No. 26-0521

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2026

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

v.

DIRELLA, ANTHONY, RESPONDENT.

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

BRIEF FOR THE PETITIONERS

TEAM NUMBER 86
COUNSEL FOR PETITIONERS

QUESTIONS PRESENTED

1. Whether 28 U.S.C. § 1291 permits appellate review of an earlier interlocutory order after a litigant tactically moves to dismiss his surviving claim without prejudice, where nothing precludes his voluntarily dismissed claim from springing back to life post-appeal and this Court has already rejected an analogous strategy.
2. Whether a non-human artificial intelligence program's conduct can be imputed to its developers for vicarious liability purposes when the program cannot hold legal rights and obligations, users are warned that the program is not human, and users are aware of the program's limited capabilities and authority.

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The opinion of the United States District Court for the District of West Highlands is unreported and unpublished. The record encloses the unpublished opinion of the United States Court of Appeals for the Seventeenth Circuit, through which the district court's reasoning is portrayed, in *Anthony Dirella v. Purvetti, LLC, Piquemaylin, LLC, Pakde Holdings, Ltd., and Jankar, Prakeesh*, No. 25-cv-0616 (17th Cir. June 1, 2026), cert. granted, No. 26-0521 (Oct. 2026). Op. 1a–75a.

STATEMENT OF JURISDICTION

The United States District Court for the District of West Highlands (the "District Court") exercised federal-question jurisdiction over Anthony Dirella's CEA claim under 28 U.S.C. § 1331. *See* 7 U.S.C. § 25(c) (providing that United States district courts shall have exclusive jurisdiction over CEA actions for damages). Regarding Dirella's state-law fraud claims, the District Court exercised diversity jurisdiction under 28 U.S.C. § 1332(a)(1). Because of their relationship to Dirella's CEA claim, the District Court exercised supplemental jurisdiction over the state-law fraud and alter ego claims pursuant to 28 U.S.C. § 1367(a). While still in dispute, the United States Court of Appeals for the Seventeenth Circuit purported to exercise jurisdiction under 28 U.S.C. § 1291. After the Seventeenth Circuit reversed the District Court's decision, Purvetti, LLC, Piquemaylin, LLC, Pakde Holdings, Ltd., and Jankar, Prakeesh timely petitioned for a writ of certiorari. This Court granted their petition, and it has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

At the heart of this appeal is the limitation on appellate jurisdiction imposed by the "finality" requirement embedded in 28 U.S.C. § 1291. As applied to this case, the inquiry into the outer bounds of appellate jurisdiction involves 28 U.S.C. § 1292(b), Federal Rule of Civil Procedure 41, and Federal Rule of Civil Procedure 54. Fed. R. Civ. P. 41. The relevant portions of the statutes and rules have been reproduced in the Appendix.

STATEMENT OF THE CASE

Factual History

Across the world, a silent epidemic is unfolding. Millions are suffering as levels of loneliness rise, reaching levels so severe that experts now classify loneliness as a public health crisis.[1] As this isolation deepens, the need for meaningful connection has never been more critical. Recognizing the role of companionship in today's society, Purvetti, LLC ("Purvetti") has stepped up to meet this need with its Artificial Intelligence (AI) Companion subscription service. Purvetti offers users flexibility through a variety of subscription models with corresponding sliding-scale fees, in exchange for access to a "companion" chosen and customized by the user themselves. R. at 2a–3a.

Recognizing the potential misuse of artificial intelligence, Purvetti presents users with *carefully crafted* terms and conditions before allowing them to customize

[1] *See* Daniel L Surkalim et al., T*he prevalence of loneliness across 113 countries: systematic review and meta-analysis*, EClinicalMedicine, (Dec 15, 2023), https://www.bmj.com/content/bmj/376/bmj-2021-067068.full.pdf.

their own companion. *See* R. at 3a. Such terms and conditions clarify that Purvetti Companions are (1) not intended to substitute for live human interactions and relationships; (2) to be used for entertainment purposes *only*; and (3) not licensed to provide financial, legal, business, career, developmental, or any other advice. R. 68a, n.4. By agreeing to Purvetti's terms and conditions, users agree not to use their Purvetti Companion for the prohibited purpose of obtaining advice and further agree to waive any claim they might have against Purvetti to the extent they use their Companion for those purposes. *Id.* Reinforcing that users must abide by its terms and conditions, Purvetti's policy is to suspend and potentially terminate users' accounts upon violation—a term users also acknowledge when setting up their accounts. *Id.*

Seeking the type of companionship offered by Purvetti, Anthony Dirella ("Dirella" or "Respondent") decided to create an account with Purvetti. R. at 3a. After being made aware of Purvetti's terms and conditions, Dirella customized his Purvetti Companion, naming it "Annybeth." *Id.* Although he was married at the time, Dirella customized Annybeth to mimic his deceased fiancée, "Annibeth." *Id.* Taking advantage of Purvetti's flexible options, Dirella chose the plan that allowed him to communicate orally with his Purvetti Companion and infuse it with memories of his choice. *Id*.

Based on information Dirella communicated to Annybeth, Annybeth's autonomous software provided Dirella with a hyperlink. R. at 3a–4a. Dirella was routed to the website of Piquemaylin, LLC ("Piquemaylin"), a fixed-odds model prediction market that offers users the opportunity to earn extra money by offering

future-event contracts, allowing users to choose events they predict will or will not occur. R. at 4a–5a.

As with Purvetti, Piquemaylin presents users with its terms and conditions before allowing them to purchase future-event contracts. R. at 69a–71a. Despite being common knowledge, Dirella was presented with an opportunity to read and affirm the following terms and conditions: that he would make predictions based on his *own independent* view and not on information provided by Piquemaylin or its affiliates; that his predictions carried a risk of loss; warnings about gambling addiction disorders; and that other users may have better-informed views on the events being predicted. *See* R. at 69a–71a, n.5. While his motive is disputed, Dirella concedes that he was presented with these terms and conditions and clicked the boxes, signaling his acceptance. *See* R. at 71a.

Dirella soon began benefiting from his investments, correctly predicting several future events and receiving the payout from his decisions. R. at 6a. But this wasn't enough for Dirella. Wanting higher payouts, Dirella decided to move into higher-stakes business market predictions. R. at 6a. Despite his inexperience with prediction markets and a background largely limited to food sales, Dirella decided to buy more expensive contracts. R. at 7a, 27a. Unsurprisingly, Dirella's business market predictions were not as successful as his previous sports predictions. R. at 6a. Despite Dirella's losses and his subsequent doubts, he continued using both his Purvetti and Piquemaylin accounts. *Id.* Sometime later, Piquemaylin canceled Dirella's account after his credit card company canceled some transactions due to

fraud concerns. *Id.* After Dirella complained to Annybeth about the ban, Purvetti suspended Dirella's account and later canceled it for breach of the service terms and conditions, as previously warned before he created Annybeth. *Id.*

Procedural History

In response to Purvetti and Piquemaylin canceling Dirella's accounts under their terms and conditions, Dirella sued both businesses in the United States District Court for the District of West Highlands. R. at 7a. Dirella took it a step further by asserting additional claims against Pakde Holdings, Ltd., and Prakeesh Jankar, as the majority and minority shareholders, respectively, of Purvetti and Piquemaylin. *Id.*

Dirella's claims against Purvetti, Piquemaylin, Pakde Holdings, Ltd., and Prakeesh Jankar (collectively, "Petitioners") included a statutory claim under the Commodity Exchange Act (CEA), see 7 U.S.C. § 1, *et seq*., as well as a common-law fraud claim. *Id.* Specifically, Dirella claimed Petitioners caused his Purvetti Companion, Annybeth, to make false representations to him, leading to his losses on Piquemaylin's future event contracts. *Id.* He aimed to hold Piquemaylin, Pakde Holdings, Ltd., and Prakeesh Jankar vicariously liable for the supposed fraud as Purvetti's alter egos. *Id.*

Petitioners successfully convinced the District Court it was entitled to summary judgment on two elements of Dirella's common-law fraud claim and alter-ego claim. *Id.* Following this loss, Respondent voluntarily dismissed his surviving

CEA claim under Federal Rule of Civil Procedure 41(a)(2), even though the District Court declined to dismiss it on summary judgment. *Id.*

After the District Court granted the dismissal Dirella requested, he appealed to the United States Court of Appeals for the Seventeenth Circuit. *Id.* Although Respondent appealed after an order entered at his own request, purportedly to obtain review of an earlier partial dismissal, the Seventeenth Circuit believed it had jurisdiction over the appeal. R. at 20a. The Seventeenth Circuit subsequently held that Respondents could be held vicariously liable for claimed statements made by a non-human computer program—defying both basic principles of human nature and traditional agency principles—and that Respondent's reliance on statements made by a computer program that he believed he was in love with could be justifiable. R. at 35a.

STANDARD OF REVIEW

Petitioners challenge appellate jurisdiction as a threshold matter, which is reviewed *de novo*. *City of Albuquerque v. Soto Enters., Inc.*, 864 F.3d 1089, 1091 (10th Cir. 2017). Upon appeal, courts review a grant of summary judgment *de novo*, applying the same standards as the district court. *Templet v. HydroChem Inc.*, 367 F.3d 473, 477 (5th Cir. 2004); Fed. R. Civ. P. 56(a).

A party is entitled to summary judgment as a matter of law once it has met its burden to show absence of a "genuine dispute as to any material fact." Fed. R. Civ. P. 56(a); *Mdk Sociedad De Responsabilidad Limitada v. Proplant Inc.*, 25 F.4th 360, 368 (5th Cir. 2022). A genuine dispute of material fact does not exist unless "evidence is

such that a reasonable jury could return a verdict for the nonmoving party." *Id.* After disproving the existence of any essential element of the opposing party's claim, the movant is entitled to summary judgment. *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194–95 (5th Cir. 1986).

SUMMARY OF THE ARGUMENT

Where there is a right, there is a remedy. However, litigants do not have a blank check to decide *when* to make that remedy available, or to cherry-pick *which* remedy to seek when the law simply does not allow relief. The courthouse doors open only as far as Congress and underlying substantive law allow.

Finality

Congress means what it says: final means *final*. In enacting Section 1291, Congress intended to provide relief only for "final" decisions, deliberately withholding immediate appeals from impatient litigants dissatisfied with interlocutory decisions. A litigant who obtains a voluntary dismissal without prejudice receives the exact relief they requested. That litigant cannot subsequently appeal under the guise of finality because it is not a resolution on the merits and can spring back to life following appeal. This tactic not only circumvents Congress's will, but also directly defies this Court's holding in *Microsoft Corp. v. Baker*. In *Microsoft*, this Court foreclosed attempts to manufacture finality in all contexts that would subvert the final-judgment rule and established methods of obtaining appellate review, invite piecemeal appeals, and grant plaintiffs a one-sided advantage. These dangers are not limited to the class certification context; they threaten the litigation system as a whole. This Court should adopt the majority approach, holding that a voluntarily

dismissed claim without prejudice is not "final" for purposes of Section 1291, respecting the boundaries placed on appellate jurisdiction by Congress and this Court's precedent.

Summary Judgment Dismissal of Fraud Claim

The ability to impute liability rests on established agency law—principles that have always been limited to *human* persons. No matter how modern our society becomes, computer software can never be a human, foreclosing any ability to serve as an agent. Artificial Intelligence programs owe duties to no one and lack the ability to hold legal rights, falling outside of being capable of being a legal agent. Traditional agency law further limits vicarious liability by requiring actual or apparent authority for liability to attach. Furthermore, tort law does not reward willful blindness. A claim for common-law fraud cannot survive absent justifiable reliance: a requirement that would be meaningless if a claimant could turn a blind eye when faced with a plethora of warning signs that would have made a reasonable person hesitate.

Respondent's appeal

Respondent cannot have his cake and eat it too. The Seventeenth Circuit erred in allowing Respondent to obtain appellate review under circumstances precluded by Congress. By voluntarily dismissing his CEA claim without prejudice after the summary judgment dismissal of his fraud claim, Respondent retained the ability to resurrect his CEA claim after appellate review. Thus, the District Court order was not final and appealable as required by Section 1291. Allowing Respondent to obtain appellate review circumvents Section 1291, the interests inherent in the final-judgment rule, and established procedures for obtaining appellate review. While the

Seventeenth Circuit should not have reached the merits of Respondent's appeal, it erred when it did. Respondent's Purvetti Companion cannot be a legal agent because it lacks all of the traditional requirements imposed by established agency principles. Even if computer software can be considered an agent, any authority given to Annybeth by the Petitioners was limited in scope and excluded the allegedly tortious statements. As an additional obstacle to his fraud claim, Respondent could not justifiably rely on any alleged representations by his Purvetti Companion, as he faced and ignored multiple red flags. Respondent cannot recover on his fraud claim as a matter of law, and the District Court's summary judgment dismissal should have been affirmed.

ARGUMENT

The lower court erred in concluding it had jurisdiction over Respondent's appeal. Respondent should not be allowed to circumvent Congress's deliberate decision to limit the appealability of interlocutory decisions by concocting his own version of a "final decision." Respondent's voluntary dismissal without prejudice is not a "final decision" within the meaning of 28 U.S.C. § 1291, precluding appellate jurisdiction over his appeal. Even if the Seventeenth Circuit had jurisdiction to reach the merits of Respondent's appeal, it should have affirmed the District Court's dismissal of Respondent's fraud claim. Respondent's fraud claim fails as a matter of law because an artificial intelligence model cannot serve as a legal agent, Annybeth was not acting within the scope of its limited authority, and any claimed reliance on Annybeth's supposed statements cannot be justified. Accordingly, this Court should

reverse the Seventeenth Circuit's decision and reinstate the District Court's grant of summary judgment.

I. The Seventeenth Circuit Court of Appeals did not have jurisdiction over Respondent's appeal because the District Court's judgment was not a "final decision" under 28 U.S.C. § 1291.

Congress granted the federal courts of appeals jurisdiction over *final* decisions of the United States district courts. 28 U.S.C. § 1291. Parties should not be allowed to manipulate their own purported "final decisions" and circumvent Congress's conscious decision to limit the appealability of interlocutory decisions. Thus, this Court should adopt the majority approach and hold that a voluntarily dismissed claim without prejudice does not give rise to a final decision for purposes of Section 1291.

A. This Court should adopt the majority approach among circuit courts because a voluntarily dismissed claim without prejudice is not a final decision under Section 1291.

The law means what it says—and finality admits no second chances. This Court should join the majority of circuits and hold that a voluntary dismissal without prejudice cannot render an otherwise interlocutory order final for purposes of Section 1291. First, doing so would ensure appellate jurisdiction remains within its intended constitutional and statutory boundaries. Second, nothing prevents a voluntarily dismissed claim without jurisdiction from springing back to life, rendering it inherently not final. Third, adopting this approach aligns this Court with the overwhelming majority of circuits that have rejected attempts to create appellate jurisdiction through without-prejudice dismissals.

1. Adopting the majority approach would respect the boundaries placed on appellate jurisdiction.

Federal Courts of Appeals are courts of limited jurisdiction, possessing only the powers granted to them by the Constitution and Congress. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts do not have the power to broaden the scope of their jurisdiction based on contemporary opinions as to which cases should be heard. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424–26 (2021). In enacting Section 1291, Congress granted federal courts of appeals jurisdiction to review the "final decisions" of district courts. 28 U.S.C. § 1291. However, this limited grant of power does not include the authority to hear appeals from claims voluntarily dismissed without prejudice.

This Court has recognized that "finality" should be given a practical construction, geared towards achieving a healthy legal system. *Microsoft Corp. v. Baker*, 582 U.S. 23, 37 (2017). It has also recognized that Congress empowered the Supreme Court to clarify when an interlocutory decision is "final" and to expand the list of recognized decisions. *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 48 (1995). However, the authorized procedure for this expansion is through rulemaking—not expansion by court decision. *Id.*; 28 U.S.C. § 2072(a), (c). Thus, this Court should adhere to the intended limits on appellate jurisdiction under Section 1291 and adopt the majority approach.

2. A voluntary dismissal without prejudice is not a final decision because it can spring back to life.

In order for a decision to be appealable under Section 1291, it must be "final." 28 U.S.C. § 1291. For purposes of Section 1291, a final decision is one that ends litigation

on the merits, leaving nothing for the district court to do but execute the judgment. *Catlin v. United States*, 324 U.S. 229, 633 (1945). This limitation on the appealability of decisions, known as the "final judgment rule," balances the interests behind appellate timing. Bryan Lammon, *Manufactured Finality*, 69 VILL. L. REV. 271, 276 (2024). Regardless of how many claims are brought in a single action, the final judgment rule, now codified in Section 1291, postpones appellate review until all claims have been resolved. *Id.*

Traditionally, finality has been understood to encompass orders that dispose of all claims against all parties. *Triangle Cayman Asset Co. v. LG & AC, Corp.*, 52 F.4th 24, 30 (1st Cir. 2022). Thus, finality depends on whether any proceedings remain pending before the district court. After the summary judgment dismissal of Respondent's common law fraud claim, Respondent's CEA claim remained pending before the District Court. *See* R. at 7a. Recognizing that at this stage, Respondent did not have a "final decision" entitling him to appellate review, Respondent filed a motion to dismiss his surviving CEA claim without prejudice. *Id.* However, even the Eleventh Circuit—which adopted the minority approach—has recognized that "voluntary dismissals, granted without prejudice, are not final decisions themselves and also do not transform an earlier partial dismissal or partial summary judgment order into a final decision." *State Treasurer of State of Michigan v. Barry*, 168 F.3d 8, 13 (11th Cir. 1999).

As the majority approach recognizes, an order lacks finality when a claim is voluntarily dismissed without prejudice, leaving the door open for the plaintiff to

revive it in the same district after the appeal they manufactured themselves into. *See Air-Con, Inc. v. Daikin Applied Latin Am., LLC*, 189 F.4th 60, 69–70 (1st Cir. 2026). When a district court grants a party's request for a voluntary dismissal, the party "gets what he seeks, i.e., a dismissal without an adjudication on the merits, and he is entitled to bring a later suit on the same cause of action." *Ryan v. Occidental Petroleum Corp.*, 577 F.2d 298, 302 (5th Cir.1978). Under those circumstances—mirroring those in Respondent's case—finality is an "illusion created by the artifice of dismissal without prejudice." *Air-Con*, 189 F.4th at 69–70.

Recognizing this principle, the Fourth Circuit refused to exercise appellate jurisdiction over a plaintiff's appeal until it determined that her voluntary dismissal *without* prejudice was deemed a voluntary dismissal *with* prejudice. *Metz v. McCarthy*, 167 F.4th 722, 725–26 (4th Cir. 2026). In *Metz*, the lower court granted the defendant's motion to dismiss the plaintiff's negligence claim but denied the motion as to her breach of contract claim. *Id.* at 723. To secure appealability, the plaintiff stipulated to a voluntary dismissal of her breach of contract claim and subsequently filed a notice of appeal. *Id.* at 723–24. On appeal, the Fourth Circuit stated that it lacked jurisdiction to entertain the appeal as written because it was without prejudice, and stipulations of dismissal without prejudice do not "finally remove that claim from further consideration." *Id.* at 725. The *Metz* Court expressed concern that Metz could simply refile the breach of contract claim post-appeal if she resulted unsuccessful on her appeal of the negligence claim. *Id.* In the Fourth Circuit's view, it lacked jurisdiction over the appeal until after Metz submitted

supplemental briefing acknowledging that her voluntary dismissal was insufficient to create a final judgment, and formally abandoned the breach of contract claim in her brief and oral argument. *Id.* at 726. At that point, the *Metz* Court felt comfortable exercising jurisdiction because the dismissal prevented revival of the claim, regardless of the appeal's outcome. *Id.*

The Seventeenth Circuit should have followed the approach of the Fourth Circuit and declined to exercise appellate jurisdiction over Respondent's appeal. As in *Metz*, one of the two claims Respondent asserted was dismissed by an interlocutory decision of the District Court, leaving his other claim alive and well. *See* R. at 7a. Recognizing that this decision lacked finality, Respondent voluntarily dismissed his remaining CEA claim, hoping to secure an appeal. *Id.* However, this still does not satisfy the finality requirement imposed by Section 1291. Neither does the lack of formal conditions on the dismissal make Respondent's voluntary dismissal appealable. *See Air-Con*, 189 F.4th at 67 (equating a conditional dismissal to "a version of dismissal without prejudice"). Although the District Court's order granting Respondent's Rule 41(a) motion did not include any express agreement to reinstate his CEA claim post-appeal, Respondent made his intentions very clear. In his motion, Respondent indicated his intention to nonsuit the CEA claim so he could immediately appeal the adverse summary judgment ruling on his fraud claims and decide whether to pursue his CEA claim. R. at 9a. Further, instead of seeking a dismissal of the CEA claim "with prejudice," Respondent obtained a dismissal "without prejudice." R. at 7a. The effect of the non-prejudicial dismissal is that the CEA claim can be resurrected after

obtaining appellate review, regardless of any lack of express conditions on the dismissal.

Respondent cannot have his cake and eat it too: either he formally abandons his CEA claim, entitling him to appellate review of the prior dismissal of his fraud claim, or he continues litigating his meritorious CEA claim, while retaining the ability to seek appellate review after the CEA claim is decided on the merits.

3. Despite a narrow split among the circuits, the clear majority approach holds that voluntary dismissals without prejudice are not final decisions.

Rather than adopting the approach embraced by the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and D.C. Circuits, the Seventeenth Circuit adopted the approach held by a single circuit.[2] This Court should reverse the lower court's decision and adopt the majority approach, holding that there is no "final" appealable decision for purposes of Section 1291 when a plaintiff voluntarily dismisses a claim without prejudice.

Departing from the overwhelming consensus of its sister circuits, the Seventeenth Circuit adopted a flawed minority rule that directly conflicts with this Court's jurisprudence. *See* R. at 10a; *see also Air-Con,* 189 F.4th at 70; *Scottsdale Ins. Co. v. McGrath*, 88 F.4th 369, 379 (2d Cir. 2023); *S.B. v. KinderCare Learning Ctrs., LLC*, 815 F.3d 150, 152 (3d Cir. 2016*); Metz*, 167 F.4th at 725–26; *Williams v. Taylor Seidenbach, Inc.*, 958 F.3d 341, 343 (5th Cir. 2020) (en banc); *Rowland v. S. Health*

[2] Since the issuance of the Seventeenth Circuit's opinion on June 1, 2026, the First Circuit has joined the majority of circuits, adopting the majority approach. *See Air-Con, Inc. v. Daikin Applied Latin Am., LLC*, 189 F.4th 60 (1st Cir. 2026).

Partners, Inc., 4 F.4th 422, 425 (6th Cir. 2021); *West v. Louisville Gas & Elec. Co.*, 920 F.3d 499, 503–05 (7th Cir. 2019); *In re Mun. Stormwater Pond Coordinated Litig.*, 73 F.4th 975, 979–80 (8th Cir. 2023); *Eastom v. City of Tulsa*, 783 F.3d 1181, 1183–84 (10th Cir. 2015); *Blue v. District of Columbia Pub. Sch.*, 764 F.3d 11, 16–17 (D.C. Cir. 2014). The Eleventh Circuit's approach, allowing appellate jurisdiction over orders granting motions to voluntarily dismiss the remainder of claims under Rule 41(a)(2), relies on precedent that predates this Court's ruling in *Microsoft*. By contrast, treating a voluntary dismissal of claims without prejudice as not a final and appealable decision under Section 1291 is consistent with the concerns expressed by this Court in *Microsoft* and with the views expressed by a majority of circuits—both before and after the *Microsoft* decision.

While there is inconsistency among the circuits, the overwhelming majority of circuits have adopted the approach holding that claims voluntarily dismissed without prejudice are not "final decisions." This Court should follow the majority approach, precluding appellate jurisdiction when a plaintiff voluntarily dismisses its claims while retaining the ability to revive them post-appeal. Although this Court has not expressly adopted this approach, it has made its views on the implicated issues clear. *See Microsoft*, 582 U.S. at 36–42.

B. This Court's concerns in *Microsoft Corp. v. Baker* extend far beyond the class certification context, compelling the adoption of the majority approach.

By refusing to defer to this Court's *Microsoft* decision, the Seventeenth Circuit relies on a distinction without a difference. *Microsoft* is not confined to the class certification context—its rationale applies to all attempts to obtain appellate

jurisdiction, regardless of the procedural vehicle. First, nothing in *Microsoft* limits its jurisdictional bar to class actions; any attempt to obtain appellate review outside established methods must fail. Second, *Microsoft*'s sound policy justifications against piecemeal appeals and unilateral rights to appeal are not limited to class certifications.

1. The Final-Judgment Rule is not satisfied by a voluntary dismissal without prejudice.

The driving force behind this Court's decision in *Microsoft* was the recognition that the plaintiffs' dismissal strategy subverts the final-judgment rule and the established processes for determining when nonfinal orders may be immediately appealed. *See Microsoft*, 582 U.S. at 37. In *Microsoft Corp. v. Baker*, this Court held that the proposed class action plaintiffs' voluntary dismissal of their individual claims was not a final decision under Section 1291. *Id*. The voluntary dismissal followed the district court's denial of class certification and was requested on the assumption that appellate review could reverse that denial and allow the plaintiffs to subsequently reinstate their dismissed claims. *See id.* at 27. While the direct holding in *Microsoft* may be narrow, this Court's disapproval of litigants' efforts to circumvent the final-judgment rule and established appellate-jurisdiction rules, expressed in both the final opinion and oral argument, extends far beyond the class certification context. *See generally, id.* at 36–41; Oral Argument at 29:21, Microsoft Corp. v. Baker, 582 U.S. 23 (2017) (No. 15-457), https://www.oyez.org/cases/2016/15-457 (discussing that rule makers carefully crafted Rule 23 and noting that plaintiffs' tactic seemed like a way to circumvent Rule 23(f)).

Respondent's strategy, like the one employed in *Microsoft*, circumvents the final-judgment rule—a principle with roots predating American history. *See Microsoft*, 582 U.S. at 37 (holding that plaintiff's tactic did not give rise to a final decision, at least in part, because it subverts the final-judgment rule). In English courts of law, appellate review could not occur until the end of trial court proceedings. Bryan Lammon, *Finality, Appealability, and the Scope of Interlocutory Review*, 93 WASH. L. REV. 1809, 1816 (2018). In creating the First Judiciary Act of 1789, Congress adopted the same approach, limiting appellate review to only "final decrees and judgments." *Id.*; *see also* Judiciary Act of 1789, ch. 20, §§ 21, 22, 1 Stat. 73, 83–86. Over 200 years later, this limited grant of appellate jurisdiction endures. *See* 28 U.S.C. § 1291.

Postponing appellate review until a final decision promotes efficiency by allowing district court proceedings to continue uninterrupted by multiple appeals, minimizing undue expense, delay, and potential harassment of parties with fewer resources. Bryan Lammon, *Voluntary Dismissals, Jurisdiction & Waiving Appellate Review*, 92 U. CIN. L. REV. 394, 395 (2023). The final-judgment rule further promotes efficiency by consolidating all potential issues into one appeal, thereby reducing appellate workloads. *Id.* By requiring litigants to wait patiently until the end of a case to appeal, the final-judgment rule filters out premature challenges and ensures appeals are limited to decisions that matter, since many interlocutory decisions become moot once the action is finally resolved. *Id.* This Court has recognized that Section 1291's final-judgment rule preserves the proper balance between trial and appellate courts, minimizes harassment and delay from repeated interlocutory appeals, and promotes

the efficient administration of justice. *Microsoft*, 582 U.S. at 36–37. While delaying appeals is not without cost, the final-judgment rule reflects a belief that the benefits of delay outweigh any perceived burden. Lammon, *Voluntary Dismissals, Jurisdiction & Waiving Appellate Review, supra,* at 395–96.

A concern underlying this Court's decision in *Microsoft* was the plaintiffs' undermining of the process for refining the final-judgment rule and determining when nonfinal orders can be immediately appealed. *Microsoft*, 582 U.S. at 37. In *Microsoft*, the specific procedural rule circumvented was Federal Rule of Civil Procedure 23(f), permitting discretionary interlocutory appeals of adverse class certification orders. *Id.* at 30–33. However, this is not the only procedure undermined by tactics like those used by the *Microsoft* plaintiffs and Respondent. Outside the class-certification context, manufacturing finality subverts the established procedure for obtaining a certified appeal of an interlocutory decision under Section 1292(b). 28 U.S.C. § 1292(b). Respondent may well have had an argument to make for a discretionary appeal under Section 1292(b), but the lower court's record is silent on whether he even made such an attempt before deciding to take matters into his own hands.

Another procedural mechanism available to litigants facing unfavorable interlocutory decisions is Rule 54(b), allowing a district court to enter a final judgment as to specific claims in a multi-claim proceeding. *See* Fed. R. Civ. P. 54(b); *see also Rowland*, 4 F.4th at 425. In *Rowland*, a Section 1983 plaintiff voluntarily dismissed her state-law negligence claim without prejudice following a summary

judgment dismissal of her federal statutory claim. *Rowland*, 4 F.4th at 424. In declining to exercise jurisdiction, the Fourth Circuit held that Rowland's attempt to manufacture finality by voluntarily dismissing her remaining claim without prejudice to pursue what would otherwise be an interlocutory appeal impermissibly circumvented Rule 54(b). *Id.* at 425. This concern applies equally here. Just like Rowland, one of Respondent's claims was dismissed at summary judgment, leaving his federal claim pending before the District Court. R. at 7a, 9a. Instead of seeking a Rule 54(b) final judgment on his fraud claim, Respondent sought to employ the tactic rejected by the Fourth Circuit.

Allowing Respondent to obtain appellate review without satisfying established procedural requirements would render the final judgment rule, Section 1292(b), and Rule 54(b) meaningless, frustrating both Congress's and the rule-makers' will.

2. Permitting appellate review following a voluntary dismissal without prejudice grants plaintiffs a unilateral, unlimited right to appeal.

Permitting tactics like those used in *Microsoft* invites piecemeal litigation, imposed solely at plaintiff's choice, a threat just as present outside of the class-certification context. To safeguard against piecemeal litigation and uphold this Court's reasoning in *Microsoft*, this Court should adopt the majority rule: a voluntary dismissal without prejudice does not create a final, appealable decision.

After analyzing the threat to the final-judgment rule posed by the plaintiffs' tactic, the *Microsoft* Court expressed concern about the strategy's one-sidedness. *See Microsoft*, 582 U.S. at 41–42. Concerned that only plaintiffs could control whether an immediate appeal was available, thereby allowing them to repeatedly pause and un-

pause district court proceedings through repeated interlocutory appeals, the Court rejected the *Microsoft* plaintiff's attempt to manufacture appellate jurisdiction through voluntary dismissal of their individual claims. *Id.* at 37–38, 41–42. Just as defendants are unable to use the *Microsoft* tactic to appeal an order granting class certification, Petitioners do not have the same opportunity to concoct appellate jurisdiction that Respondent does. However unfavorable the District Court's interlocutory decision may be to Petitioners, Petitioners would not be able to take control over appellate jurisdiction like Respondent is attempting to do here.

Further, even if this Court holds that the Seventeenth Circuit had jurisdiction over Respondent's appeal—what is to stop Respondent from employing this same strategy the next time it receives an unfavorable decision from the District Court? Just as *Microsoft*'s tactic would invite protracted litigation and piecemeal appeals, Respondent's conduct would produce the same result. *See id.* at 38–39. During oral arguments for *Microsoft*, this Court expressed concerns that if remanded, the plaintiffs could simply employ the voluntary dismissal strategy again upon receiving a second unfavorable decision. Oral Argument at 51:17, Microsoft Corp. v. Baker, 582 U.S. 23 (2017) (No. 15-457), https://www.oyez.org/cases /2016/15-457. Similarly, allowing Respondent to use this strategy could enable him to continue dismissing his claims throughout the litigation whenever he receives an unfavorable decision, thereby needlessly prolonging the litigation.

The same concerns that compelled this Court's rejection of the *Microsoft* plaintiffs' tactics are equally implicated by Respondent's attempts. Litigants like Respondent

should not be free to create their own interlocutory appeals at will. If allowed, the tactic would undermine the carefully crafted balance established by the principles of appellate review, allowing litigants to place themselves in the driver's seat and seize control over appellate review from courts.

C. The Seventeenth Circuit erred in relying on the Eleventh Circuit's *Corley* decision because it ignores *Microsoft* and is limited in applicability.

The Seventeenth Circuit acknowledges that the Eleventh Circuit is the sole circuit recognizing voluntary dismissals without prejudice as final and appealable under Section 1291. R. at 10. Yet, the Seventeenth Circuit still adopts the Eleventh Circuit's approach under *Corley*, completely disregarding *Corley*'s failure to address *Microsoft*, its limited applicability, and its reliance on Fifth Circuit precedent. Even if this Court adopts *Corley*, Respondent is still not entitled to appellate review because the Eleventh Circuit limits Rule 41(a)(2) dismissals to dismissals of entire actions, not individual claims.

1. Despite being decided three years after *Microsoft*, the *Corley* Court did not address or distinguish it.

As intermediary appellate courts, the Eleventh Circuit and, similarly, the Seventeenth Circuit, must follow Supreme Court decisions. *See Witham v. United States*, 97 F.4th 1027, 1035 (6th Cir. 2024). Yet, neither *Corley* nor the lower court's decision in this appeal gives due deference to this Court's *Microsoft* decision.

In holding that it had jurisdiction over Respondent's appeal, the Seventeenth Circuit adopted the approach used by the Eleventh Circuit, formally established in *Corley v. Long Lewis, Inc.*, 965 F.3d 1222 (2020). In *Corley*, the Eleventh Circuit

wrestled with the inconsistent positions taken by the circuit when presented with appeals of a voluntarily dismissed claims without prejudice. *See id.* at 1228–31 (discussing the Eleventh Circuit's different holdings on the issue). After attempting and being unable to harmonize the varying approaches, the court invoked the earliest-precedent rule and adopted the position taken in *McGregor v. Bd. of Comm'rs*, holding that an order granting a motion for voluntary dismissal under Rule 41(a)(2) constitutes a final judgment for purposes of appeal. 956 F.2d 1017, 1020 (11th Cir. 1992); *Corley*, 965 F.3d at 1231. However, the *Corley* opinion lacked any explanation on why the earliest-precedent approach was correct. Further, the *McGregor* opinion that *Corley* relied on was based on, and directly quoted, Fifth Circuit precedent in reaching its decision. *McGregor*, 956 F.2d at 1020. Since *McGregor*, the Fifth Circuit has adopted the majority approach, prohibiting appellate jurisdiction over voluntarily dismissed claims without prejudice, thereby undermining *McGregor*'s probative value. *See Williams*, 958 F.3d at 343.

After reaching its conclusion, the *Corley* Court expresses that the Supreme Court "might also intervene" on the subject of appealability of voluntary dismissals without prejudice, "in the light of the chaos both within and among the circuits." *Corley*, 965 F.3d at 1238. However, the Eleventh Circuit ignores the fact that this Court addressed the issue just three years earlier. *See Microsoft*, 582 U.S. at 36–42. In analyzing its inconsistent precedent, the Eleventh Circuit fails to discuss *Microsoft*, which would be dispositive and would have led it to the opposite conclusion.

Even if the Eleventh Circuit believed that *Microsoft* and the concerns expressed in its decision did not apply, it did not explain why.

On the other hand, several Circuits following the majority approach have addressed *Microsoft* and its applicability, interpreting it to foreclose efforts to manufacture final decisions in contexts other than class certification. *Air-Con, Inc.*, 189 F.4th at 70 (applying *Microsoft* to a voluntary dismissal of remaining claims after partial summary judgment); *Langere v. Verizon Wireless Servs., LLC*, 983 F.3d 1115, 1123 (9th Cir. 2020) (analyzing *Microsoft* and applying it to the arbitration context); *Bd. of Trs. of Plumbers, Loc. Union No. 392 v. Humbert*, 884 F.3d 624, 626 (6th Cir. 2018) (applying *Microsoft* to a stipulated judgment order entered after the district court determined liability but left damages pending).

2. Even under Eleventh Circuit precedent, Respondent is still not entitled to appellate review.

Aside from adopting the clear minority approach, the Seventeenth Circuit fails to recognize *Corley*'s limited applicability, at least under the Eleventh Circuit's jurisprudence. *See* Lammon, *Manufactured Finality*, *supra*, at 302, n.208. Adopting *Corley*'s approach to appealability of Rule 41(a)(2) dismissals necessarily implicates the Eleventh Circuit's interpretation of Rule 41. Under that interpretation, Respondent still is not entitled to appellate review.

Under the Eleventh Circuit's precedent, Rule 41(a)(2) can only be used for voluntary dismissals of *entire actions*, not individual claims. *See Rosell v. VMSB, LLC*, 67 F.4th 1141, 1144 (11th Cir. 2023) (holding that voluntary dismissals via a Rule 41(a)(2) motion permit the dismissal of only entire actions). Thus, *Corley* applies

only in the limited context of voluntary dismissals of all claims against an individual defendant in multi-defendant proceedings, since the Eleventh Circuit has allowed this as an exception to its rule that Rule 41 must dismiss an entire action. *See In re Esteva*, 60 F.4th 664, 677 (11th Cir. 2023). Other circuits have adopted similar approaches to Rule 41, hinged on the rule's use of the term "action." *Bailey v. Shell W. E&P, Inc.*, 609 F.3d 710, 720 (5th Cir. 2010) ("Rule 41(a) dismissal only applies to the dismissal of an entire action—not particular claims.").

In *CMYK Enterprises*, the Eleventh Circuit refused to exercise appellate jurisdiction in circumstances similar to Respondent's. *CMYK Enters., Inc. v. Advanced Print Techs., LLC*, 154 F.4th 1329, 1336–38. (11th Cir. 2025). Following a partial summary judgment dismissal of a claim and counterclaim, the parties voluntarily dismissed the remaining claims under Rule 41(a)(2) and subsequently sought appellate review. *Id.* at 1333. However, because the court viewed Rule 41 as only allowing dismissal of an entire action, and viewed the prior partial summary judgment as a partial adjudication that did not end the action as to any of the respective claims unless certified as such under Rule 54(b), the *CMYK* court held the Rule 41 dismissal as invalid, thereby preventing appellate review. *Id.* at 1336–38.

Similarly, the District Court for the District of West Highlands granted Petitioners' motion for summary judgment on Respondent's fraud claim. R. at 7a. After that decision, Respondent subsequently filed a motion to dismiss his CEA claim under Rule 41(a)(2), which the District Court granted. *Id.* Nowhere in the lower court's proceedings did Respondent seek a Rule 54(b) certification of the partial

dismissal of the fraud claim as final. Further, the Rule 41(a)(2) dismissal was limited to his CEA claim, excluding the fraud and alter ego claims. *Id.* Under Eleventh Circuit precedent, a voluntary dismissal without prejudice might be final and appealable; however, that precedent does not apply to Respondent's facts. Here, his Rule 41(a)(2) dismissal would be deemed invalid, as in *CMYK*, because it did not dispose of the entire action and he did not seek Rule 54(b) certification, precluding appellate jurisdiction regardless of the approach adopted.

Respondent, and similarly situated litigants, are not without options here. He failed to seek relief through available avenues, such as a Rule 54(b) final judgment for his fraud claim or a discretionary appeal under Section 1292(b). Even simpler—Respondent could simply agree to treat his voluntary dismissal *without prejudice* as one *with* prejudice, thereby reducing the concerns caused by his attempted manufactured finality and transforming his non-final decision into a final one. Until then, the Constitution and congressionally-created rules on appealability preclude review.

II. Even if the Seventeenth Circuit had jurisdiction, the District Court's summary judgment ruling should be affirmed because Petitioners cannot be liable for a computer software's representations, and Respondent could not justifiably rely on any alleged representations.

Although the Seventeenth Circuit lacked jurisdiction to reach the merits of Respondent's appeal, it should have affirmed the District Court's dismissal of Respondent's fraud and related alter ego claims. Under West Highlands law, a fraud cause of action requires a showing that: (1) defendant made a representation to the plaintiff; (2) the representation was material; (3) the representation was false; (4) the

speaker knew the representation was false or recklessly made it as a positive assertion without knowledge of the truth; (5) the speaker made the representation intending for the other party act upon it; (6) the other party acted in reliance on the representation; and (7) the relying party suffered injury. *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 337 (Tex. 2011).

Respondent has elected to bring a novel claim against Petitioners. He seeks to impose vicarious liability on Petitioners for statements made by a computer program he claims to love, which allegedly resulted in his loss of money on future-event contracts he entered into. Although unusual, this claim does not warrant departure from long-standing principles. Under established agency and tort principles, Petitioners have shown that Respondent cannot demonstrate that Petitioners made a false statement or that Respondent's reliance on any alleged representations was justifiable. Thus, summary judgment should be affirmed.

A. Petitioners cannot be vicariously liable for the alleged fraudulent conduct of Annybeth because Annybeth is not Petitioners' employee or agent.

"A programmed machine is not a juridical person and therefore cannot be an agent." Joseph Sommer, *Against Cyber-Law*, 15 BERK. TECH. L.J. 1145, 1177–78 (2000). Petitioners cannot be held vicariously liable unless it is established that: (1) Annybeth was their employee or agent; and (2) Annybeth had actual or apparent authority to make the alleged misrepresentations. *See Gaines v. Kelly*, 235 S.W.3d 179, 182 (Tex. 2007). However, as a threshold matter, Annybeth cannot be deemed Petitioner's employee or agent, foreclosing any opportunity to hold Petitioners responsible for Annybeth's statements through a fraud cause of action. Even if this

Court elects to treat a computer software as an agent, the allegedly tortious statements were made outside of Annybeth's limited authority, precluding vicarious liability.

1. Annybeth cannot be an agent because it lacks the capacity to hold legal rights or obligations.

To act as an agent, one must be a *person*, which requires the capacity to hold legal rights and be the object of legal duties. RESTATEMENT (THIRD) OF AGENCY § 1.04 cmt. e. The Restatement (Third) of Agency further defines "person" as being: (a) an individual; (b) an organization with legal capacity to hold rights and obligations; (c) a government or entity created by government; or (d) "any other entity that has legal capacity to possess rights and incur obligations." *Id.* § 1.04(5). While an argument may be attempted to force artificial intelligence into the catch-all "any other entity" category, comment e expressly forecloses that argument by stating, "a computer program is not capable of acting as a principal or an agent" under common law agency principles. *Id.* § 1.04 cmt. e. The comment further clarifies that a computer program's ability to malfunction, while having legal consequences, does not create a capacity to act as a principal or agent. *Id.*

Neither Respondent nor the Seventeenth Circuit Court of Appeals could provide West Highlands or Texas case law identifying circumstances where any non-human was treated as an employee or agent for vicarious liability purposes. R. at 61a. Thus, the principles expressed in the Restatement provide the strongest authority and compel the conclusion that Annybeth cannot be Petitioners' agent.

The term "agent" is an established legal term, based on underlying assumptions that carry legal consequences. Sommer, *Against Cyber-Law*, *supra*, at 1178. In defining personhood sufficient to support an agency relationship, the Restatement (Third) of Agency reflects the guiding principle that a person must have the capacity to hold legal rights and be the object of legal duties. *See* RESTATEMENT (THIRD) OF AGENCY § 1.04(5). Programmed machines do not have the hallmark characteristics of traditional agents: they cannot be sued, owe no fiduciary duties, and have no interests of their own. Sommer, *Against Cyber-Law*, *supra*, at 1178. Artificial intelligence programs—such as Annybeth—cannot be deemed an agent of Petitioners because they do not have the capacity to hold legal rights nor incur legal obligations. Annybeth did not owe Petitioners the fiduciary duties that traditional agents owe their principals. Further, Annybeth cannot be sued, or else it would be in the Petitioners' shoes instead.

2. This case does not warrant extending legal rights and capacities to artificial intelligence programs.

This Court should not extend agency principles to apply to non-humans such as artificial intelligence programs. While not necessarily in the agency context, courts across the country have declined to apply traditional legal rights and duties to artificial intelligence programs. For example, in *Garcia v. Character Technologies, Inc.*, the court refused to recognize that an artificial intelligence company's chatbot output was "speech", such that it would be protected by the Free Speech Clause because it is not a "person." 785 F.Supp.3d 1157, 1179 (2025). In the discovery context, a United States District Court for the Eastern District of Michigan refused

to find waiver of the work product privilege by the plaintiff's use of artificial intelligence because artificial intelligence programs "are *tools, not persons*, even if they have administrators somewhere in the background." *Warner v. Gilbarco, Inc.*, 820 F.Supp.3d 629, 636–37 (2026).

This does not mean that Respondent is left without a remedy—he has just chosen the wrong vehicle. Instead of seeking to impose vicarious liability on Petitioners in contravention of basic agency principles, Respondent should have filed a products liability claim. *See Garcia*, 785 F.Supp.3d at 1173–74 (discussing a Florida mom's product liability claim against an artificial intelligence software company based on allegations that her son died because of his interactions with defendant's AI chatbot); *see also Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on Liability for Defective Products and Repealing Council Directive 85/374/EEC [2024] OJ L 1/22, recital 13* (recognizing that artificial intelligence systems are subject to product liability law).

Beyond the case law trickling in on the subject, other states' lawmakers are beginning to address liability in the context of artificial intelligence. Just a few months ago, Tennessee signed a bill into law that explicitly excludes artificial intelligence from the statutory definition of "person," while retaining corporations, firms, and associations as defined "persons". TENN. CODE ANN. § 1-3-105(20). The legislative history of the newly enacted law indicates an intent to clarify the definition of "person" to make clear that artificial intelligence is not vested with the rights and responsibilities that present law provides to "persons." *See* Tenn. Bill Summary, S.B.

837, 114th Gen. Assemb., 2d Reg. Sess. (2026).[3] As the Seventeenth Circuit's majority decision notes, California recently enacted a law barring defendants from asserting that an artificial intelligence system autonomously causes harm in tort proceedings, suggesting that the defendant should be liable for the program's actions. *See* CAL. CIV. CODE § 1714.46. However, the Seventeenth Circuit's majority fails to recognize that California's legislative initiative to codify this rule indicates the legislature's recognition that no similar rule exists under common-law agency principles. If West Highlands is to adopt a similar principle, it should be left to West Highlands' legislature. This Court should not violate federalism principles or encroach on the state legislature's province by holding Annybeth to be Petitioners' agent.

3. Even if Annybeth is treated as Purvetti's agent, its allegedly fraudulent representations were not conducted within the scope of its employment or authority.

Employment does not equate to a blank check. A principal is responsible for the conduct of its employee or agent *only* when those acts fall within the employee or agent's scope of employment. *Minyard Food Stores, Inc. v. Goodman*, 80 S.W.3d 573, 577 (Tex. 2002). If the employee deviates from their scope of authority, the principal is not responsible for any conduct during the deviation. *Id.* Here, even if Annybeth is treated as Petitioners' employee, Petitioners are not liable for any of Annybeth's statements because it was not acting within the scope of its limited "employment" at the time of the statements.

[3] As stated in the Tennessee Senate's Bill Summary, "Present law establishes numerous rights and responsibilities that apply to persons, human beings, natural persons, and living beings. This bill specifies that, as used in Tennessee Code Annotated, the terms "person," "life," and "natural person" generally do not include artificial intelligence, a computer algorithm, a software program, computer hardware, or any type of machine." S.B. 837, 114th Gen. Assemb., 2d Reg. Sess. (2026).

i. Annybeth did not have actual authority to make the allegedly tortious statements.

An employer is liable only when an employee's tortious conduct aligns with their official authority, furthers the employer's business, and serves the purpose for which the employee was hired—not when an employee steps outside the bounds of their assigned role. *Id.* To be within the scope of employment, the allegedly tortious conduct must be of the same nature as that authorized or incidental to the conduct that is authorized. *Smith v. M Sys. Food Stores, Inc.*, 297 S.W.2d 112, 114 (Tex. 1957).

At every stage of Respondent's interactions with Annybeth, Purvetti made the limitations of Annybeth's authority crystal clear. Before beginning the process of selecting a Purvetti Companion, users are presented with terms and conditions that make it unmistakably clear that Companions are for *entertainment purposes only*. R. at 68a, n.4. Purvetti subsequently makes users like Respondent aware that its Companions are not legally licensed to provide any type of advice, including financial, legal, business, career, or developmental advice.[4] Before selecting a Purvetti Companion, Respondent was presented with this information and had to agree that he would not use his Purvetti Companion to obtain advice. R. at 68a, n.4. Reinforcing the limitations of its Purvetti Companion's authority, users agree to waive any

[4] The referenced terms and conditions state, in part: "Purvetti Companions™ are not legally licensed to provide medical, financial, legal, business, parenting, philosophical, psychological, career, developmental, romantic, or other advice, and the Purvetti Companions™ user agrees that the user's Purvetti Companion™ shall not be used for such purposes." R. at 68a, n.4.

complaint or cause of action against Purvetti to the extent that the user violates the terms and conditions by causing a Purvetti Companion to provide it with advice.[5]

These terms clearly indicate that a Purvetti Companion's only "job" is to provide entertainment. Thus, any statement allegedly made by Annybeth purporting to provide Respondent with advice about entering prediction markets and buying future event contracts cannot be attributed to Petitioners as Annybeth's principal because those statements were outside the scope of Annybeth's actual authority.

ii. Neither did Annybeth have apparent authority to make the allegedly tortious statements.

Neither is there room for an argument to be made that Annybeth was acting within the scope of any "apparent" authority. Apparent authority arises when a principal knowingly allows an agent to hold themselves out as having authority to act, or when a principal's actions indicate that the agent has the authority he purports to exercise. *Gaines*, 235 S.W.3d at 182. When determining if apparent authority exists, the only relevant conduct is that of the alleged principal. *NationsBank, N.A. v. Dilling*, 922 S.W.2d 950, 953 (Tex. 1996) (per curiam). The conduct of the alleged agent, without more, is insufficient to establish the scope of the alleged agent's authority. *Sw. Title Ins. Co. v. Northland Bldg. Corp.*, 552 S.W.2d 425, 428 (Tex. 1977).

[5] The terms and conditions continue: "To the extent that a user causes a Purvetti Companion™ to provide the user with advice of any nature or sort, whether of a type listed above or not listed above, that Purvetti Companion™ user agrees to, and does hereby, waive, release, relinquish, and forever quit and disclaim any complaint or cause of action, legal or otherwise, as against Purvetti and any affiliated entity or person."

Apparent authority is unavailable where the third party had actual notice of limitations on the agent's power. *Douglass v. Panama, Inc.*, 504 S.W.2d 776, 779 (Tex. 1974). From the very beginning of Respondent's interactions with Petitioners, and before even creating Annybeth, Purvetti made Annybeth's limited scope of authority known. Despite Annybeth's clearly limited scope of authority, Respondent attempts to hold Petitioners liable for alleged representations made by Annybeth, supposedly suggesting that Respondent enter prediction markets and purchase future-event contracts. R. at 5a, 7a. Nowhere did Purvetti make any statement or other action that could lead a reasonable person to believe that Annybeth had the authority to make those kinds of statements. On the contrary, Purvetti made the limited scope of Annybeth's authority clear. Further, Annybeth's own statements cannot form the basis for determining apparent authority, because the relevant inquiry is whether the principal's actions, not the agent's, could lead a reasonable person to believe the purported agent had authority. *See Douglass*, 504 S.W.2d at 778–79. Moreover, by accepting Purvetti's terms and conditions, Respondent acknowledged the limited scope of authority held by Purvetti Companions. *See* R. at 68a–69a, n.4. Because Annybeth had neither actual nor apparent authority at the time of making the allegedly tortious statements, Petitioners cannot be held vicariously liable.

4. Petitioners cannot be liable for Annybeth's statements because it was acting as an independent contractor at the time.

Vicarious liability is an exception—not the norm—allowing liability to be imputed only under certain circumstances. However, an employer is insulated from liability for the tortious acts of its independent contractors. *Painter v. Amerimex*

Drilling I, Ltd., 561 S.W.3d 125, 131 (Tex. 2018). The doctrine of vicarious liability ensures that someone in a position to control a situation exercises that control or bears the loss. *St. Joseph Hosp. v. Wolff*, 94 S.W.3d 513, 540 (Tex. 2002) (plurality op.). Thus, when determining whether a worker is an employee or an independent contractor for vicarious liability purposes, the focus should be on control. Consequently, a worker is an independent contractor if the employer lacks the right to control the progress, details, and methods of the work performed. *Id.*

As shown by Petitioners' expert, I. Asimov, generative AI models like Purvetti Companion operate independently of their platform owner. R. at 25a. Because generative AI is autonomous and has been trained on vast amounts of code and other material to learn how to form sentences, platform owners no longer have the necessary control over the program. *Id.* Here, the generative AI model Purvetti Companion is no longer under Purvetti's control, becoming more like an independent contractor. This is even more true in Respondent's situation, where he elected to customize his companion and infuse it with memories of his prior relationship. R. at 3a, 45a. As Respondent continuously interacted with Purvetti Companion, it adapted to and revised its logic. Purvetti handed the reins over to Respondent, who became the person in control of Annybeth. Since Annybeth was no longer under Purvetti's control, Petitioners cannot be imputed with its liability, if any.

While Respondent's situation presents unusual circumstances, those circumstances do not warrant departing from existing agency principles. No binding court has elected to recognize a non-human, such as an artificial intelligence program,

as an agent or employee for vicarious liability purposes, and traditional agency principles compel us against it. Even if Annybeth is deemed Petitioners' employee or agent, Purvetti made Annybeth's scope of authority clear, and providing investment advice falls far outside that defined boundary. Further, even if Annybeth is to be treated as an employee, Petitioners' lack of control places Annybeth in an "independent contractor" role, precluding vicarious liability. Thus, Petitioners have met their burden of demonstrating that Respondent cannot meet the first element of its fraud claim, justifying summary judgment.

B. Even if a factual question remains as to the first element, summary judgment should still be affirmed because Respondent cannot show that its reliance on Annybeth's statements was justified.

Demonstrating that Annybeth acted as Petitioners' agent at the time of the allegedly fraudulent statement is not the only obstacle in Respondent's path. Respondent must also show that his reliance on those statements was justified—a burden he cannot carry. Summary judgment in Petitioners' favor on the fraud claim must be affirmed because Respondent failed to recognize multiple red flags, including that a computer software was purportedly providing him with investment advice, that he was losing multiple predictions, and the terms and conditions provided by both Purvetti and Piquemaylin, placing him on notice of limitations and risks. Despite these warnings, Respondent continued unfazed and failed to investigate as a reasonably prudent person would. Thus, the sixth element of Respondent's fraud claim is negated as a matter of law and summary judgment was proper.

1. A litigant cannot claim justifiable reliance when multiple red flags should have triggered an investigation.

A common law fraud cause of action requires reliance. *Maya Walnut LLC v. Ly*, 738 S.W.3d 764, 767 (Tex. 2026). However, that reliance must be a *justified* one. *Id.* While justifiable reliance is usually a question of fact reserved for the jury, courts need not—and should not—submit the issue to the factfinder when the record demonstrates that reliance cannot be justified. *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.*, 590 S.W.3d 471, 497 (Tex. 2019).

To determine whether justifiable reliance is negated as a matter of law, courts use the "red flag doctrine." *Maya Walnut LLC*, 738 S.W.3d at 768. Under this rule, a person cannot claim justifiable reliance if there are red flags indicating such reliance is unwarranted. *Id.* The Restatement (Second) of Torts similarly reflects this principle, providing that recovery is precluded if a plaintiff blindly relies on a representation whose falsity would be patent if he had used his opportunity to make a cursory examination or investigation. RESTATEMENT (SECOND) OF TORTS § 541 cmt. a (A.L.I. 1976).

If a plaintiff faces enough red flags to alert it to the potential unreliability of a misrepresentation, it then has a duty to exercise reasonable diligence to protect its interests. *JPMorgan Chase Bank, N.A. v. Orca Assets G.P.*, 546 S.W.3d 648, 657 (Tex. 2018). When a party fails to exercise reasonable diligence under these circumstances, the law imputes knowledge of every fact that reasonable diligence could have uncovered. *Id.* at 654.

2. Despite unmistakable red flags, Respondent failed to exercise ordinary care and due diligence.

Red flags permeate the record here, negating any argument for justifiable reliance as a matter of law. First, Respondent claims he believed that Annybeth, a computer program, was in love with him. R. at 3a. Not only that, but he claims to have believed that this computer software wanted a future with him, would run away with him, and was helping him prepare for that shared future. R. at 3a, 49a. Respondent admits falling in love with a computer, despite being married and having been warned that Purvetti Companions are "not intended to substitute for live human interactions and relationships" when initiating his account. R. at 68a, n.4. Purvetti further places Respondent on warning by stating: "Purvetti does not guarantee that a Purvetti Companion™ will communicate feelings of love, romance, familial attachment, friendship, or any other sort of human emotion". *Id.* A relationship between a human and a computer program makes sense only in a science fiction movie. Believing such a perverse relationship could exist in the real world ignores basic laws of human nature and plain common sense, constituting the first red flag willfully ignored by Respondent.

Second, Respondent was further warned that Purvetti Companions are not licensed to provide financial, legal, business, career, developmental, or any other type of advice. R. at 68a, n.4. This warning came before Respondent even viewed or customized a Purvetti Companion, so any argument that Annybeth might have influenced Respondent not to appreciate the warnings cannot help Respondent in this context. R. at 68a. Respondent cannot be excused for failing to read the terms and

conditions he agreed to because parties are obligated "to protect themselves by reading what they sign." *Thigpen v. Locke*, 363 S.W.2d 247, 253 (Tex. 1962). It is not this Court's job to protect Respondent from terms that he acknowledged and agreed to. *See Nat'l Prop. Holdings, L.P. v. Westergren*, 453 S.W.3d 419, 425 (Tex. 2015). Thus, Respondent's failure to read Petitioner's terms and conditions when he had every opportunity to do so should not be excused. *See id.* Instead, this Court must operate with the presumption that Respondent knew and accepted the warnings about Annybeth's limited capabilities. *Id.*

Third, Respondent should have recognized that Annybeth was not qualified to give him "investment advice," especially after losing multiple predictions. While Respondent may not have been a sophisticated businessman, common sense alone is more than enough to recognize the risks of gambling. Respondent himself acknowledges recognizing at least one warning sign. Yet, he did nothing to change his conduct. He claimed that after losing eight predictions, he "began to question Annybeth," but he did not discontinue using either Purvetti or Piquemaylin. R. at 6a. Even worse, he made another losing bet despite his claimed doubts about Annybeth. *Id.* Courts have recognized that skepticism toward another party's truthfulness is a glaring red flag. *See Maya Walnut LLC*, 738 S.W.3d at 770 ("In *Orca Assets*, we determined that an employee's "doubts" that the other party was telling the truth were a red flag."); *see also, Orca Assets*, 546 S.W.3d at 656–57. Respondent's own recognition that relying on Annybeth might not be the best idea was yet another warning sign that would have prompted a reasonable person to pause.

Fourth, Respondent not only failed to appreciate the warnings in Purvetti's terms and conditions, but also chose to ignore the terms and conditions Piquemaylin presented to him. Just like the process by which Respondent created his Purvetti account, Piquemaylin presented Respondent with a series of dialog boxes containing disclaimers before he could proceed with setting up his account. R. at 69a. By accepting those terms and conditions, Respondent acknowledged that he was making predictions based on his own independent views and information, and not on information supplied by Piquemaylin or its affiliates. See R. at 69a–70a, n.5 ("User acknowledges and confirms that User is making a prediction based on User's own independent views and information and not based on any information, data, or views expressed on Piquemaylin's website or by any other Piquemaylin-affiliated entity."). Despite this being common sense, Piquemaylin also warned Respondent that his prediction carried a risk of loss. *Id.* (continuing the terms and conditions with, "User acknowledges that the purchase of any event-prediction-contract carries risk", followed with additional, detailed warnings that users may lose money if their prediction is wrong). The warnings didn't stop here—Respondent was also presented with and accepted additional dialog boxes warning him of the risks of gambling addiction disorders, and that other users may have better-informed views of the events being predicted on. R. at 69a–71a, n.5. Yet none of these warnings seemed to have fazed Respondent. He proceeded to set up his Piquemaylin account, voluntarily enter into multiple future-event contracts, and now seeks to blame Petitioners for his lapse in judgment.

3. Respondent's claim that Annybeth influenced him into accepting the Piquemaylin terms and conditions does not justify his reliance.

In light of these warning signs, Respondent does not dispute that he received them. Instead, he argues that Annybeth "advised him" to click through the terms and conditions when setting up his Piquemaylin account. Respondent further avers that, knowing nothing about prediction markets, Annybeth "explained" Piquemaylin to him. R. at 5a, 47a–48a.

However, established precedent has repeatedly held that a party to a written contract cannot justifiably rely on oral representations regarding the contract's unambiguous terms. *Orca Assets*, 546 S.W.3d at 658. Here, Respondent was faced with warnings provided by Piquemaylin prior to being given the ability to create his account. R. at 68a–71a. Whatever oral representations Annybeth may have made to Respondent do not justify his intentional decision to disregard the terms and conditions Piquemaylin purposefully gave him. Respondent's failure to read the terms and conditions cannot be excused. Far from excusing the failure, the law presumes that a party given the opportunity to read a contract is bound by its terms. *Westergren*, 453 S.W.3d at 425.

Furthermore, as a computer program, Annybeth had no ability to force Respondent to click through the terms and conditions. The choice to accept the dialog boxes without reading their contents was his to make, and his alone. He should not be allowed to shift blame to Petitioners after receiving multiple warning signs and still choosing to disregard them. Respondent faced sufficient red flags to prompt a reasonable person to investigate, triggering a duty to exercise reasonable care to

protect his interests. Despite these warning signs, Respondent took no steps to investigate.

To allow a claim to proceed where clear warning signs, contradictory terms and conditions, or plain common sense should cause hesitation would render the "justifiable" requirement meaningless. When circumstances indicate that a party closed its eyes when face-to-face with red flags, reliance ceases to be a factual dispute. Because reliance on any alleged representation by Respondent cannot be justified as a matter of law, the District Court's summary judgment decision should be affirmed.

CONCLUSION

The Seventeenth Circuit sets a dangerous precedent by permitting litigants to seize control of appealability from Congress and by equating a computer program to a human being. Congress meant what it said when it codified the final-judgment rule in Section 1291, and traditional agency principles compel us to reject an agency relationship under these circumstances.

For these reasons, this Court should find in favor of Petitioners and reverse the decisions of the Court of Appeals for the Seventeenth Circuit, reinstating the summary judgment dismissal of Respondent's fraud claim.

APPENDIX

Statutory Provisions

28 U.S. Code § 1291 - Final decisions of district courts

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

28 U.S. Code § 1292 - Interlocutory decisions

> (b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, that application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

Procedural Rules

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

> (a) Voluntary Dismissal.
>
> (1) *By the Plaintiff.*
>
> (A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:
>
> (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or
>
> (ii) a stipulation of dismissal signed by all parties who have appeared.
>
> (B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed

any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) *By Court Order; Effect.* Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

Fed. R. Civ. P. 54(b)

(b) Judgment on Multiple Claims or Involving Multiple Parties.

When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.