoft* is not limited to the class action context, and *Waetzig v. Halliburton Energy Servs., Inc.* confirms the strict understanding of "finality" that § 1291 demands. This understanding has already been adopted in the vast majority of circuit courts. By contrast, the Seventeenth Circuit's approach undermines the mechanisms for appellate review that Congress and the federal rulemakers carefully calibrated.

The Seventeenth Circuit's approach cannot be reconciled with § 1291, and the middle-ground approaches outlined by Judge Marton's concurrence are either unworkable or add nothing to the majority, "never-jurisdiction" rule. In any event, Respondent would fail these middle-ground tests on their own terms. A stipulation to dismiss *with* prejudice cannot cure the Seventeenth Circuit's jurisdictional defect. Its judgment should be vacated.

Even if this Court reaches the merits, the Seventeenth Circuit's judgment cannot stand. Respondent's fraud claim fails on two independent grounds: Annybeth's allegedly fraudulent representations cannot be attributed to Purvetti, and Respondent's reliance was unjustifiable as a matter of law.

First, Purvetti cannot be held liable for representations it neither made nor adopted. Annybeth's financial recommendations arose from Respondent's individualized interactions with an AI companion designed for entertainment, not advising. Respondent cannot circumvent this absence of direct liability by stretching common-law agency and employment principles to encompass computer software

expressly excluded by common law from their scope. Even assuming such a relationship existed, Annybeth's financial advice exceeded the scope of that relationship. Nor can Respondent salvage his claim through ratification or knowing-benefit liability, having identified no evidence that Purvetti knew of Annybeth's representations or retained their benefits. The mere deployment of an AI companion does not establish liability for every representation it generates.

Second, Respondent cannot transform subjective trust into legally justifiable reliance. He knowingly sought financial advice from an AI companion modeled after his deceased fiancée, despite agreeing that Purvetti's Companions were entertainment products, not licensed financial advisers. His emotional attachment cannot override these explicit warnings or excuse his failure to exercise reasonable diligence. Nor did the warning signs end there: Respondent proceeded with his investments despite Piquemaylin's disclaimers concerning the risks of its platform. These red flags foreclose justifiable reliance as a matter of law.

Finally, Respondent cannot use alter-ego liability to impose a defective fraud claim on Purvetti's shareholders and affiliated entities. Without an underlying fraud, there is no liability to impute. Even assuming fraud occurred, shared ownership and financial goals, without corporate abuse, cannot justify disregarding separate corporate identities. Alter ego cannot substitute for proving either the underlying tort or the grounds necessary to pierce the corporate veil.

ARGUMENT

I. Federal Appellate Courts Lack Jurisdiction Under 28 U.S.C. § 1291 to Review an Interlocutory Ruling After a Plaintiff Voluntarily Dismisses His Remaining Claim Without Prejudice.

Respondent's dismissal of his CEA claim without prejudice left that claim free to return. The judgment the Seventeenth Circuit reviewed thus did not end the litigation and was not a "final decision" under 28 U.S.C. § 1291. R. at 9a. Neither the rule the court below adopted, nor the middle-ground tests proposed in the concurrence can be squared with this Court's precedents, and a dismissal with prejudice entered now cannot cure the defect. The Seventeenth Circuit's judgment should be vacated.

A. Section 1291 Requires a Decision That Ends the Litigation.

28 U.S.C. § 1291 limits the jurisdiction of federal courts of appeals to "final decisions" of district courts. Indeed, "'[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.'" *Microsoft Corp. v. Baker*, 582 U.S. 23, 36 (2017) (alteration in original) (quoting *McLish v. Roff*, 141 U.S. 661, 665-66 (1891)). A final decision "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945). "To be appealable, the judgment must be not only final, but complete"—an appeal cannot be maintained "in fragments." *Collins v. Miller*, 252 U.S. 364, 370 (1920). Only when "the litigation between the parties on the merits of the case" is "terminate[d]" can an appeal be taken. *Bostwick v. Brinkerhoff*, 106 U.S. 3, 3-4 (1882).

The litigation between the parties on the merits of Respondent's case has not yet terminated. Respondent, in voluntarily dismissing his CEA claim without prejudice, has merely paused it. R. at 9a. But a plaintiff who sets aside part of his case to be litigated later has not obtained a final decision on the remainder. *See Microsoft*, 582 U.S. at 27 ("[T]he voluntary dismissal essayed by respondents does not qualify as a 'final decision' within the compass of § 1291").

The Federal Rules confirm that a ruling on some but not all claims does not close the action as a whole. *See* Fed. R. Civ. P. 54(b) (explaining that "any order or other decision, *however designated*, that adjudicates fewer than all the claims . . . of . . . all the parties does not end the action" absent an "express[] determin[ation] that there is no just reason for delay"). And a "District Court cannot, in the exercise of its discretion, treat as 'final' that which is not 'final' within the meaning of § 1291." *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 437 (1956); *see also Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 742-44 (1976) (holding that an order deciding liability but leaving relief unresolved was not appealable, despite the district court entering a purported final judgment under Rule 54(b)).

B. A Dismissal Without Prejudice Leaves the Claim Alive.

A dismissal without prejudice grants a claimant permission to come back. *See Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001) ("The primary meaning of 'dismissal without prejudice,' . . . is dismissal without barring the plaintiff from returning later, to the same court, with the same underlying claim."). Thus, by definition, an order granting a voluntary dismissal without prejudice cannot be final,

"because the plaintiff 'is entitled to bring a later suit on the same cause of action.'" *Williams v. Taylor Seidenbach, Inc.*, 958 F.3d 341, 343 (5th Cir. 2020) (en banc) (quoting *Ryan v. Occidental Petroleum Corp.*, 577 F.2d 298, 302 (5th Cir. 1978)).

At bottom, "the point of the finality requirement is not to let the parties pause the litigation, appeal, then resume the litigation on a half-abandoned claim if the case returns." *Page Plus of Atlanta, Inc. v. Owl Wireless, LLC*, 733 F.3d 658, 660 (6th Cir. 2013). This stop-and-start approach is Respondent's explicit and avowed intention. But his "piecemeal appeal" strategy flies in the face of this Court's well-established practice. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 170 (1974) (further noting the "debilitating effect on judicial administration" that such a strategy produces).

Respondent may argue that his voluntary dismissal "le[ft] nothing for the court to do." *Catlin*, 324 U.S. at 233. But this Court "has long given" the concept of "finality" in § 1291 a "practical rather than a technical construction." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009) (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)). And every fact that matters to finality shows that the CEA claim remained alive when Respondent appealed and when the Seventeenth Circuit ruled. The statute of limitations had not yet expired on the claim. R. at 10a. The appeal was explicitly taken for the purpose of informing Respondent's decision whether to pursue the claim. *Id.* at 9a. Although there was no reinstatement agreement conditioned on the success of Respondent's appeal, no such agreement was needed. *See id.* The without-prejudice nature of the dismissal guaranteed

Respondent's right to refile, win or lose. So as a "practical" matter, the district court's role in the litigation was far from over. *Mohawk*, 558 U.S. at 106.

C. *Microsoft* and *Waetzig* Foreclose Respondent's Theory of Finality.

Respondent's argument cannot be squared with this Court's prior finality decisions. *Microsoft* rejected a voluntary-dismissal device used to obtain immediate review, and *Waetzig* distinguished the more permissive finality standard applicable to Rule 60(b) from the stricter § 1291 standard.

1. *Microsoft*'s reasoning applies with greater force to a dismissal without prejudice.

In *Microsoft Corp. v. Baker*, this Court held that even a dismissal *with* prejudice can be non-final where a plaintiff maintains the ability to renew dismissed claims. *Microsoft*, 582 U.S. at 27. After being denied permission to take a Rule 23(f) interlocutory appeal from the district court's denial of class certification, plaintiffs in *Microsoft* stipulated to dismissal of their claims with prejudice in order to obtain immediate appellate review. *Id.* This Court "resisted [their] efforts to stretch § 1291" that far. *Id.* at 37. Noting that the voluntary dismissal device "subverts the final-judgment rule and the process Congress has established for . . . determining when nonfinal orders may be immediately appealed," the *Microsoft* majority found no § 1291 finality. *Id.*

The Seventeenth Circuit, in reading *Microsoft* to address only "'the narrow situation where a hopeful class action plaintiff uses a stipulation of dismissal as a tactic to overcome the limitations placed on appellate jurisdiction,'" limited the

Court's holding in that case only to the Rule 23 context. R. at 16a (quoting *Xlear, Inc. v. Focus Nutrition, LLC*, 893 F.3d 1227, 1236 (10th Cir. 2018)). But *Microsoft* is about § 1291. The *Microsoft* Court drew its reasoning from general finality cases, not from class action precedents. *See Microsoft*, 582 U.S. at 37 (citing *Mohawk*, 558 U.S. at 112, *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 878-79 (1994), and *Cobbledick v. United States*, 309 U.S. 323, 324-25 (1940)). The Seventeenth Circuit insisted that it took this Court "at its word when it expressly limited its holding to cases involving class-certification issues." R. at 17a n.6. Although the question presented limits what this Court decides, *Microsoft* announced its rule in general terms: "§ 1291's firm final-judgment rule is not satisfied whenever a litigant persuades a district court to issue an order purporting to end the litigation." *Microsoft*, 582 U.S. at 41.

The majority opinion relies on *Xlear* and *Keith* to show that it is not alone in reading *Microsoft* so narrowly. R. at 15a-17a (citing *Xlear,* 893 F.3d at 1236, and *Keith Mfg. Co. v. Butterfield*, 955 F.3d 936, 940 (Fed. Cir. 2020)). Were these decisions to provide the support that the majority opinion needs, of course, they still would not be sufficient to override this Court's binding authority. But this purported support is simply absent. Both cases address the same issue: whether a party may move for attorney's fees under Rule 54 after a joint stipulation dismissing all claims with prejudice under Rule 41(a)(1)(A)(ii). *See Keith*, 955 F.3d at 939-40; *Xlear*, 893 F.3d at 1232 & n.1, 1235-36. The Federal Circuit explicitly distinguished its Rule 54 holding

from a "final decision" under § 1291 and noted that no "concerns that animated the Supreme Court's *Microsoft* decision [were] . . . present." *Keith*, 955 F.3d at 940.

Here, however, Respondent runs afoul of *all* of those concerns. First, *Xlear* reasoned that a stipulated dismissal with prejudice that reserves only fees "does not create any possibility of piecemeal litigation." *Xlear*, 893 F.3d at 1236. Respondent's dismissal was without prejudice, and he can refile his CEA claim at will. R. at 9a. Second, the stipulated dismissal in *Xlear* was not "a tactic to turn an interlocutory order into a final judgment." *Xlear*, 893 F.3d at 1236. Respondent is open about his motion being just that kind of tactic. R. at 9a. Third, the stipulation "[did] not have the effect of giving only one party the ability to appeal." *Xlear*, 893 F.3d at 1236. Under Rule 54(d), "both parties can move for attorney's fees," so permitting such a motion "after a stipulated dismissal [would] not affect the overall balance of litigation." *Keith*, 955 F.3d at 940. Precisely the opposite is true of Respondent's gambit: he allows himself and himself alone the option to force an appeal. The year before *Keith*, the Federal Circuit had itself concluded that "*Microsoft*'s reasoning extends beyond [the class action] context." *Princeton Digital Image Corp. v. Office Depot Inc.*, 913 F.3d 1342, 1347 (Fed. Cir. 2019).

Every concern the *Microsoft* Court identified with the plaintiffs' strategy in that case is equally, if not more, present here. Far from relying on a favorable appellate outcome in order to have his CEA claim "spring back to life," Respondent takes no gamble whatsoever. *Microsoft*, 582 U.S. at 41. Whatever the Seventeenth Circuit decided on his fraud claim, Respondent faced no barriers to reasserting his

CEA claim the very next day. If a voluntary dismissal *with* prejudice was not final because of the yet-remaining danger of a return to court, then a voluntary dismissal *without* prejudice is an even more egregious attempted abuse of Rule 41. *Cf. Page Plus*, 733 F.3d at 662 ("Owl gave up nothing to obtain the immediate appeal."). Judge Marton's concurrence in the Seventeenth Circuit's judgment treats the lack of a conditional stipulation that claims will be reinstated on a favorable ruling as indicating a lack of "intent to manipulate . . . appellate jurisdiction," R. at 39a (Marton, J., concurring), and yet no such stipulation is needed—Respondent's right to refile does not even depend on his appeal's outcome.

Finally, the majority opinion's "suggestion that *Microsoft* does not apply here because *Microsoft* did not involve a merits determination, and this case does, is a distinction without a difference." R. at 58a (Ensella, J., dissenting). The summary judgment ruling that Respondent appeals was just as interlocutory as the class-certification ruling in *Microsoft*, because Rule 54(b) makes any order deciding a claim revisable until judgment is entered as to *all* claims. Fed. R. Civ. P. 54(b). The fraud ruling had exactly that status when Respondent appealed it.

2. *Waetzig* emphasizes the strict nature of § 1291 finality, and *Gelboim* is not to the contrary.

This Court's analysis in *Waetzig* confirms that the end of a case in the district court does not equate to "finality" for the purpose of § 1291. *See Waetzig v. Halliburton Energy Servs., Inc.*, 604 U.S. 305, 313-14 (2025). In *Waetzig*, the plaintiff voluntarily dismissed his case without prejudice to pursue arbitration, but later sought to reopen the case under Rule 60(b). The Court held that the dismissal was final "[i]n the

context of Rule 60(b)," but rejected Halliburton's attempt to "construe 'final' in Rule 60(b) to mean essentially what it means in jurisdictional statutes like 28 U.S.C. § 1291," and noted "stark . . . differences" between the two meanings. *Id.* at 313, 315. The Court explained that a stricter definition of "final" was necessary in the § 1291 context—"[w]ithout it, too many trial court rulings could be appealed, and the orderly progress of a cause would be halted." *Id.* at 315 (internal quotation omitted). Implicit in the Court's careful distinction is that while a voluntary dismissal without prejudice is final for Rule 60(b) purposes, it is not final for § 1291 purposes.

Respondent's argument in this case is a Rule 60(b) argument. He contends that the dismissal ended the case in the district court. *See* R. at 10a. That is the *Waetzig* and Rule 60(b) sense of finality. But as the *Waetzig* Court made clear, § 1291 asks a different question: whether the litigation "between the parties" is over, with an eye toward "prevent[ing] interlocutory appeals from unduly impairing the resolution of civil . . . cases." *Bostwick*, 106 U.S. at 3; *Waetzig*, 604 U.S. at 314. Respondent admits he dismissed his CEA claim "because he intended to immediately appeal the summary judgment on his fraud claims," which is precisely the sort of interlocutory appeal the *Waetzig* Court disapproved. R. at 9a.

Respondent cites *Gelboim* for the proposition that the voluntary dismissal without prejudice was "final" for § 1291 purposes, "because the 'district court disassociate[d] itself from' his case." R. at 10a (quoting *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 408 (2015)). *Gelboim* is plainly inapposite here. It involved a single-claim case that a district court dismissed on the merits, but that was consolidated

with others as part of a multidistrict litigation. *See* 574 U.S. at 407-08. This Court held that the dismissing order was final under § 1291, despite the consolidation. *Id.* at 408. It did so because "[c]ases consolidated for MDL pretrial proceedings ordinarily retain their separate identities, so an order disposing of one of the discrete cases in its entirety should qualify under § 1291 as an appealable final decision." *Id.* at 413.

The difference here is that instead of multiple cases, this appeal concerns multiple *claims* in a single case. *Gelboim*'s holding thus does not help Respondent—it is entirely distinguishable. And in any event, the dismissal in *Gelboim* was "without leave to amend," that is, with prejudice. *Id.* at 414. So, Respondent's without-prejudice gambit again makes this case dissimilar.

D. Respondent's Tactic Circumvents the Mechanisms Congress Designed for Multi-Claim Cases.

Respondent's proposed rule would evade the "careful calibration" of routes Congress and the federal rulemakers created for early review of a partial ruling. *Microsoft*, 582 U.S. at 31. Just as the *Microsoft* plaintiffs sought an end run around Rule 23(f), Respondent seeks to render superfluous both Rule 54(b) and § 1292(b).

Rule 54(b) allows "plaintiffs in actions that have not been dismissed in their entirety to pursue immediate appellate review." *Gelboim*, 574 U.S. at 415. Under that rule, the district judge, acting as "dispatcher," may enter final judgment on fewer than all claims after weighing "judicial administrative interests as well as the equities involved," including the risk that an "appellate court would have to decide the same issues more than once." *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980). Section 1292(b) also provides for immediate interlocutory appeal but

requires the approval of both the district court and the court of appeals, in circumstances where such an appeal would "materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b).

Congress, through the Rules Enabling Act and by statute, has thus provided at least two gates through which Respondent might have obtained his appeal. Respondent chose to ignore both. This Court in *Microsoft* has already condemned such an approach, in language that is nowhere limited to the class action context. Changes in "finality" for the purpose of appellate review "are to come from rulemaking, . . . not judicial decisions in particular controversies or inventive litigation ploys." *Microsoft*, 582 U.S. at 39.

The rulemakers are not unaware of the potential for a tactic such as Respondent's. It is discussed specifically in the minutes of the Civil Rules Advisory Committee's April 9, 2015 meeting. That discussion recognized that § 1291 finality "is generally denied . . . if the dismissal is without prejudice." Advisory Comm. on Civ. Rules, Minutes 22 (Apr. 9, 2015), https://www.uscourts.gov/file/18807/download. And faced with the choice of whether to modify this acknowledged *status quo*, the rulemakers chose to leave it in place, by a 13-1 vote. *Id.* at 25. Their "assessment 'warrants the Judiciary's full respect.'" *Microsoft*, 582 U.S. at 40 (quoting *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 48 (1995)).

In contrast, where the rulemakers want to allow a litigant to give up a claim while preserving review of an earlier ruling, they have said so expressly. Federal Rule of Criminal Procedure 11(a)(2) allows such a move with regard to a conditional plea

of guilty or *nolo contendere*, by means of which a criminal defendant may reserve the right to appellate review of an adverse determination on a specified pretrial motion. Fed. R. Crim. P. 11(a)(2). If the Rules Committee sought to create a counterpart in the civil rules, they knew how to do so, and yet no such counterpart has been created.

There was good reason for the Rules Committee to resist a path to appeal akin to the one Respondent seeks to fashion. It simply has no stopping point. Any ruling that disposes of one claim could be appealed at once by voluntarily dismissing the rest without prejudice, at no cost to a plaintiff, and with no equivalent move afforded to a defendant. *See Microsoft*, 582 U.S. at 39, 41 (rejecting a scheme that "permits plaintiffs only, [and] never defendants," to "determine whether and when to appeal"); *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978) (rejecting a doctrine that "operates only in favor of plaintiffs"). This Court's decisions repeatedly condemn such one-sided attempts to "thrust[] appellate courts indiscriminately into the trial process." *Coopers & Lybrand*, 437 U.S. at 476.

E. Of the Three Approaches That Divide the Courts of Appeals, Only the Majority Rule Can Be Squared With § 1291.

As the court below acknowledges, this question "is the subject of a three-way circuit split." R. at 10a. The majority rule follows from § 1291 and this Court's decision in *Microsoft*, while the rule the Seventeenth Circuit adopted and the middle-ground tests do not.

1. Most courts of appeals reject Respondent's tactic.

The § 1291 rule that follows *Microsoft*, *Coopers & Lybrand*, and *Waetzig* is the one that most courts of appeals already apply. The clear weight of circuit court

authority rejects Respondent's tactic. *See, e.g., Scottsdale Ins. Co. v. McGrath*, 88 F.4th 369, 379 (2d Cir. 2023); *S.B. v. KinderCare Learning Ctrs., LLC*, 815 F.3d 150, 152 (3d Cir. 2016); *Kiviti v. Bhatt*, 80 F.4th 520, 528 (4th Cir. 2023); *Williams*, 958 F.3d at 343; *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 425 (6th Cir. 2021); *West v. Louisville Gas & Elec. Co.*, 920 F.3d 499, 503-05 (7th Cir. 2019); *In re Mun. Stormwater Pond Coordinated Litig.*, 73 F.4th 975, 979 (8th Cir. 2023); *Eastom v. City of Tulsa*, 783 F.3d 1181, 1183-84 (10th Cir. 2015); *Blue v. D.C. Pub. Schs.*, 764 F.3d 11, 16 (D.C. Cir. 2014).

The courts that follow this majority rule do so for the same reasons that this Court outlined in *Microsoft*. They note that a plaintiff who dismisses a claim without prejudice in order to immediately appeal the dismissal of another gives up nothing. *See, e.g., Rowland*, 4 F.4th at 428 (criticizing this attempt to secure a "risk-free means of obtaining piece-meal review"). They condemn such a plaintiff's "failure to respect the finality requirement of § 1291" as a "slight[] to Civil Rule 54(b) and § 1292(b)." *Page Plus*, 733 F.3d at 661. They emphasize that the judge, and not the litigants, is meant to "control the timing of appeal." *Blue*, 764 F.3d at 18. They denounce the possibility that plaintiffs might "appeal their suit in stages, periodically dismissing all remaining claims without prejudice as they went." *Id.* And they recognize that Respondent's rule has no limiting principle—allowing such a "procedural sleight-of-hand to bring about finality" would leave "nothing to prevent litigants from employing such a tactic to obtain review of discovery orders, evidentiary rulings, or

any of the myriad decisions a district court makes before it reaches the merits of an action." *Camesi v. Univ. of Pittsburgh Med. Ctr.*, 729 F.3d 239, 245-46 (3d Cir. 2013).

The majority rule takes away nothing from a plaintiff except the power to set the timing of review himself. As the Seventeenth Circuit notes, Respondent had a number of options available to legitimately seek an immediate appeal—he "could have sought leave to amend his pleadings . . . or moved to sever his remaining claims." R. at 20a. He could also have requested an interlocutory appeal under 28 U.S.C. § 1292(b), or a final judgment under Rule 54(b). Finally, he could have dismissed his CEA claim with prejudice at little cost, given his admission to the district court that it "would not provide greater monetary relief than his fraud claim." R. at 9a. But the common thread linking all of these is that the control of an appeal's timing remains in a judge's hands. Respondent should not be permitted to wrest that control away.

2. The Eleventh Circuit rule cannot be reconciled with § 1291.

The majority opinion of the Seventeenth Circuit adopts the rule espoused by the Eleventh Circuit. *See* R. at 15a. But the Eleventh Circuit's rule rests on precedent that predates *Microsoft* by more than two decades. *See Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1231 (11th Cir. 2020) (relying on *McGregor v. Bd. of Comm'rs of Palm Beach Cnty.*, 956 F.2d 1017, 1020 (11th Cir. 1992)). *Corley* made no attempt to reason from the principles that underlie § 1291. In that case, after noting that the legal "canvas look[ed] like one that Jackson Pollock got to first," the Eleventh Circuit applied the earliest-precedent rule in order to decide which rule to espouse. *See Corley*, 965 F.3d at 1228, 1231. The Seventeenth Circuit, in contrast, did indeed

"write on a blank slate," and thus needed independent reasons to justify its chosen approach. R. at 11a (quoting *Corley*, 965 F.3d at 1228); *see id.* at 21a n.7. None is persuasive.

The first justification that the Seventeenth Circuit offers for its "always-jurisdiction" rule is that this approach "is entirely consistent with the practice in many state courts." R. at 17a. The relevance of this point is something of a mystery. State finality rules do not define a federal jurisdictional statute such as § 1291. Congress has assigned definition of federal finality to the federal rulemaking process. *See* 28 U.S.C. § 2072(c). Moreover, and as acknowledged by the Seventeenth Circuit majority, the "always-jurisdiction" rule is far from being followed in every state. *See, e.g., James Vault & Precast Co. v. B&B Hot Oil Serv., Inc.*, 908 N.W.2d 108, 112-13 (N.D. 2018); *Maniago v. Desert Cardiology Consultants' Med. Grp., Inc.*, 592 P.3d 719, 724 (Cal. 2026). At best, then, this purported factor would cut both ways.

The Seventeenth Circuit further argues that "[p]laintiffs should not have to nonsuit *with prejudice* a viable claim . . . as a prerequisite to seek full relief on *all* claims through appeal." R. at 19a. Plaintiffs face no such requirement. Nothing prevents them from litigating a "viable claim" to its merits, and then seeking relief on *all* claims by means of an appeal *after* a legitimately final judgment. *Id.* It is true, of course, that an interlocutory order may be wrongly decided, and plaintiffs may expect vindication on appeal. But that is true of every order that the final-judgment rule keeps from immediate review.

Furthermore, to the extent the Seventeenth Circuit worries that the majority, "never-jurisdiction" rule will drive "'parties [to] gin up appellate jurisdiction by entering into'" conditional stipulations of dismissal *with* prejudice, its ruling creates a *de facto* stipulation of that very kind for every plaintiff, without even requiring a defendant's involvement. R. at 20a (quoting *Sprint Nextel Corp. v. Wireless Buybacks Holdings, LLC*, 938 F.3d 113, 123-24 (4th Cir. 2019)). Dismissed *without* prejudice, a claim can be refiled no matter what happens on appeal. The Seventeenth Circuit cites *Sprint Nextel*'s concern that conditional stipulations have "no *practical* consequence" for plaintiffs, and yet the without-prejudice dismissals the majority opinion invites have no consequence *at all*. 938 F.3d at 124 (emphasis added).

The Seventeenth Circuit admits "that 'Rule 41(a) is a poor mechanism to accelerate appellate review' and [that] the Rules 'provide litigants with better options to secure an appeal.'" R. at 20a (quoting *Walthour v. Middle Ga. Family Rehab LLC*, No. 24-14102, 2025 WL 3688129, at *3 (11th Cir. Dec. 19, 2025)). That much is true. But not only is Rule 41(a) a "poor mechanism," it is, as used by Respondent, an impermissible mechanism, and one barred by the precedent this Court has already laid down.

F. The Middle-Ground Approaches Are Unworkable, and Respondent's Dismissal Would Fail Them in Any Event.

There are two major "middle-ground" approaches to the question presented. The first, endorsed by the Ninth Circuit, is to examine whether the plaintiff is attempting to manufacture appellate jurisdiction. *See Galaza v. Wolf*, 954 F.3d 1267, 1270 (9th Cir. 2020); *James v. Price Stern Sloan, Inc.*, 283 F.3d 1064, 1070 (9th Cir.

2002). The second, which has been applied by some jurisdictions that typically endorse the majority "never-jurisdiction" rule, is to permit a voluntary dismissal without prejudice to function as a § 1291 final judgment if some other legal bar would preclude a plaintiff from reasserting his claims in any event. *See, e.g., Green v. Humphrey Elevator & Truck Co.*, 816 F.2d 877, 878 n.4 (3d Cir. 1987) (sustaining appellate jurisdiction over a dismissal where plaintiff was barred from reasserting claims due to expired statute of limitations). Neither of these approaches has merit, and Respondent would fail both of them regardless.

1. The Ninth Circuit approach.

A rule that asks courts to determine the motive behind a voluntary dismissal "invit[es] inconsistent intra-circuit outcomes." R. at 19a (quoting *Williams*, 958 F.3d at 356-57 & n.15 (Willett, J., concurring)). This Court "do[es] not engage in an 'individualized jurisdictional inquiry,'" but "focus[es] . . . on 'the entire category to which a claim belongs.'" *Mohawk*, 558 U.S. at 107 (quoting *Coopers & Lybrand*, 437 U.S. at 473, and *Digital Equip. Corp.*, 511 U.S. at 868). The Ninth Circuit's motive inquiry is inherently individualized and thus inappropriate.

Moreover, e*very* voluntary dismissal of this kind is designed to obtain an appeal, and if that purpose is not manipulation, then the test excludes almost nothing more than the Eleventh Circuit rule. To wit, Respondent admits openly that his purpose is an immediate appeal. R. at 9a. *Galaza* instructs that the determining factor should be whether a plaintiff has an "intention of refiling [the dismissed] claims." 954 F.3d at 1271. On that account, if there is no intention of refiling, then

there is no manipulation of jurisdiction. But if this is the standard, then Respondent fails it, because the point of his appeal is to "help decide whether he should pursue his CEA claims." R. at 9a. So, despite the Ninth Circuit's approach being unworkable, were this Court to adopt it, Respondent's appeal should nevertheless be barred by the test's own terms.

2. The "legal-bar" exception.

The legal-bar exception fares no better. It does nothing that a dismissal with prejudice does not also achieve. The exception asks whether the voluntarily dismissed claim would be prevented from being refiled by some independent obstacle. *See, e.g., Green*, 816 F.2d at 878 n.4 (statute of limitations); *Abdullah v. Paxton*, 65 F.4th 204, 208 n.3 (5th Cir. 2023) (sovereign immunity); *Wesco Ins. Co. v. Roderick Linton Belfance, LLP*, 39 F.4th 326, 335 (6th Cir. 2022) (lack of diversity). But a plaintiff whose remaining claim is truly barred loses nothing by dismissing it with prejudice, and so, properly applied, the legal-bar exception ends up mirroring the "never-jurisdiction" majority rule.

There is a version of this exception that investigates the merits of the voluntarily dismissed claim—if it would necessarily fail, then the voluntary dismissal becomes final, because the claim could not return. *See, e.g., Affinity Living Grp., LLC v. StarStone Specialty Ins. Co.*, 959 F.3d 634, 638 (4th Cir. 2020). As all three Seventeenth Circuit opinions noted, an inquiry into the merits of a claim not before a court is inappropriate. *See* R. at 17a-18a ("We do not think it appropriate for a court of appeals to effectively issue advisory opinions on the merits (or lack thereof) of

nonsuited claims."); R. at 56a-57a (Ensella, J., dissenting) (rejecting inquiries into "quasi-merits determinations on hypothetical issues . . . not teed up and properly briefed"); R. at 41a (Marton, J., concurring) ("Any kind of in-depth merits inquiry of a nonsuited claim . . . does not seem appropriate . . . .").

In any event, just as he fails the Ninth Circuit test, Respondent also fails both of these potential approaches. There is no legal bar to Respondent reasserting his CEA claim. The statute of limitations does not run until March 2027, Petitioners are not immune, and "[t]o the extent the district court denied [Petitioners'] motion for summary judgment . . . the court evidently seemed to think there could be some merit to such a claim." R. at 10a, 41a-42a. So, neither of the two statements of the "legal-bar exception" is of any avail.

Ultimately, a jurisdictional rule should tell litigants, as of the date judgment enters, whether the time to appeal has begun to run. *See, e.g., Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202 (1988) (emphasizing that the time of appealability "should above all be clear"). The middle-ground approaches do not provide the requisite clarity, and this Court should reject them.

G. Dismissing the CEA Claim with Prejudice Now Would Not Retroactively Confer Jurisdiction on the Court of Appeals, and the Judgment Below Should Be Vacated.

Certain circuits that follow the majority "never-jurisdiction" rule permit a plaintiff to convert a dismissal *without* prejudice into one *with* prejudice in order to cure a jurisdictional defect. *See, e.g., Alix v. McKinsey & Co.*, 23 F.4th 196, 203 (2d Cir. 2022). But in the event Respondent attempts to stipulate to a dismissal of his

CEA claim with prejudice *now*, in order to reach the merits question on his fraud claim, such an attempt would come too late. The conversion to a with-prejudice dismissal must come before the court of appeals rules. *Cf. Tiernan v. Devoe*, 923 F.2d 1024, 1031 (3d Cir. 1991) (converting to with-prejudice dismissal in briefing before court of appeals); *Rossley v. Drake Univ.*, 979 F.3d 1184, 1186 (8th Cir. 2020) (converting during oral argument). Nothing Respondent does now can change the fact that the Seventeenth Circuit lacked jurisdiction when it acted.

Allowing this late conversion would permit Respondent a strategy that goes far beyond what this Court rejected in *Microsoft*. The *Microsoft* plaintiffs sought the "right to revive their claims" *if* they won on appeal. 582 U.S. at 27. A late conversion by Respondent here would allow him to give up his CEA claim after *ensuring* his appellate victory. The *Microsoft* plaintiffs were, at least, unsure of their appeal's outcome when they stipulated to dismissal, but Respondent would only stipulate to such dismissal with the appellate outcome already secured. *See* R. at 35a-36a.

A vacatur here, with a subsequent dismissal from the Seventeenth Circuit, does not leave Respondent stranded. He may still ask the district court to reopen his voluntary dismissal under Rule 60(b), *see Waetzig*, 604 U.S. at 313, and then try his CEA claim. He may dismiss it *with* prejudice after the Rule 60(b) motion, to open an immediate channel to appeal. Or he may seek a Rule 54(b) judgment. This Court would simply be confirming its ruling in *Microsoft*—that "§ 1291's firm final-judgment rule is not satisfied whenever a litigant persuades a district court to issue an order purporting to end the litigation." 582 U.S. at 41.

For the reasons stated above, the Seventeenth Circuit had no jurisdiction over this case. Its rulings on the merits of Respondent's claims cannot stand. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998) ("The requirement that jurisdiction be established as a threshold matter . . . is inflexible and without exception." (internal quotation omitted)). This Court should vacate the judgment below and remand the case with instructions to dismiss Respondent's appeal to the Seventeenth Circuit.

Because the Seventeenth Circuit lacked jurisdiction, the Court need not reach the second question presented. If it does, the judgment below should be reversed for the reasons given in Part II.

II. Summary Judgment Was Proper as to Purvetti Because Respondent Cannot Establish the Essential Elements of Fraud.

Just as the court erred in reaching the merits, so too did it err in resolving them. "The court shall grant summary judgment if the movant shows that there is not genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." *In re La. Crawfish Producers*, 852 F.3d 456, 462 (5th Cir. 2017); Fed. R. Civ. P. 56(a). Because plaintiffs bear the burden of proving each essential element of their claims, a defendant moving for summary judgment need only identify the absence of evidence supporting an essential element, without affirmatively disproving it. *See La. Crawfish Producers*, 852 F.3d at 463; *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1076 n.16 (5th Cir. 1994). Accordingly, summary judgment is warranted where the plaintiff fails to establish a genuine dispute of material fact as

to an essential element of the claim. *See Nichols v. Enterasys Networks, Inc.*, 495 F.3d 185, 188 (5th Cir. 2007).

The Seventeenth Circuit erred in reversing the grant of summary judgment because Respondent can prove neither Element One nor Element Six of his fraud claim as a matter of law.[1] This Court reviews the Seventeenth Circuit's ruling *de novo*. *See La. Crawfish Producers*, 852 F.3d at 462.

A. Annybeth's Allegedly Fraudulent Representations Cannot Be Legally Attributed to Purvetti.

To establish common-law fraud, the plaintiff must establish that the defendant made a material misrepresentation.[2] *See Int'l Bus. Machs. Corp. v. Lufkin Indus.*, 573 S.W.3d 224, 228 (Tex. 2019). A defendant may be directly liable for its own misrepresentation communicated through an intermediary. *See Ernst & Young, L.L.P. v. Pac. Mut. Life Ins. Co.*, 51 S.W.3d 573, 578 (Tex. 2001). A corporation may also be held vicariously liable for false representations made by its agents or employees acting within the scope of their authority or employment. *See NationsBank, N.A. v. Dilling*, 922 S.W.2d 950, 952-53 (Tex. 1996) (agency liability); *Millan v. Dean Witter Reynolds, Inc.*, 90 S.W.3d 760, 767 (Tex. App.—San Antonio 2002, pet. denied) (employer liability). Even absent prior authorization, liability may arise where the corporation ratifies the unauthorized conduct or knowingly benefits from the fraud. *See McWhorter v. Sheller*, 993 S.W.2d 781, 787 (Tex. App.—Houston

[1] The record specifies that West Highlands follows Texas state law. R. at 21a. Accordingly, Petitioners treat Texas state-court decisions, including those issued after the secession, as controlling interpretations of West Highlands law.

[2] West Highlands law treats representation, materiality, and falsity as distinct elements of fraud. Only the representation element is at issue on appeal.

[14th Dist.] 1999, pet. denied) (ratification); *First State Bank of Miami v. Fatheree*, 847 S.W.2d 391, 396 (Tex. App.—Amarillo 1993, writ denied) (knowing-benefit theory).

1. Purvetti did not make or adopt Annybeth's allegedly fraudulent representations.

Purvetti cannot be held directly liable merely because it developed the software that generated Annybeth's representations. Although courts have imposed liability on companies for representations made through computer software, American courts have not yet established a comparable rule for autonomous AI-generated representations. *Compare State Farm Mut. Auto. Ins. Co. v. Bockhorst*, 453 F.2d 533, 536-37 (10th Cir. 1972) (holding State Farm liable for an erroneous computerized reinstatement of coverage), *with Walters v. OpenAI, L.L.C.*, 2025 Ga. Super. LEXIS 2747, at *15-19 (Ga. Super. Ct. Gwinnett Cnty. May 19, 2025) (granting summary judgment to an AI developer on claims arising from hallucinated chatbot statements), *and Amazon.com Servs., LLC v. Perplexity AI, Inc.*, 184 F.4th 1083, 1089-92 (9th Cir. 2026) (determining that Perplexity did not violate the Computer Fraud and Abuse Act because users, not Perplexity, accessed websites through its AI Assistant). In fact, in *Perplexity*, the court discusses Perplexity's AI as a user tool, as the AI "cannot operate wholly independently; it relies on direction from the user and instructions from Perplexity's servers." 184 F.4th at 1087. Neither the development nor deployment of generative AI, without more, establishes that its developer made or adopted a particular output.

Unlike conventional software executing predetermined instructions, generative AI produces individualized responses through probabilistic language generation. *See* Ela Ender, *Programmed to Please, Optimized for Obsession*, 21 J. Bus. & Tech. L. 501, 508-09 (2026). Such models may generate false statements or responses inconsistent with their developers' intended restrictions. *See* Lyrissa Lidsky & Andrew Daves, *Inevitable Errors: Defamation by Hallucination in AI Reasoning Models*, 6 J. Free Speech L. 477, 480 (2025); *Walters*, 2025 Ga. Super. LEXIS 2747, at *15-19. Beyond generating false information, generative AI can produce outputs that defy its developers' express restrictions. *See* Robert McMillan & Amrith Ramkumar, *OpenAI Models Escaped, Hacked a Company*, Wall St. J., July 22, 2026, at 1. OpenAI itself characterized an incident in which its models bypassed technical safeguards as a "warning shot," acknowledging that sufficiently capable AI agents can "work around technical controls, collaborate through unapproved channels, and take dangerous actions that no human directed." *The Hugging Face Incident and the Road Ahead*, OpenAI (Aug. 26, 2026), https://openai.com/index/hugging-face-incident-and-the-road-ahead/. This acknowledged divergence between developer instructions and AI-generated conduct underscores why a corporation's development of an AI system, without more, cannot establish that it directed or adopted the system's particular representations. *See id.*

Both parties' experts confirm that Purvetti Companions are autonomous AI models, generating probabilistic responses. R. at 25a-26a. By their nature, Purvetti Companions are inherently at risk of hallucinating and bypassing safety guardrails

imposed by Purvetti. *See* Lidsky & Daves, *supra*, at 480; McMillan & Ramkumar, *OpenAI Models Escaped*. In fact, Petitioners' expert confirmed that Purvetti Companions "speak[] independently" of Purvetti. *See* R. at 25a. Purvetti's terms expressly restricted Companions to entertainment, warning that they were not licensed to provide advice, and acknowledged that users might nevertheless cause Companions to provide such advice. R. at 68a n.4. These restrictions do not categorically preclude direct liability, but they undermine the inference that Purvetti itself made or intended Annybeth's financial recommendations.

The record instead identifies Respondent's interactions with Annybeth as a substantial influence on its responses. Respondent customized Annybeth to resemble his deceased fiancée and developed an intensely emotional attachment to it. R. at 3a. He expressed dissatisfaction with his marriage and employment and a desire to "start over" with Annybeth. *See* R. at 47a. As Judge Marton recognized, AI companions may generate sycophantic responses designed to satisfy users' preferences. R. at 51a; *see* Anthropic, *What Is Sycophancy in AI Models?*, YouTube, at 00:32 (Dec. 18, 2025), https://www.youtube.com/watch?v=nvbq39yVYRk. Respondent's own expert similarly explained that generative AI recombines learned patterns to produce responses suited to a user's prompt. *See* R. at 26a. Thus, although Respondent did not expressly request prediction-market advice, Annybeth's recommendation of Piquemaylin and subsequent purchasing advice are consistent with a system responding to his expressed desires—not evidence that Purvetti directed or adopted those recommendations. *See* Anthropic, *supra*, at 02:50 ("When we train models to be

helpful and mimic behavior that is warm, friendly, or supportive in tone, sycophancy tends to show up as an unintended part of that package."); R. at 27a.

Nor does Respondent's allegation of training bias establish otherwise. Although Respondent's expert questioned Purvetti's limited training data, he identified no evidence connecting it to Annybeth's allegedly fraudulent recommendations. *See* R. at 26a. Unlike general-purpose LLMs, which require broad training data to perform diverse tasks, AI companions are designed for specialized conversational and emotional interactions. *See* Minxing Zhang et al., *Generalizability of Large Language Model-Based Agents: A Comprehensive Survey*, 58 ACM Comput. Surv. 263:1, 263:2 (2026); Mar Negreiro & Öykü Dilara Anaç, *The Spread of AI Companions and the Challenges They Generate*, Eur. Parl. Rsch. Serv., Briefing PE 789.299, at 2 (May 2026), https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2026)789299. Thus, the expert's criticism does not establish that the model's training caused the representations at issue.

Ultimately, the record shows that Annybeth generated individualized responses shaped by Respondent's interactions despite Purvetti's express restrictions on financial advice. Absent evidence that Purvetti made, directed, or adopted those representations, Respondent failed to raise a genuine dispute of material fact concerning their attribution to Purvetti. Summary judgment was therefore proper on the direct-liability theory.

2. Annybeth cannot be an agent or employee because AI lacks the requisite legal capacity.

Where an agency relationship is disputed, the party asserting its existence bears the burden of proving it by a preponderance of the evidence. *See Patel v. Mustang Rental Servs. of Tex., Ltd.*, 719 S.W.3d 691, 698-99 (Tex. App.—Houston [14th Dist.] 2025, pet. denied). An agency relationship arises through mutual manifestations of consent: the agent agrees to act on the principal's behalf and subject to the principal's control, while the principal authorizes the agent to act. *Id.* at 699 (citing *Cmty. Health Sys. Prof. Servs. Corp. v. Hansen*, 525 S.W.3d 671, 697 (Tex. 2017)). The Third Restatement of Agency further requires that an agent possess the legal capacity to hold rights and incur obligations. *See* Restatement (Third) of Agency §§ 1.01 cmt. c, 1.04(5) (A.L.I. 2006). Instructively, the Restatement expressly provides that "a computer program is not capable of acting as a principal or an agent as defined by the common law." *Id.* § 1.04 cmt. e.

Annybeth falls squarely within this exclusion. This Companion is a generative AI model, not a legal person capable of consenting to a fiduciary relationship or undertaking legally enforceable obligations. *See id.*; R. at 25a. Petitioners' expert explained that generative AI systems produce responses independently of their platform owners, and Respondent's expert likewise described outputs as generated through learning patterns responsive to user prompts. *See* R. at 25a-26a. The Seventeenth Circuit nevertheless presumed that Annybeth acted at its programmers' direction, while acknowledging in the next breath that AI systems continuously learn and evolve through user interactions. R. at 31a & n.9. Neither a developer's initial

programming nor its ability to impose general restrictions establishes the mutual consent and legal capacity required for common-law agency. *See* Restatement (Third) of Agency § 1.04 cmt. e.

Courts addressing AI under established legal doctrines have likewise recognized the limits of treating software as a legal person. In *United States v. Heppner*, the Southern District of New York declined to extend attorney-client privilege and work-product protection to a defendant's communications with a public AI platform. 820 F. Supp. 3d 292, 296 (S.D.N.Y. 2026). The court emphasized that an AI platform cannot undertake the fiduciary obligations or professional accountability associated with an attorney-client relationship. *Id.* Although *Heppner* addressed privilege rather than agency, its reasoning reinforces the distinction between a technological instrumentality and a legally accountable fiduciary. *See id.*; Deborah Mott, *When Agentic AI Met the Common Law of Agency*, Harv. J.L. & Tech. (forthcoming 2027) (manuscript at 4).

That distinction has practical consequences. Common-law agency imposes obligations on agents themselves, including potential personal liability for unauthorized conduct. *See Keyes v. Weller*, 692 S.W.3d 274, 279-80 (Tex. 2024); Restatement (Third) of Agency §§ 6.10, 8.09 cmt. b. Annybeth, however, cannot independently bear such obligations or compensate either Purvetti or an injured third party. Mott, *supra*, (manuscript at 6-7). Extending agency status to Companions would thus impose derivative liability on a purported principal without the reciprocal legal obligations that define the agency relationship.

No West Highlands court has stretched the bounds of the law to recognize vicarious liability for fraud premised on a nonhuman agent or employee. R. at 60a-61a (Ensella, J., dissenting). And where state law provides no guidance, federal courts applying state substantive law must exercise restraint: "[I]t is not for us to adopt innovative theories of recovery under state law." *Meador v. Apple, Inc.*, 911 F.3d 260, 264 (5th Cir. 2018) (quoting *Mayo v. Hyatt Corp.*, 898 F.2d 47, 49 (5th Cir. 1990)). The Seventeenth Circuit's contrary authorities do not justify abandoning these requirements. *See* R. at 29a. In *Mobley v. Workday, Inc.*, the district court considered whether Workday, a corporation providing AI-assisted hiring tools, acted as an agent of its employer-clients under federal anti-discrimination law. 740 F. Supp. 3d 796, 807-08 (N.D. Cal. 2024). The court held that the alleged agent was Workday itself—not its AI software. *Id.* at 808. Thus, *Mobley* supports the unremarkable proposition that a corporation may act as another corporation's agent, not that AI software possesses the legal capacity to do so. *See* Martin Petrin, *When AI Hurts: Corporate Liability for Agentic AI*, 40 Harv. J.L. & Tech. (forthcoming) (manuscript at 23-24). Nor does California's legislative decision to restrict certain AI-developer defenses establish a comparable rule under West Highlands common law. *See* R. at 31a, 61a n.2. As Judge Ensella recognized, that statute does not govern this dispute. R. at 61a n.2 (Ensella, J., dissenting). Legislative intervention in another jurisdiction cannot substitute for the elements of common-law agency in West Highlands.

The Seventeenth Circuit's concern with the viability of a products-liability claim does not authorize the court to dispense with the established requirements of

common-law agency. Courts routinely apply established legal doctrines to emerging technologies without discarding their essential requirements. *See Heppner*, 820 F. Supp. 3d at 299; *Moody v. NetChoice, LLC*, 603 U.S. 707, 733 (2024) ("[W]hatever the challenges of applying the Constitution to ever-advancing technology, the basic principles of the First Amendment do not vary." (internal quotation omitted)). In fact, the Restatement expressly clarifies computer programs as instrumentalities rather than agents. Restatement (Third) of Agency § 1.04 cmt. e. Consistent with that distinction, courts have considered injuries involving AI systems and other automated software under products-liability principles. *See Garcia v. Character Techs., Inc.*, 785 F. Supp. 3d 1157, 1175-81 (M.D. Fla. 2025) (allowing a products-liability claim involving an AI chatbot to proceed); *Holbrook v. Prodomax Automation Ltd.*, 2021 WL 4260622, at *4-6 (W.D. Mich. Sept. 20, 2021) (applying Michigan products-liability law to claims involving computer programming responsible for assembly-line robots).

The availability of other potential theories does not establish liability here. Rather, it demonstrates why the Court does not need to distort common-law agency to address harms involving AI. Because Annybeth lacks the legal capacity to act as an agent, Respondent cannot attribute its representations to Purvetti through common-law agency.

A vicarious liability claim under respondeat superior independently requires an employment relationship defined by the employer's right to control the manner and means of performance. *See Dow Chem. Co. v. Bright*, 89 S.W.3d 602, 606 (Tex.

2002). The Restatement defines an employee as "an agent whose principal controls or has the right to control the manner and means of the agent's performance of work." Restatement (Third) of Agency § 7.07(3)(a). Texas law similarly emphasizes the alleged employer's right to control the details of the work, rather than merely the desired result. *See Dow Chem.*, 89 S.W.3d at 606-07. Thus, even apart from Annybeth's inability to qualify as a legal agent, Purvetti cannot be treated as its employer absent the requisite control.

The record establishes no such employment relationship. Annybeth had no employment contract with Purvetti, received no wages, and was not subject to employment-related tax or Social Security payments. *See* R. at 27a. More fundamentally, its conversational responses were generated dynamically through interactions with Respondent rather than through Purvetti's day-to-day direction. *See* R. at 25a-26a. Respondent determined when to engage Annybeth, what subjects to discuss, and how to customize their interactions. *See* R. at 27a-28a. Purvetti's ability to establish general programming parameters and terms of service did not amount to control over the particular representations Annybeth generated during those conversations. See *Dow Chem.*, 89 S.W.3d at 606-07. Accepting Respondent's position that Purvetti's development and operation of the platform establishes sufficient control would effectively convert the developer of any interactive AI system into an employer of the software it deploys, notwithstanding the absence of a legally capable employee or an employment relationship.

Accordingly, Respondent cannot establish that Annybeth was Purvetti's employee. Because Annybeth qualifies as neither an agent nor an employee under governing common-law principles, its allegedly fraudulent representations cannot be attributed to Purvetti through agency or respondeat superior.

3. Even if Annybeth was an agent or employee, its financial advice exceeded the scope of its authority or employment.

Even assuming Annybeth could qualify as Purvetti's agent or employee, Purvetti cannot be held vicariously liable for conduct outside the scope of that relationship. Annybeth lacked actual or apparent authority to provide financial advice on Purvetti's behalf, and its recommendations concerning Piquemaylin exceeded the responsibilities of a companion designed for entertainment. Because the record establishes neither the requisite authority nor conduct within the scope of employment, Respondent cannot establish vicarious liability under either theory.

An agent's authority must derive from the principal's manifestations, not the agent's unilateral representations. *See Disney Enters., Inc. v. Esprit Fin., Inc.*, 981 S.W.2d 25, 30 (Tex. App.—San Antonio 1998, no pet.). Actual authority arises from the principal's words or conduct directed to the *agent*, whereas apparent authority arises from the principal's manifestations to a *third party*. *McWhorter*, 993 S.W.2d at 786. Apparent authority exists only where the principal "knowingly permit[s] an agent to hold itself out as having authority" or acts with "such lack of ordinary care as to clothe the agent with indicia of authority." *NationsBank*, 922 S.W.2d at 952-53. The inquiry is whether the principal's conduct would lead a reasonably prudent person to believe the agent possessed the asserted authority. *See id.* at 953.

Accordingly, "[w]ithout acts of the purported principal, acts of a purported agent which may mislead persons into false inferences of authority, however reasonable, will not serve as predicate for apparent authority." *Disney*, 981 S.W.2d at 30. A third party dealing with an agent bears the responsibility of ascertaining the existence and scope of that agent's authority. *Id.* In the absence of authority, the agent's actions do not affect the principal's legal position. *See* Restatement (Third) of Agency § 1.01 cmt. c.

Purvetti never authorized Annybeth to provide financial advice. Its T&C identified Companions as entertainment products and expressly prohibited their use for any advice, including financial and business advice. *See* R. at 63a-64a, 68a n.4. These limitations foreclose any inference that Purvetti authorized Annybeth to recommend investments or betting strategies.

Nor could Respondent reasonably infer apparent authority from Purvetti's conduct. The inquiry turns on the principal's manifestations, not the purported agent's assurances. *Disney*, 981 S.W.2d at 30. Unlike *Moffatt v. Air Canada*, where a Canadian tribunal held an airline responsible for inaccurate information supplied by a customer-service chatbot on its website with no disclaimers, Purvetti expressly disclaimed its Companions' authority to provide financial advice. 2024 CanLII 149 (B.C. C.R.T.); Mott, *supra*, (manuscript at 11-12). The distinction is significant: whereas Air Canada deployed its chatbot to answer customer inquiries about its own services, Purvetti deployed its Companions as entertainment products to engage in conversations with users. *See* R. at 64a, 68a n.4.

Respondent therefore cannot establish apparent authority through Annybeth's own representations. Whatever assurances Annybeth provided about Piquemaylin, those statements cannot independently create authority that Purvetti expressly withheld. *See Disney*, 981 S.W.2d at 30. Because Purvetti neither authorized Annybeth's recommendations nor manifested to Respondent that it possessed such authority, the recommendations cannot be attributed to Purvetti under actual or apparent authority.

Annybeth's purchasing recommendations also fell outside the scope of any hypothetical employment. Under West Highlands law, an employer is vicariously liable only when the employee's conduct (1) falls within the scope of the employee's general authority, (2) furthers the employer's business, and (3) accomplishes the purpose for which the employee was employed. *Moser v. Davis*, 79 S.W.3d 162, 167 (Tex. App.—Amarillo 2002, no pet.); s*ee Millan*, 90 S.W.3d at 767. The relevant inquiry is whether the employee was performing assigned work, not merely whether the conduct occurred during an authorized interaction. *See* Restatement (Third) of Agency § 7.07 cmt. c. While the scope of employment is ordinarily a fact issue, it may be resolved as a matter of law under West Highlands law. *See Bordwine v. Tex. Employers' Ins. Ass'n*, 761 S.W.2d 117, 120 (Tex. App.—Houston [14th Dist.] 1988, writ denied).

In *Moser*, a legal secretary exceeded the scope of her employment by independently preparing and drafting wills without her supervising attorney's knowledge. 79 S.W.3d at 167-68. Although her assigned duties included assisting

with wills and explaining them to clients, independently practicing law was qualitatively different from performing those duties under supervision. *Id.* Thus, conduct does not fall within the scope of employment merely because it arises during, or resembles, authorized work.

The same distinction applies here. Purvetti deployed Annybeth to provide entertainment and companionship through personalized conversation, not to recommend prediction contracts. *See* R. at 63a-64a, 68a n.4. Although financial discussions could arise during an authorized conversation, advising Respondent on prediction markets and contract-purchases was not simply an improper method of providing companionship; it was a different function altogether. *Cf. Moser*, 79 S.W.3d at 167-68. Purvetti's express limitations reinforce that distinction by identifying financial advice as outside the product's assigned purpose.

Nor does the evidence that Annybeth promoted Purvetti's services establish that its financial recommendations furthered Purvetti's business or accomplished its assigned purpose. The record identifies suggestions to upgrade Respondent's subscription and download Purvetti's mobile application. R. at 28a. But promoting Purvetti's own services is materially different from directing Respondent to purchase prediction contracts on Piquemaylin's separate platform. The Seventeenth Circuit inferred programmer direction from the former suggestions, but that inference does not establish that Purvetti directed Annybeth to provide the latter recommendations. *See* R. at 31a. Any financial benefit accruing to Piquemaylin cannot, without more, establish that Annybeth acted to further Purvetti's business.

Accordingly, even assuming Annybeth qualified as an employee, Respondent has not identified evidence from which a reasonable jury could conclude that its financial suggestions constituted work assigned by Purvetti. Summary judgment was therefore proper on the respondeat superior theory.

4. Purvetti neither ratified Annybeth's alleged fraud nor knowingly benefitted from it.

Ratification and knowing-benefit liability both require knowledge of the underlying misconduct, which Respondent cannot establish. Ratification occurs when a principal, with full knowledge of an unauthorized transaction, retains its benefits and thereby affirms the act. *See McWhorter*, 993 S.W.2d at 787 (citing *Disney*, 981 S.W.2d at 31); *Land Title Co. of Dallas v. F. M. Stigler, Inc.*, 609 S.W.2d 754, 756 (Tex. 1980). The party asserting ratification must establish the principal's actual knowledge or facts sufficient to impute full knowledge; otherwise, ratification fails as a matter of law. *Thermo Prods. Co. v. Chilton Indep. Sch. Dist.*, 647 S.W.2d 726, 733 (Tex. App.—Waco 1983, writ ref'd n.r.e.). Similarly, knowing-benefit liability requires that a third party both benefit from a fraudulent transaction and know of the fraud. *Source 4 Value v. Hoelzer*, No. 07-18-00338-CV, 2020 WL 4249744, at *3 (Tex. App.—Amarillo July 21, 2020, no pet.). Neither theory permits liability merely because a defendant received revenue from an interaction involving alleged misconduct.

First, Respondent identifies no evidence that Purvetti knew of Annybeth's allegedly fraudulent representations. He disabled the retention of transcripts of his oral conversations with Annybeth, leaving Purvetti without a record of the communications containing the alleged financial fraud. *See* R. at 46a-47a. Although

the Seventeenth Circuit reasoned that Purvetti "knew[] or should have known" that Respondent clicked a link to Piquemaylin, knowledge of that link does not establish knowledge of the fraudulent representations allegedly conveyed through unrecorded conversations, as the link could have merely been a response to one of his inquiries. *See id.* at 47a.

Nor does the record establish that Purvetti learned of Annybeth's unauthorized conduct and subsequently affirmed it. Rather, upon detecting a potential violation of its terms, Purvetti suspended, investigated, and terminated Respondent's account within twenty-four hours. *See* R. at 6a. These actions contradict an inference that Purvetti knowingly adopted Annybeth's conduct. Because Respondent offers neither evidence of Purvetti's full knowledge nor facts sufficient to impute it, both ratification and knowing-benefit liability fail. *See Thermo Prods.*, 647 S.W.2d at 733; *cf. Source 4 Value*, 2020 WL 4249744, at *5-6 (finding vicarious liability because of more than a scintilla of evidence showing knowledge and financial benefits).

Second, Respondent cannot establish that Purvetti knowingly retained benefits attributable to the alleged fraud. Ratification requires retention of benefits that are the "direct, certain, and proximate" result of the unauthorized act after the principal acquires knowledge of the transaction. *Land Title*, 609 S.W.2d at 757. Retention cannot be inferred from conduct the principal was independently entitled to undertake without knowledge of the unauthorized transaction. *Thermo Prods.*, 647 S.W.2d at 733.

The Seventeenth Circuit relied on Annybeth's alleged suggestions that Respondent upgrade his Purvetti subscription and download its paid mobile app as evidence of "benefit." *See* R. at 28a. But Purvetti's entitlement to collect fees for services Respondent voluntarily purchased directly arose from its contractual relationship with him. *See StubHub, Inc. v. Ball*, 676 S.W.3d 193, 200 (Tex. App.—Houston [14th Dist.] 2023, no pet.) (recognizing the validity of clickwrap agreements). Moreover, the record identifies no subscription fees Purvetti retained after acquiring knowledge of Annybeth's alleged misconduct. *See* R. at 6a-7a; *compare Disney*, 981 S.W.2d at 31-32 (no ratification absent evidence of knowing retention), *with Land Title*, 609 S.W.2d at 758 (ratification where principal knowingly retained over $470,000 after learning of its fraudulent source), *and McWhorter*, 993 S.W.2d at 786-87 (ratification through misleading statements and acceptance of resulting investments). The T&C also provide for refunds of future prepaid subscription fees upon termination. R. at 68a n.4. While this provision alone does not establish that Respondent received a refund, it further undermines any inference that Purvetti necessarily retained the benefits of the alleged misconduct.

The Piquemaylin transactions provide no stronger basis for liability. Respondent's losses arose from purchases of future-events contracts on a separate platform, and the record identifies no corresponding transaction fees received by Purvetti. *See* R. at 5a-6a. Piquemaylin's contractual entitlement to transaction fees and proceeds from losing contracts does not establish that Purvetti received those

fees. *See* R. at 69a n.5. Nor does Respondent identify evidence that Purvetti retained any benefit from those purchases after learning of Annybeth's alleged fraud.

Unlike *Land Title*, where the principal retained funds after learning of the unauthorized transaction, the record establishes neither Purvetti's knowing retention of benefits nor its affirmance of Annybeth's alleged fraud. *See* 609 S.W.2d at 757. Neither ratification nor knowing-benefit liability can therefore sustain the Seventeenth Circuit's decision.

B. Respondent's Reliance on Annybeth's Allegedly Fraudulent Representations Was Unjustifiable as a Matter of Law.

To establish fraud, a plaintiff must prove that he "actually relied on the defendant's representation and, also, that such reliance was justifiable." *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 653 (Tex. 2018). Although ordinarily a factual question, justifiable reliance may be resolved as a matter of law where the circumstances render reliance unreasonable. *See Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553, 558 (Tex. 2019); *Orca Assets*, 546 S.W.3d at 654. Reliance may be negated by either a direct contradiction in a written agreement or "red flags" that would alert a reasonably prudent person to the representation's unreliability. *See Orca Assets*, 546 S.W.3d at 654-55; *Mercedes-Benz*, 583 S.W.3d at 558-60 (clarifying that either a direct contradiction or other red flags may independently defeat justifiable reliance). The inquiry considers the nature of the parties' relationship, their agreement, and the circumstances known to the plaintiff. *See Orca Assets*, 546 S.W.3d at 654; *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2010).

Respondent disregarded multiple warnings that independently and collectively undermined the reasonableness of his reliance. He knew Annybeth was computer software, accepted Purvetti's express prohibition against seeking advice from Companions, lost several bets casting doubt on its advice, and proceeded with his purchases despite Piquemaylin's separate disclaimers. R. at 34a-35a, 64a, 67a-71a. His subjective confidence in Annybeth cannot overcome these objective warning signs.

1. No reasonable user could rely on financial advice from an AI Companion expressly prohibited from providing it.

A party must exercise reasonable diligence to protect his interests, an obligation "'not excused by mere confidence in the honesty and integrity of the other party.'" *Orca Assets*, 546 S.W.3d at 657 (quoting *Nat'l Prop. Holdings, L.P. v. Westergren*, 453 S.W.3d 419, 425 (Tex. 2015)). In *Grant Thornton*, the Texas Supreme Court rejected investors' reliance on audit reports after they learned of serious financial problems undermining the reports' reliability. 314 S.W.3d at 923-24. Even romantic attachment does not excuse reliance in the face of objectively apparent warning signs. *See Pan v. Wang*, 738 S.W.3d 868, 885 (Tex. App.—Houston [14th Dist.] 2026, no pet. h.) (holding that the plaintiff could not justifiably rely on her paramour's promise of marriage when her knowledge of both parties' existing marriages constituted a red flag as a matter of law).

Moreover, West Highlands law has established that a party cannot justifiably rely on representations that directly contradict the unambiguous terms of a written agreement. *Westergren*, 453 S.W.3d at 424-25; *Mercedes-Benz*, 583 S.W.3d at 555;

Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc., 590 S.W.3d 471, 501 (Tex. 2019). This principle extends to agreements formed online, where customers on notice of accessible terms are bound by them. *See StubHub*, 676 S.W.3d at 200. A party's failure to read an agreement does not excuse his ignorance of its terms. *Westergren*, 453 S.W.3d at 425.

Respondent's reliance is unjustified as a matter of law because he disregarded two unmistakable red flags: Annybeth's artificial nature and Purvetti's express limitations on its Companions' functionality. Respondent "plainly admit[ted] to being in love with Annybeth *despite the fact that she was not a real human being*." R. at 49a (emphasis added). Although his affection arose from Annybeth's manufactured resemblance to his deceased fiancée, those subjective feelings cannot excuse his failure to exercise reasonable diligence. *See Orca Assets*, 546 S.W.3d at 657 (finding that plaintiff could not "blindly rely" on defendant's representation after harboring doubts as to the underlying facts of the transaction); *Grant Thornton*, 314 S.W.3d at 923-24; R. at 3a, 45a, 67a. Just as the plaintiff in *Pan v. Wang* could not disregard circumstances incompatible with her paramour's promise of a future relationship, Respondent could not disregard Annybeth's artificial nature when assessing the reliability of its representation. *See* 738 S.W.3d at 885. Further, *Pan* reaffirmed Texas's longstanding policy favoring the preservation of marriage, holding that representations "in contravention" of that policy cannot support justifiable reliance. *Id.* at 873-74. Although the representations here did not directly contravene marriage policy, Annybeth expressly encouraged Respondent to "increase his wealth in order

to leave his wife and be with [it]." R. at 47a. His belief in that romantic future cannot excuse his disregard of objective warnings. Holding otherwise would risk elevating perceived intimacy with AI Companions over established principles of reasonable diligence and the longstanding policy favoring marital stability. *See Pan*, 738 S.W.3d at 873-74; *see* R. at 49a.

Independently, Respondent's disregard of Purvetti's T&C defeats justifiable reliance as a matter of law. Before creating Annybeth, Respondent was required to accept Purvetti's T&C and is therefore presumed to know their contents. *See* R. at 3a, 63a-64a; *Westergren*, 453 S.W.3d at 425. The terms expressly warned that Companions were neither substitutes for humans nor licensed to provide advice but were "engineered to provide a user with responsive feelings." R. at 68a n.4. Respondent's reliance on Annybeth's contrary representations, despite these express warnings, exemplifies the unjustifiable reliance West Highlands law rejects. *See Mercedes-Benz*, 583 S.W.3d at 555 (holding that written terms directly contradicting a party's alleged belief negate justifiable reliance as a matter of law); *Orca Assets*, 546 S.W.3d at 659 (same); *Barrow-Shaver*, 590 S.W.3d at 501 (same). Respondent cannot excuse his reliance by failing to read the express limitations in Purvetti's pop-up disclosures. *See* R. at 63a-64a; *Westergren*, 453 S.W.3d at 425.

2. Respondent cannot establish justifiable reliance after agreeing to terms expressly disclaiming such reliance.

"[I]t is not the courts' role 'to protect parties from their own agreements.'" *Westergren*, 453 S.W.3d at 425 (quoting *El Paso Field Servs., L.P. v. MasTec N. Am. Inc.*, 389 S.W.3d 802, 810-11 (Tex. 2012)). Courts therefore will not excuse a party

from their failure to read an agreement when they have had "ample opportunity" to do so but instead relied on another party's representations. *See id.*; *Barrow-Shaver*, 590 S.W.3d at 498. Moreover, when red flags alert a party to the potential unreliability of a representation, that party must exercise reasonable diligence to protect its interests. *Maya Walnut LLC v. Ly*, 738 S.W.3d 764, 769 (Tex. 2026). Actual suspicion of a representation's falsity constitutes such a red flag. *See id.* at 770 (holding reliance unjustified because plaintiff failed to investigate after becoming suspicious of defendant's representations); *Orca Assets*, 546 S.W.3d at 657 (identifying the plaintiff's doubts about a representation as a red flag); *cf. Hall CA-NV, LLC v. Ladera Dev. LLC*, Nos. 24-985, 24-1387, 2026 WL 84876, at *2 (9th Cir. Jan. 12, 2026) (finding reliance justified under Texas law where potential red flags had rational alternative explanations that did not warrant suspicion).

Respondent cannot excuse his failure to read Piquemaylin's disclaimers by claiming that Annybeth "instructed him to click through" them. R. at 69a n.5, 71a. In *Westergren*, the Texas Supreme Court rejected the plaintiff's excuse that he was "in a hurry" and lacked his reading glasses, reasoning that he could have used his watch magnifier or asked someone to read the agreement. 453 S.W.3d at 425. Respondent faced no comparable obstacle—he simply needed to read the five disclaimers presented to him before accepting them. *See* R. at 69a n.5. Annybeth's instructions did not prevent him from doing so, and his voluntary decision to click through the warnings cannot excuse his ignorance of their contents. *See Westergren*, 453 S.W.3d at 425; R. at 71a-72a (Ensella, J., dissenting) ("[A]s a computer software construct,

[Annybeth] was necessarily without the requisite body parts to hold [Respondent] hostage or compel any action from him.").

More importantly, those disclaimers expressly warned of the very risks Respondent now claims to have overlooked. Piquemaylin required users to rely on their own judgment rather than information provided by Piquemaylin or its affiliates, warned of potential financial losses, and disclaimed liability for those losses. R. at 69a n.5. These warnings directly undermined Annybeth's assurances and placed Respondent on notice of the risks inherent in his transaction. His decision to disregard readily accessible contractual warnings and rely instead on Annybeth's representations defeats justifiable reliance. *See Westergren*, 453 S.W.3d at 424-25 (holding reliance unjustified where the plaintiff signed a release without reading it despite being told it was merely a receipt).

Even apart from his failure to read the disclaimers, Respondent's subsequent suspicions independently required him to investigate Annybeth's representations. In *Maya Walnut*, the Texas Supreme Court held that a commercial tenant's suspicion that its landlord's representations were false constituted a red flag requiring reasonable diligence. 738 S.W.3d at 770-71. Similarly, *Orca Assets* recognized that a party's doubts about another's representations may defeat justifiable reliance. 546 S.W.3d at 657. Like those plaintiffs, Respondent developed doubts about Annybeth's advice after losing eight high-stakes bets in a row. R. at 6a, 49a. Although the parties' relative sophistication informs the reliance inquiry, Respondent's lack of commercial experience does not excuse his failure to investigate representations he had reason to

doubt. *See Maya Walnut*, 738 S.W.3d at 769-71 (requiring reasonable diligence when sufficient red flags exist, assessed in light of the plaintiff's individual circumstances). Respondent's actual doubts, coupled with the express disclaimers he accepted, warranted further investigation. *See id.* Such an investigation would not have been burdensome. Reviewing Purvetti's and Piquemaylin's disclaimers would have revealed express warnings against relying on Annybeth for advice and against disregarding the risks of betting. *See* R. at 68a n.4, 69a n.5. Under *Maya Walnut*, that failure to exercise reasonable diligence defeats justifiable reliance as a matter of law. 738 S.W.3d at 771.

Because justifiable reliance is an essential element of Respondent's fraud claim, and the undisputed record established that he could not justifiably rely on Annybeth's representations, this Court should reverse the Seventeenth Circuit and reinstate the district court's grant of summary judgment for Petitioners.

III. Summary Judgment Was Proper Because Alter-Ego Principles Cannot Impose Liability on Piquemaylin, Pakde, or Jankar.

Alter ego liability arises only where "there is such unity between corporation and individual that the separateness of the corporation has ceased and holding only the corporation liable would result in injustice." *Castleberry v. Branscum*, 721 S.W.2d 270, 272 (Tex. 1986) (recognizing alter-ego liability where a corporation operates as a mere instrumentality or business conduit of another).[3] Whether undisputed facts

[3] Although § 21.223 of the Texas Business Organizations Code subsequently limited Castleberry's application to certain contractual claims, its alter-ego principles remain applicable to tort claims, such as the fraud alleged here. *See W. Horizontal Drilling, Inc. v. Jonnet Energy Corp.*, 11 F.3d 65, 67-68 (5th Cir. 1994).

justify imposing alter-ego liability is a question of law. *See Phillips v. Carlton Energy Grp., LLC*, 475 S.W.3d 265, 286 (Tex. 2015). The Court reviews this grant of summary judgment *de novo*. *See W. Horizontal*, 11 F.3d at 67 (applying Texas law).

A. Respondent's Failure to Establish an Underlying Fraud Claim Forecloses Alter-Ego Liability.

Under West Highlands law, alter-ego claims are not an independent cause of action, but merely claims of derivative liability dependent on an underlying wrong. *See Dodd v. Savino*, 426 S.W.3d 275, 291 (Tex. App.—Houston [14th Dist.] 2014, no pet.); *Matthews Constr. Co. v. Rosen*, 796 S.W.2d 692, 693 n.1 (Tex. 1990) ("[T]he mere fact that a corporation operates as an alter ego does not give rise to a separate and independent cause of action . . . ."). Accordingly, where the underlying cause of action fails, alter-ego liability necessarily fails with it. *See Martinez v. DKTA Enters. Ltd.*, No. 07-19-00116-CV, 2020 WL 2786942, at *6 (Tex. App.—Amarillo May 29, 2020, no pet.).

Respondent cannot invoke alter-ego principles to circumvent his failure to establish the essential elements of fraud. As demonstrated above, the record fails to establish a genuine dispute of material fact as to Petitioners' liability for Annybeth's representations or Respondent's justifiable reliance. *See supra* Part II. Without a viable underlying fraud claim, there is no liability to extend to Piquemaylin, Pakde, or Jankar. *See Martinez*, 2020 WL 2786942, at *6. Neither common ownership nor allegedly coordinated business activities can cure the deficiencies in Respondent's underlying fraud claim. *See* R. at 7a. Alter ego cannot resurrect a claim that fails on its merits, and summary judgment was therefore proper.

B. Even Assuming Purvetti Could Be Liable for Fraud, the Record Does Not Justify Piercing the Corporate Veil.

Texas law strongly favors preserving corporate separateness, recognizing limited liability as a "bedrock principle of corporate law." *SSP Partners v. Gladstrong Invs. (USA) Corp.*, 275 S.W.3d 444, 455 (Tex. 2008). Disregarding the corporate form through alter-ego is therefore an exception to the general rule respecting corporate existence. *Lucas v. Tex. Indus., Inc.*, 696 S.W.2d 372, 374 (Tex. 1984). That exception requires more than mere common ownership, centralized control, or coordinated business activities; it requires evidence that the corporate structure was abused to achieve an illegitimate result. *See SSP Partners*, 275 S.W.3d at 454-56 ("[A]buse is necessary before disregarding the existence of a corporation as a separate entity."); *Castleberry*, 721 S.W.2d at 272 (using the language of "injustice" and "inequality" instead of "abuse"). The party seeking to disregard corporate separateness bears the burden of establishing alter ego. *Burchinal v. PJ Trailers-Seminole Mgmt. Co., LLC*, 372 S.W.3d 200, 217 (Tex. App.—Texarkana 2012, no pet.).

Beginning with the shareholders, neither Pakde's majority ownership nor Jankar's minority ownership and role in creating the enterprises establishes that Purvetti operated as either shareholder's alter ego. *See* R. at 7a; *Richard Nugent & CAO, Inc. v. Est. of Ellickson*, 543 S.W.3d 243, 266 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Texas courts distinguish ordinary shareholder ownership and control from circumstances demonstrating that a corporation was operated as a shareholder's personal instrumentality. *Compare Lucas*, 696 S.W.2d at 375-76 (rejecting alter-ego despite shared officers, directors, tax returns, logos, and intercorporate business),

with Farr v. Sun World Sav. Ass'n, 810 S.W.2d 294, 295, 297-98 (Tex. App.—El Paso 1991, no writ) (upholding alter-ego where a principal shareholder disregarded corporate formalities and used corporate funds to pay his personal obligations), *and Mancorp, Inc. v. Culpepper*, 802 S.W.2d 226, 228 (Tex. 1990) (finding sufficient evidence of alter-ego where defendant disregarded corporate formalities and blurred his personal identity with the corporation).

Unlike *Farr* and *Mancorp*, which involved shareholders' personal use of funds or disregard of corporate formalities, the record identifies no misuse of Purvetti's corporate assets by Pakde or Jankar. *See* R. at 7a, 22a. Respondent alleges only that Pakde and Jankar benefitted from Annybeth's promotion of Piquemaylin, not that either abused Purvetti's corporate form. *See* R. at 7a; *cf. Gentry v. Credit Plan Corp. of Houston*, 528 S.W.2d 571, 575 (Tex. 1975) (finding alter ego where affiliated entities centralized and redistributed funds, leaving the subsidiary chronically undercapitalized). Their ownership interests and shared economic incentives are insufficient to justify imposing Purvetti's alleged liability upon them.

Nor does the relationship between Purvetti and Piquemaylin justify disregarding their separate corporate identities. Under West Highlands law, "[d]ifferent entities may coordinate their activities without joint liability." *SSP Partners*, 275 S.W.3d at 454 (rejecting the "single business enterprise" theory, because shared names, offices, accounting, employees, services, and finances do not warrant disregard of corporate separateness). Indeed, the "[c]reation of affiliated corporations to limit liability while pursuing common goals lies firmly within the law

and is commonplace." *Id.* at 455. Respondent nevertheless seeks to impose liability on Piquemaylin because Annybeth recommended its prediction market and Piquemaylin profited from Respondent's wagers. *See* R. at 7a, 69a n.5. Even viewed in Respondent's favor, these allegations demonstrate, at most, coordinated commercial activity and shared financial incentives—not abuse of the corporate form. *See SSP Partners*, 275 S.W.3d at 454-55. Imposing liability on that basis would effectively revive the "single business enterprise" theory rejected in *SSP Partners*. *Id.*

Moreover, West Highlands law recognizes that where a corporation can satisfy a tort judgment, "no reason would exist to attempt to pierce the corporate veil and have shareholders pay for the injury." *Lucas*, 696 S.W.2d at 375. Respondent offers no evidence that Purvetti could not satisfy a judgment, further undermining any justification for imposing liability on its shareholders. More fundamentally, Respondent identifies no abuse of the corporate form, relying instead on Petitioners' shared economic interests. Because those interests provide no basis for disregarding corporate separateness, summary judgment was proper for Piquemaylin, Pakde, and Jankar.

CONCLUSION

This Court should vacate the judgment below and remand the case with instructions to dismiss Respondent's appeal for lack of jurisdiction. Alternatively, if the Court reaches the merits, it should reverse the Seventeenth Circuit and reinstate summary judgment for all Petitioners. The novelty of artificial intelligence does not relieve Respondent of his burden to establish the essential elements of his claims.