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Case Number 236,2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

META PLATFORMS, INC., and INSTAGRAM, LLC,

Defendants-Below/Appellants,

v.

HARTFORD CASUALTY INSURANCE CO., and SENTINEL INSURANCE CO.,

Plaintiffs-Below/Appellees,

-and-

FEDERAL INSURANCE COMPANY, OLD REPUBLIC INSURANCE COMPANY, STARR INDEMNITY AND LIABILITY COMPANY, and ZURICH AMERICAN INSURANCE COMPANY,

Defendants-Below/Appellees,

-and-

ACE PROPERTY AND CASUALTY INSURANCE COMPANY, WESTCHESTER FIRE INSURANCE COMPANY, and WESTCHESTER SURPLUS LINES INSURANCE COMPANY,

Third-Party Plaintiffs-Below/Appellees,

No. 236, 2026

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE,
C.A. No. N24C-11-010 SKR CCLD

-and-

ASPEN AMERICAN INSURANCE COMPANY, ENDURANCE AMERICAN SPECIALTY, FIREMAN'S FUND INDEMNITY CORPORATION, GEMINI INSURANCE COMPANY, GREAT AMERICAN INSURANCE COMPANY, GREAT AMERICAN SPIRIT INSURANCE COMPANY, INTERSTATE FIRE & CASUALTY COMPANY, NATIONAL FIRE & MARINE INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, STARR SURPLUS LINES INSURANCE COMPANY, STEADFAST INSURANCE COMPANY, and XL INSURANCE AMERICA, INC.,

Third-Party Defendants-Below/Appellees.

APPELLANTS' OPENING BRIEF

Dated: August 27, 2026

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NATURE OF PROCEEDINGS

This is a case between Meta and some of its commercial general liability insurers ("Insurers"). Insurers, in return for sizable premiums, sold Meta policies that promised to defend the company against suits alleging harm caused by an "accident." The policies are governed by California law, which treats an "accident" consistent with its plain meaning: as "an unexpected, unforeseen, or undesigned happening or consequence from either a known or an unknown cause." *Liberty Surplus Ins. Corp. v. Ledesma & Meyer Constr. Co.*, 418 P.3d 400, 403 (Cal. 2018) (citation omitted). The touchstone of an "accident" is not whether the insured intended the *conduct*, but whether it intended the *consequence.* As many a child knows, a foul ball that breaks a window is still an accident even though the batter meant to swing the bat and hit the ball. Plus, California law requires Insurers to defend any suit even *potentially* seeking covered damages on any claim or theory.

Having pocketed Meta's premiums, Insurers have now shirked their duty to defend. Since 2022, nearly every State and thousands of individual plaintiffs, local governments, and school districts have brought lawsuits against Meta, claiming that its negligent design of Facebook and Instagram has harmed teenage users (the "Social Media Cases"). These suits are the paradigmatic example of claims based on an "accident." Plaintiffs do not contend that Meta *intended* to injure minors. They contend only that Meta intended to design its services in a particular way—and that

design eventually harmed minors, typically based on a lengthy, complex chain of causation involving third parties who posted allegedly harmful content. That is the very definition of an "accident," and certainly the Social Media Cases potentially seek recovery based on such an accident. Insurers should have come to Meta's defense.

Instead, Insurers brought this action—not in California, but in Delaware—asking this State's judiciary to declare their California-law duty to defend inapplicable. The Superior Court erred in accepting that invitation. It held that because Meta's design choices were "deliberate," the resulting injuries could not constitute an "accident," at least unless some unforeseeable, intervening act caused the harm. Ex. A[1] at 40–47. For more than 65 years, California courts have said the opposite: an "accident" is "an unexpected, unforeseen, or undesigned *happening or consequence*." *Geddes & Smith, Inc. v. St. Paul-Mercury Indem. Co.*, 334 P.2d 881, 884 (Cal. 1959) (emphasis added) (citation omitted). As the California Supreme Court has put the point, when a driver speeds and hits another car, the speeding is intentional, but the collision is not. *See Delgado v. Interinsurance Exch. of the Auto.*

[1] The Superior Court's Corrected Memorandum Opinion and Order and the Order Denying Defendants Meta Platforms, Inc. and Instagram LLC's Motion for Reargument are attached as Exhibits A and B, respectively.

With respect to Exhibit A, the Superior Court's decision was issued on February 27, 2026. A corrected decision was issued on March 5, 2026, to include an insurer inadvertently omitted from a footnote. For simplicity, this brief refers to the operative, corrected order as "Order."

Club of S. Cal., 211 P.3d 1083, 1091 (Cal. 2009). The key question for coverage is not whether the insured intended the *conduct*, but the *consequence*.

The decision below would upend California insurance law, and with it, the settled expectations of insureds and insurers alike. Most business conduct is deliberate: companies design and market their goods and services purposefully, not through coin flips or games of chance. But they do not intend for those goods and services to cause harm. Usually, that is an *accident*—an unintended consequence of volitional conduct. To be sure, that consequence may well be foreseeable in a *tort-law* sense, just as a car wreck is a foreseeable outcome of speeding. But the *insurance-law* question is whether the harm was intended and expected by the insured at the time of its action. Simply put, if deliberate conduct were enough to defeat coverage, liability insurance would provide scant protection for the very risks it is sold to cover.

Applying well-established California law, the Social Media Cases trigger Insurers' duty to defend. As the judge overseeing those cases explained, "[n]egligence … and product liability are core to these cases." *See* A07046. In other words, the Social Media Cases are not about whether Meta intentionally designed Facebook and Instagram but whether in doing so, Meta negligently disregarded the risks to minors. Indeed, a jury has already found Meta did—and held Meta liable for negligent design. *See* A10406. Where a jury has already found negligent-design

liability, there is plainly at least the potential for Meta to be liable for an accident—which is sufficient to trigger the duty to defend. The Court should therefore reverse. At a minimum, if the Court harbors doubts about whether the Superior Court's decision comports with California law, it should certify the question to the California Supreme Court.

SUMMARY OF ARGUMENT

I. Insurers owe Meta a duty to defend the Social Media Cases because the claims at least potentially seek recovery based on an "accident" under California law. California's definition of "accident" is settled and broad: an accident is an unexpected, unforeseen, or undesigned happening or consequence. Under this definition, an insured's deliberate acts can (and often do) result in an "accident" if the consequences of those acts are unexpected or unintended.

The Social Media Cases fit squarely within this framework. The complaints allege that Meta negligently designed Facebook and Instagram in a manner that caused bodily injury and property damage. Even a single theory potentially permitting recovery based on an "accident" is sufficient to trigger Insurers' duty to defend. Here, *each* theory in the Social Media Cases depends on a causal chain in which Meta's design choices are only the starting point, and the alleged harms result from unexpected third-party conduct. The bodily-injury theories include harm from excessive use, harm from viewing content posted by others, and harm caused by users to other users. The property-damage allegations concern acts of vandalism encouraged by viral challenges disseminated by third parties on Meta's services. The complaints do not allege that Meta intended or expected these harms and, therefore, they trigger Insurers' duty to defend.

The Superior Court reached the opposite conclusion by applying a two-part test that contradicts established California law. At step one, it emphasized that Meta's design choices were deliberate, ignoring California's settled rule that deliberate acts can produce accidental results when the consequences are unexpected or unintended. At step two, it collapsed the "unexpected" inquiry into a foreseeability test, relying on nonbinding federal cases involving opioids and guns—cases where the harm was the "functionally inevitable" result of the challenged conduct. That is not true here: Meta's design of a social media service is not inherently harmful, nor are the underlying Plaintiffs' alleged injuries from using that service the "inevitable" result of such use. The Superior Court's rule would reach far beyond this case, effectively eliminating CGL coverage whenever a business's deliberate product- or service-related decisions lead to unintended harm. Both errors require reversal.

II. Alternatively, if this Court is uncertain as to whether the Superior Court's reasoning comports with California law, it should certify the question to the California Supreme Court. The issue meets both requirements for certification: it is outcome-determinative; and if the Court concludes that no controlling California Supreme Court decision directly addresses how "accident" applies here, seeking authoritative guidance from that State's highest court would be appropriate.

Certification would be particularly appropriate given the sweeping effects of upholding the decision below. If deliberate conduct alone defeats coverage, liability

insurance provides little protection for ordinary business risks. And if foreseeability alone defeats coverage, insureds will have no legitimate expectation of protection for negligent acts—because tort plaintiffs must always plead that the alleged harms were foreseeable. The Court should reject Insurers' invitation to adopt an abrupt change in California precedent with destabilizing, industry-wide implications. If the Court concludes the issue is not already settled in Meta's favor, it should seek clarity from California's court of last resort.

STATEMENT OF FACTS

A. Meta's General Liability Policies

Companies purchase commercial general liability ("CGL") insurance to receive "the broadest spectrum of protection against liability for unintentional and unexpected" damages "arising out of the conduct of [their] business." *MacKinnon v. Truck Ins. Exch.*, 73 P.3d 1205, 1217 (Cal. 2003) (citation omitted). CGL policies give insureds a reasonable expectation that they will be covered for "ordinary acts of negligence" resulting in bodily injury or property damage, unless an exclusion expressly says otherwise. *Id.* at 1214. Under California law, therefore, courts construe CGL coverage "broadly so as to afford the greatest possible protection to the insured." *Id.* at 1213 (citation omitted).

Meta paid substantial premiums to Insurers[2] for exactly this protection. The CGL policies ("Policies") require Insurers to pay all sums Meta becomes legally obligated to pay as "damages" because of "bodily injury"[3] or "property damage"[4] during the policy periods, subject to retentions, deductibles, and policy limits.

[2] "Insurers" include Plaintiffs Hartford Casualty Insurance Company, Sentinel Insurance Company, several entities under the Chubb Limited umbrella, and certain other insurers. *See* Ex. A at 2–3.

[3] The Policies typically define "bodily injury" to mean "physical injury, sickness or disease sustained by a person, including resulting death, humiliation, mental anguish, mental injury or shock at any time." *See* A00367–399.

[4] The Policies typically define "property damage" to mean "physical injury to tangible property, including resulting loss of use of that property." *See* A00274.

Covered bodily injury and property damage must be caused by an "occurrence." *See* A00367–99, A00152–53, A00274. The Policies, consistent with industry-standard general liability policies, define an "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." *See* A00367–99, A00153, A00274. The Policies do not define the word "accident," thus leaving its usual meaning under California law. *See Bay Cities Paving & Grading, Inc. v. Lawyers' Mut. Ins. Co.*, 855 P.2d 1263, 1270–71 (Cal. 1993). The Policies further provide that Insurers have "the right and duty to defend [Meta] against any 'suit' seeking those damages" potentially covered by the Policies. *See* A00152, A00276.

B. The Social Media Cases

Beginning in 2022, Meta was sued in thousands of lawsuits by individual users ("Individual Plaintiffs"), school districts, local governments, and tribal entities ("School District Plaintiffs"), and state attorneys general ("AG Plaintiffs"). The plaintiffs allege that the design of Meta's social media services—Facebook and Instagram—caused bodily injury and property damage. *See* A07762. Most of the cases are consolidated in a multidistrict litigation ("MDL") in federal district court

in California[5] and in a Judicial Council Coordination Proceeding ("JCCP") in California state court.[6]

Central to all the lawsuits are allegations of negligent acts—specifically, that Meta negligently designed certain features of its social media services. Each set of plaintiffs asserts that Meta designed its services in a manner that would "maximize the number of children who download and use them compulsively"—*i.e.*, to be "addictive." *See* A06163, A06177, A06395; *see also* A06446–47, A06738–40, A06743–44, A07805, A07825, A07859, A07946. In doing so, Meta allegedly failed to use reasonable care in designing its services. *See, e.g.*, A06157–58. Plaintiffs further claim that Meta failed to warn users of risks about which Meta "knew or should have known." *See, e.g.*, *id.*, A06394, A06411; *see also* A06440, A07946. The complaints assert that use of Meta's negligently designed services caused two types of harms covered by Meta's Policies: bodily injury and property damage.[7]

Many allegations of bodily injury relate to purported harms that minors supposedly experienced in connection with compulsive use of social media. Each

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[5] *See In re Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, MDL No. 3047 (N.D. Cal.).

[6] *See Soc. Media Cases*, JCCP No. 5255 (Cal. Super. Ct.).

[7] In the JCCP, most of the master complaint has been dismissed except the negligence claim. *See* A09107–96. Assertions of negligence similarly predominate in the MDL, where the Court has allowed the negligence allegations to proceed. *See* A09197–376.

category of Plaintiffs alleges that Meta's negligent design caused some users to experience bodily injuries such as self-harm, sleep and eating disorders, body dysmorphia, and suicide. *See* A07762. The complaints typically link the user's alleged injuries to exposure to third-party content—for instance, distressing or harmful posts or messages created by other users. *See, e.g.*, A09117 (describing "fitspiration" and "thinspiration" posts); A06786 (describing "bullying content"). The complaints do not allege that Meta intended these injuries.

Other allegations of user bodily injury stem from harm inflicted more directly by other users. Some Plaintiffs assert that Meta's design facilitated interactions between teens and sexual predators, resulting in sexual exploitation, abuse, or assault. *See, e.g.*, A08522. The complaints likewise do not allege that Meta directed or intended these injuries.

The School District and AG Plaintiffs also seek to hold Meta liable for acts of vandalism perpetrated by users of Meta's services. The complaints assert that users destroyed property and recorded their acts of destruction, often to create viral content or participate in social media challenges. *See* A06463; *see also* A07835. Again, the complaints do not allege that Meta directed or intended any such damage.

Much of the Social Media litigation remains pending. But a jury has already found Meta liable for negligence in the first bellwether personal injury trial. In that case, the plaintiff, known as K.G.M., alleged that use of Meta's services caused

social-media addiction and related bodily injuries—including anxiety, depression, self-harm, and suicidal attempts—as well as harm from third-party content, including bullying and sextortion. The jury found that Meta was "negligent in the design or operation of Instagram," and "Meta's negligence [was] a substantial factor in causing harm to K.G.M." *See* A10406. Meta has appealed. As the judge overseeing the MDL put it, negligence is "core to these cases." *See* A07046.

C. The Coverage Action

Meta timely tendered the Social Media Cases to Insurers. Some Insurers agreed to defend certain Individual Plaintiffs' claims subject to a reservation of rights. *See* A00156. But then, on November 1, 2024, Hartford commenced this action in Delaware Superior Court seeking a declaration that it has no duty to defend. *See* A00086–138. Meta moved to dismiss or stay the action pending resolution of the Social Media Cases or, alternatively, to dismiss on forum non conveniens grounds. *See* A09383–426. Insurers moved for partial summary judgment, arguing that the "accident" requirement was not met because the alleged harms were the result of Meta's deliberate conduct—despite the allegations of negligent conduct resulting in injury and damage. *See* A00324–66.

The Superior Court (Rennie, J.) granted Insurers' motion, agreeing that the Policies' "accident" requirement was not met. Ex. A at 52. Purporting to apply California law, the court defined an "accident" as either non-"deliberate conduct" or

else "some additional, unexpected, independent, and unforeseen happening" that produces the alleged harm. *Id.* at 40 (citation omitted). The Superior Court determined that because Meta's alleged design choices were deliberate and because the harms alleged in the Social Media Cases were alleged to be "foreseeable," the cases did not result from any "accident" that would trigger coverage. And because there was no potential for coverage, the Superior Court concluded, Insurers had no duty to defend. *Id.* at 40–52.

The Superior Court first assessed whether the underlying complaints alleged "strictly deliberate conduct." *Id.* at 40. As part of that assessment, the court deemed Meta's "'subjective intent' in engaging in the conduct"—*i.e.*, what it was intending or expecting to result from the conduct—to be "irrelevant." *Id.* at 42 (citation omitted). Instead, the court looked at the "alleged general purpose" of Meta's acts and whether those acts were done deliberately. *Id.* at 44–45. Because the underlying Plaintiffs alleged that Meta deliberately designed its services to increase user engagement, the court ruled that Meta's conduct—while "legally labeled as negligent"—was "factually intentional." *Id.* at 45.

The Superior Court then determined that the underlying complaints do not allege any "additional, unexpected, independent, and unforeseen happening" that would qualify as an "accident." *Id.* at 47 (citation omitted). The court found that the alleged harms—including eating disorders, suicidality, and self-harm—were "within

the foreseeable range of outcomes from implementing a design choice intended to increase" user engagement. *Id.* at 48. The court also rejected Meta's argument, based on *Liberty Surplus Insurance Corp. v. Ledesma & Meyer Construction Company*, 418 P.3d 400 (Cal. 2018), that third-party content could be such an "unforeseen happening." In the Superior Court's view, "*Ledesma* does not lend itself to a bright-line rule for identifying unforeseen happenings." *See* Ex. A at 50. Relying instead on unpublished federal court decisions, the court ruled that "the creation and consumption of third-party content is the functional and intended result of Meta's deliberate platform architecture," and therefore it "was not 'mere fortuity' that these design choices led to the alleged harms." *Id.*

Meta moved for reargument, contending that the Superior Court had mischaracterized Meta's position and that new evidence—including supplemental authority from the *K.G.M.* trial—warranted consideration. The court denied Meta's motion but granted Meta's alternative request for entry of partial final judgment under Rule 54(b). *See* Ex. B at 6. Meta now appeals to this Court.

ARGUMENT

I. Insurers Must Defend Meta in the Social Media Cases.

A. Question Presented

Whether Insurers have a duty to defend Meta in the Social Media Cases, which allege that Meta was negligent in designing its social media services, where Meta neither expected nor intended to injure users or damage property, or intended others to do so. Meta preserved this issue below. *See* A07767–86.

B. Scope of Review

The Superior Court's grant of summary judgment is reviewed de novo. *See ConAgra Foods, Inc. v. Lexington Ins. Co.*, 21 A.3d 62, 68 (Del. 2011). Its interpretation of the Policies, including Insurers' obligation to defend, likewise is a matter of law reviewed de novo. *See Universal Underwriters Ins. Co. v. Travelers Ins. Co.*, 669 A.2d 45, 47 (Del. 1995). The parties agree that this dispute is governed by California law, which the Superior Court applied below, *see* Ex. A at 29, 34—albeit incorrectly.

C. Merits

California's broad duty to defend is triggered by a "bare 'potential'" for coverage. *Montrose Chem. Corp. v. Super. Ct.*, 861 P.2d 1153, 1160 (Cal. 1993). That standard is easily satisfied here: the Social Media Cases allege an "accident" under California law. The meaning of that term is settled: an "unexpected, unforeseen, or

undesigned happening or consequence." *Ledesma*, 418 P.3d at 403. Contrary to the Superior Court's reasoning below, an "accident" is not limited to circumstances where the insured's initial conduct was not deliberate. To the contrary, an insured's deliberate acts can (and often do) result in an "accident," so long as the consequences of those acts are unexpected, unforeseen, or undesigned. *Id.* at 404–05. Deliberately taking an action (*e.g.*, hitting a baseball, turning left in a car) does not equate to intending harm that results (*e.g.*, breaking a window, grazing another car). And even if the resulting harm is "foreseeable" in the sense required for negligence or other tort liability, the harm still results from an "accident" because it is neither the intended nor expected outcome of the insured's conduct. That common-sense principle is why companies that purchase CGL policies may "legitimately expect coverage" for "claims of negligence," *id.* at 409, which have long formed the heartland of insurance coverage for accidents. The principle was at the root of the development of the definition of "occurrence" to include "accident" in the standard-form CGL policy language. *See* Restatement of the Law of Liability Insurance § 32 reporters' note to cmt. d (A.L.I. 2019).

The test is met here. The Social Media Cases allege that Meta's deliberate design choices resulted in bodily injury and property damage that Meta neither intended nor expected. No complaint alleges that Meta wanted users to harm themselves, or that Meta directed or expected third parties or other users to harm

users. The complaints allege that Meta was negligent—precisely the type of claim for which insureds "legitimately expect coverage." *Ledesma*, 418 P.3d at 409. The Superior Court's contrary holding collapsed the distinction between intentional acts and intentional injuries and replaced the "unexpected" inquiry with a foreseeability test that California law does not permit. Both errors require reversal.

1. Deliberate Conduct Can Produce an "Accident" When the Consequences Are Unexpected or Unintended.

The California Supreme Court has given "accident" the same interpretation for more than six decades. Throughout that time, the court has held that deliberate actions can result in an "accident" when they have unexpected or unintended consequences—just like driving a car too fast or hiring the wrong employee.

The California Supreme Court first interpreted "accident" in an occurrence-based CGL policy in *Geddes & Smith, Inc. v. St. Paul-Mercury Indemnity Company*, 334 P.2d 881, 884 (Cal. 1959). The court construed the term to refer to "an unexpected, unforeseen, or undesigned happening or consequence from either a known or an unknown cause." *Id.* at 563–64 (citation omitted). The insured there manufactured aluminum doors that developed defects within months of installation—some sagged on their hinges, some went out of shape, parts fell out, and eventually all the doors fell apart. *Id.* at 560. The insured's design and manufacturing were deliberate, but the resulting property damage was an "accident" because the failures were "unexpected, undesigned, and unforeseen." *Id.* at 564.

Ledesma is the California Supreme Court's most recent decision on point, and it is particularly instructive here. There, a construction company knowingly hired a registered sex offender to supervise a project at a middle school. 418 P.3d at 402; *see also Liberty Surplus Ins. Corp. v. Ledesma & Meyer Constr. Co.*, 834 F.3d 998, 1000 n.1 (9th Cir. 2016). After the employee sexually abused a student, the student sued the insured for negligent hiring, supervision, and retention. *Ledesma*, 418 P.3d at 402. Even though the direct cause of the harm was an intentional act—and even though the insured's hiring decision was "deliberate"—the court held that the insured was entitled to coverage because the assault was an "accident" from the insured's perspective. *Id.* at 406–09.

In so holding, the *Ledesma* court explained how to analyze the "accident" question: examine the entire chain of causation, from the insured's challenged actions to the injury for which coverage is sought. *Id.* at 405–06. That the causal chain begins with a deliberate action does not foreclose coverage, so long as the consequence of that action is unexpected or unintended. *Id.* Applying that framework, the court held that the insured's intentional acts of hiring, supervising, and retaining the employee were "accidents" because the abuse was "an unexpected, unforeseen, or undesigned happening or consequence" of the decision to hire. *Id.* at 408 (citation omitted). *Ledesma* relied heavily on *Delgado v. Interinsurance Exchange of the Automobile Club of Southern California*, an earlier California

Supreme Court case which applied the same definition of "accident" to hold that an alleged assault and battery did not constitute an accident because "all of the acts, the manner in which they were done, and *the objective accomplished* occurred *as intended*." 211 P.3d at 1088 (emphasis added).

As *Geddes, Delgado*, and *Ledesma* illustrate, California law takes a commonsense approach to defining "accident." Courts may look beyond a cause of action's label. Coverage may exist for claims not styled as "negligence" if they seek to hold the insured liable for negligent conduct. *See Ledesma*, 418 P.3d at 403–04; *Hartford Cas. Ins. Co. v. Swift Distrib., Inc.*, 326 P.3d 253, 258 (Cal. 2014). By the same token, a claim labeled "negligence" may not trigger defense "when all of the acts, the manner in which they were done, *and* the objective accomplished occurred as intended by the actor." *Delgado*, 211 P.3d at 1088 (emphasis added). Where deliberate acts are "done with the intent to cause injury," coverage is unavailable. *Id.* at 1089. For instance, if instead of batting a ball that spins foul and breaks a window, the batter throws his bat at an umpire with a frustratingly wide strike zone, the resulting harm to the ump would be the expected result, and no "accident" would trigger coverage. *See, e.g.*, *State Farm Gen. Ins. Co. v. Frake*, 128 Cal. Rptr. 3d 301, 310–11 (Cal. Ct. App. 2011). Put simply, under California law, a deliberate act with unintended consequences can result in an accident; a deliberate act done with intent to injure will not. Where deliberate acts produce damage through some "additional,

unexpected, independent, and unforeseen happening," an accident sufficient to trigger the duty to defend results. *Ledesma*, 418 P.3d at 403. The California Supreme Court has further illustrated the point: when a driver intentionally speeds and negligently hits another car, the speeding is intentional, but the collision is fortuitous. *Delgado*, 211 P.3d at 1091. Coverage is triggered.

California law also recognizes "accidents" where harm results from an insured's conduct after a lengthy causal chain, especially one involving third parties. If some "unforeseen, unexpected, or undesigned" happening or consequence produced the injury, the resulting harm is accidental—even when deliberate acts are the starting point. *See Ledesma*, 418 P.3d at 405–09. That is the rule California courts have applied for decades. It governs here.

That settled law applies with special force here at the duty-to-defend stage. The duty to defend is "broad." *Horace Mann Ins. Co. v. Barbara B.*, 846 P.2d 792, 795 (Cal. 1993). To trigger it, Meta need show only a "bare 'potential'" for coverage. *Montrose*, 861 P.2d at 1160. Insurers, by contrast, must prove that the allegations "by no conceivable theory raise a single issue which could bring it within the policy coverage." *Id.* (citation omitted). Any doubts "must be resolved in favor of the insured." *Swift Distrib.*, 326 P.3d at 258 (citation omitted). And where at least some claims are potentially covered, Insurers must defend the entire action. *Buss v. Super. Ct.*, 939 P.2d 766, 774 (Cal. 1997). The allegations here easily clear that bar.

2. Meta Is Entitled to Defense for the Social Media Cases Because the Consequences of Its Design Choices Were Unexpected or Unintended.

The Social Media Cases number in the thousands, but their allegations share a common theme: Meta was negligent in designing Facebook and Instagram, and Meta's design choices caused bodily injury and property damage. The bodily-injury allegations include three principal theories: (1) users suffer harm from excessive use; (2) users suffer harm from viewing content posted by others; and (3) users harm other users. The property-damage allegations concern acts of vandalism allegedly encouraged by viral challenges. Each theory triggers Insurers' duty to defend because each involves unexpected and unintended consequences of Meta's choices in designing its widely used social media services.

a. The Complaints Allege Bodily Injuries Caused by an "Accident."

The complaints allege that Meta's negligent design caused bodily injury in at least three ways: (1) users suffer bodily injury from excessive use of Meta's services; (2) users suffer bodily injury from viewing harmful content posted by other users; and (3) users cause bodily harm to other users. Meta is entitled to coverage for each.

First, the complaints, on behalf of a very small fraction of total users, allege those users of Facebook or Instagram suffer bodily injury from excessive use of Meta's services. *See, e.g.*, A06477. These bodily injuries include alleged physical harms arising from purported "addiction" to social media, such as "eating and

feeding disorders; depressive disorders; anxiety disorders; sleep disorders; trauma- and stressor-related disorders; obsessive-compulsive and related disorders; disruptive, impulse-control, and conduct disorders; suicidal ideation; self-harm; and suicide." *See* A06174; *see also* A06437, A07005, A07124.

This theory depends on the following causal chain: Meta designs Facebook and Instagram; their engaging design causes some users to spend excessive time on the services; and those users suffer bodily injury as a result of their use of the services and engagement with content that third parties have shared. The complaints allege that Meta "should have known" its services were harmful, *see, e.g.*, A07093, but that is not enough to foreclose coverage. General knowledge of potential harm does not establish that Meta expected its services to cause these injuries. *See State of Cal. v. Allstate Ins. Co.*, 201 P.3d 1147, 1160–62 (Cal. 2009).

Meta is entitled to coverage so long as the bodily injuries were "unexpected" or "unforeseen." *Ledesma*, 418 P.3d at 403. Both of those words mean something distinct from "unforeseeable." Under California insurance law, an insured "expects" or "foresees" an injury only if it is "actually aware" that the injury is "*practically certain* to occur." *Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co.*, 52 Cal. Rptr. 2d 690, 724 (Cal. Ct. App. 1996) (emphasis added). "General knowledge" of the potential for harm does not suffice. *Id.* That is far narrower than "foreseeability" under California general tort jurisprudence, which asks only whether the risk was

"*likely* enough . . . that a reasonably thoughtful [person] would take account of it in guiding practical conduct." *Brewer v. Teano*, 47 Cal. Rptr. 2d 348, 354 (Cal. Ct. App. 1995) (emphasis added) (citation omitted).

Here, the underlying complaints' allegations fall short of the insurance-law standard for "unexpected" and "unforeseen" conduct. The complaints cite U.S. Surgeon General advisories to support the allegation that Meta should have known of the alleged harms. *See, e.g.*, A07092 (discussing 2021 Advisory); A08712–13 (discussing 2023 Advisory). But those advisories do not establish a *definitive* link between social media use and teen mental health harms. The 2023 Advisory itself states that "[m]ore research is needed to fully understand the impact of social media," and that "we do not yet have enough evidence to determine if social media is sufficiently safe for children and adolescents." *See* Off. of the Surgeon Gen., U.S. Dep't of Health & Hum. Servs., *Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory* 4 (2023), https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf. Whether teen social media causes mental health harms is hotly disputed in the Social Media Cases—the MDL and JCCP courts both concluded that juries must decide the questions. But the question for the purpose of Insurers' duty to defend is not which side will prevail; rather, it is only whether the lawsuit *potentially* seeks recovery based on an "accident." In part

because that latter question remains in dispute, Meta is entitled to insurance coverage as it mounts its defense.

Second, the complaints allege bodily injury from viewing harmful content on Facebook or Instagram. Specifically, the complaints allege that some users: (1) receive bullying and harassing messages from other users which cause mental health harms, *see, e.g.*, A07893–94; (2) post "[h]eavily edited and unrealistic beauty, modeling, fitness, talent, and success-related posts," causing their comparison-prone psychology to suffer greatly, *see, e.g.*, A06585; (3) post content that "romanticize[s] acts of self-harm," which can harm other users who view it, *see, e.g.*, A08693; and (4) post "challenge videos," which may encourage viewers to harm themselves, *see, e.g.*, A06489 (describing the "Blackout Challenge," which encourages youth to make themselves faint by holding their breath and constricting their chest muscles, or by restricting airflow with a ligature around their neck), or damage property, *see, e.g.*, A06683 (describing challenges that "encourage[] students to damage and vandalize school property," resulting in "property damage, ranging from stolen urinals to smashed floor tiles").

This theory depends on the following causal chain: Meta designs Facebook and Instagram with allegedly defective features that encourage users to remain on the services; some users post harmful content; and other users suffer harm from viewing that content. As in *Ledesma*, the direct cause of these harms is the action of

third parties—the users who posted the allegedly harmful content. Just as the insured in *Ledesma* did not expect or intend for its employee to assault a student (even if the harms were arguably foreseeable to the insured given the employee's record), neither did Meta expect or intend for users to harm each other (even though the complaints allege that the harms were foreseeable to Meta).

The case for coverage here is even stronger than in *Ledesma*. There, the California Supreme Court held that the insured's alleged negligent hiring of a known sex offender to work at a middle school construction project was an "accident" because the employee's alleged sexual abuse was unexpected from the insured's perspective. 418 P.3d at 408. In other words, the acts of one intervening actor—the employee—were sufficient to render the alleged abuse "accidental." By contrast, the Social Media Cases allege harms stemming from a far more complex chain of actors—countless third-party users—between Meta's alleged failure to use reasonable care in designing services and the alleged harms. *See, e.g.*, A07921; A08635. If the hiring of a known sex offender in *Ledesma* triggered the duty to defend, Meta's choices in designing its services must as well.

Third, the complaints allege that users of Meta's services caused bodily harm to other users. For example, the complaints allege that Meta's design allegedly enabled predators to discover and privately contact minors; the predators then groomed the minors, soliciting nude photos from them, and then made threats

involving those images to facilitate "sexual exploitation, sexual abuse, and sextortion." *See* A06191 (alleging that "[m]any adult predators use Defendants' apps to facilitate commercial sex acts, including the production and distribution of known [CSAM]"); A07229–30 (alleging encryption of Messenger service increased material promoting "sexual exploitation of minors").

This theory depends on the following causal chain: Meta designs Facebook and Instagram with allegedly defective features; and adult users utilize those features to contact minors and then harm them, often offline. As in *Ledesma*, the direct cause of these harms is the action of third parties—the adult predators. Meta is entitled to coverage so long as it did not expect or intend users to harm each other. The complaints do not allege that Meta intended such harm. They allege only that Meta was negligent in not doing more to prohibit it.

Each of the three bodily-injury theories depends on a causal chain in which Meta's design choices are but the starting point. The alleged harms result from unexpected and unintended consequences—including the independent actions of third parties. Under *Ledesma* and settled California law, Meta is entitled to coverage because the complaints do not allege that Meta intended or expected the alleged injuries. The complaints allege negligence—precisely the type of claim for which insureds "legitimately expect coverage." *See Ledesma*, 318 P.3d at 409.

b. The Complaints Allege Property Damage Caused by an "Accident."

The School District and AG Plaintiffs also allege that Facebook and Instagram users damaged their property. Meta is entitled to coverage for these suits as well, as the alleged property damage also was caused by an accident.

These Plaintiffs seek to hold Meta liable for acts of vandalism that were recorded and posted on its services. *See, e.g.*, A06463, A06498–99. They allege that viral challenges "encourage[] students to damage and vandalize school property," resulting in "property damage, ranging from stolen urinals to smashed floor tiles." *See* A06683. Local governments allege similar harms. *See* A06511.

Here, too, Meta's design choices are only the "starting point" of a long causal chain leading to property damage. *See Ledesma*, 418 P.3d at 405–06. That chain includes multiple links, including users who create content that encourages the destruction of property, and users who, inspired by that content, go on to vandalize property. The same analysis that applies to bodily injury applies here: Meta did not intend or expect such content or the property damage it encouraged, and the complaints allege only negligence. *See supra* pp. 21–26. As with the bodily-injury claims, the third-party conduct is distinct here, where the prototypical case involves an impressionable minor influenced by a flood of viral challenge posts and driven to take part in damaging acts.

The complaints do not allege that Meta intended damage to third-party property, led users to harm such property, or otherwise expected such harm to occur. They describe a causal chain set off by Meta's design choices, punctuated by unexpected third-party conduct, ending in alleged property damage. Under California law, that is an "accident." *See Ledesma*, 418 P.3d at 405.

3. The Superior Court's Errors Require Reversal.

The Superior Court applied a two-part test with no footing in California law. At step one, the court asked whether Meta's conduct was deliberate, rather than considering whether the consequences of its conduct were unexpected or unintended. At step two, the court reduced the "unexpected" inquiry into whether "unforeseeable" events in the causal chain produced the damage. Because it concluded there were none, the court held that Insurers have no duty to defend.

The Superior Court erred at each step. First, by focusing only on whether Meta's design choices were deliberate, the court ignored California's longstanding rule that deliberate acts can produce accidental results when the consequences are unexpected or unintended. *See supra* pp. 17–21. Second, the court collapsed the "unexpected" inquiry into a mere foreseeability test, eliminating coverage for injuries that are "foreseeable" yet unexpected—precisely the injuries of the type at issue in *Ledesma* and subject to coverage. Both errors require reversal.

a. The Superior Court Erred in Placing Undue Weight on Whether Meta's Conduct Was Deliberate.

The Superior Court acknowledged "earlier cases" holding that "'accident' could refer to unintended conduct *or* unintended harm." Ex. A at 42 n.174 (emphasis in original). But it concluded that "it is no longer good law that an accident can arise merely from unintended harm." *Id.* Under its view, an "accident" can occur only when the complaint alleges "truly inadvertent or nonvolitional behavior." *Id.* at 43–44. Because Meta's design choices were "voluntary business decisions," the court held there was no accident. *Id.* That reasoning has no basis in California law.

The California Supreme Court last addressed the meaning of "accident" in *Ledesma*, where it reaffirmed that the term includes injuries in which *either* the "happening" *or* the "consequence" was unexpected. 418 P.3d at 408. The court applied that definition to hold that an accident occurred even though the insured's hiring decision was intentional—because the *consequences* were unexpected and the injury unintended. *Id.* at 406–08. The Superior Court's conclusion that California law has changed on this point is simply wrong. Nothing has changed.

The Superior Court read *Delgado* as overruling cases holding that accidents can arise from unintended harm. Ex. A at 42 n.174. But because *Delgado* preceded *Ledesma*, the California Supreme Court's reasoning in the latter case controls. And *Ledesma* relied on *Delgado* in rejecting efforts to limit the scope of an "accident" for deliberate acts leading to injury. *See, e.g.*, 418 P.3d at 408 (citing "the principles

discussed in … *Delgado*" in rejecting an argument "that there is no coverage for an 'accident' if the injury-producing conduct is deliberate"). Regardless, *Delgado* adopts the same formulation of "accident" as *Ledesma*: "an unexpected, unforeseen, or undesigned happening or consequence." 211 P.3d at 1087 (citation omitted). Indeed, the Supreme Court took the case only to address (and reject) the distinct notion that something could be an "accident" if it was unexpected from the perspective of the *victim* rather than the insured. *See id.* at 1088. *Frake* is similar. *See* 128 Cal. Rptr. 3d at 309. There, the insured deliberately struck his friend, and injury resulted directly from that intended contact. *Id.* at 303. The court made clear that if "any aspect in the causal series of events" was unintended or fortuitous, an accident may have occurred. *Id.* at 310 (citation omitted).

Accordingly, these cases establish a straightforward conclusion—the person committing the assault and battery plainly intended to cause harm to the other. Here, the Social Media Cases allege that Meta designed its social media services without any purported intent to cause bodily injury or property damage. Under *Delgado* and *Frake*, as under *Ledesma* and other extensive California authority, that is a quintessential "accident" triggering coverage.

The Superior Court's reliance on simple "mistake" cases—*Ghukasian v. Aegis Security Insurance Co.*, 292 Cal. Rptr. 3d 923 (Cal. Ct. App. 2022), and *Albert v. Mid-Century Insurance Co.*, 187 Cal. Rptr. 3d 211 (Cal. Ct. App. 2015)—is equally

misplaced. Both cases involved property-boundary mistakes in which the insureds hired contractors to cut down trees. The contractors did exactly as instructed, but the insureds were mistaken about the boundary lines; the trees belonged to a neighbor. *See Ghukasian*, 292 Cal. Rptr. 3d at 924; *Albert*, 187 Cal. Rptr. 3d at 215. The courts held that the damage was not an "accident" because the insureds had intended the precise injury-producing acts—cutting down the very trees at issue—and the resulting injuries, even if the insureds had a mistaken belief about the legal justifications for that conduct. Here, by contrast, Meta's alleged intent (to design engaging services) and the alleged harms (eating disorders, self-harm, suicide) are not directly linked. The causal chain is attenuated by intervening, unexpected events.

The implications of the Superior Court's rule extend far beyond this case. If deliberate (meaning volitional) conduct alone defeats coverage, liability insurance provides little protection for ordinary business risks, since essentially all business conduct (*e.g.*, designing and manufacturing products, bringing them to market) can be characterized as deliberate. This Court should not adopt a novel rule California courts have never endorsed—one that would render CGL coverage effectively illusory for any business whose deliberate decisions about a product or service lead to unintended harm.

b. The Superior Court Wrongly Collapsed "Unexpected" into "Unforeseeable."

The Superior Court's second error followed from the first. After limiting the first step to whether Meta's conduct was "deliberate," the court considered whether any "additional, unexpected, independent, and unforeseen happening" produced the injury or damage. Ex. A at 47 (citation omitted). But it wrongly narrowed that inquiry to a test of whether the injury or damage was "unforeseeable." *Id.* That reframing also is inconsistent with California law—and, if accepted, would negate insurance coverage even for heartland negligence claims in common tort cases.

By reducing the inquiry to "foreseeability," the Superior Court eliminated coverage for injuries that perhaps are "foreseeable," but nonetheless are unexpected (not *foreseen*) by the insured. *Ledesma* illustrates the distinction. There, the employee's sexual assault was foreseeable—the insured had hired the employee to work construction at a middle school even though he was a registered sex offender. *Ledesma*, 418 P.3d at 403; *see also Ledesma*, 834 F.3d at 1000 n.1. Indeed, that knowledge was the entire basis of the negligence-based theories advanced. *See Ledesma*, 418 P.3d at 403. But the California Supreme Court held that coverage was not vitiated because the later sexual assault by the known sex offender itself was "unexpected" from the insured's perspective. *Id.* at 405–06. If "foreseeability" alone were sufficient to render the consequences of the insured's choices not "accidental," *Ledesma* would have found no coverage. It did not, because whether harms are

foreseeable in the sense required for tort liability is distinct from whether the same harms are intended or expected by the insured for insurance coverage.

Delgado's hypothetical makes the same point. *See supra* p. 2. When someone speeds while driving, it is foreseeable that an accident might happen; indeed, car accidents are a known and foreseeable risk of speeding. But that does not mean the driver expects or intends to hit another car every time she gets behind the wheel and exceeds the speed limit. The collision may be "foreseeable" as a risk, but still unexpected and unintended from the driver's perspective. Just so here. Even if it were foreseeable that billions of users would sign up for Meta's services and that some fraction of those users would self-harm, create harmful content, or interact harmfully with other users or Plaintiffs' property, that does not establish that Meta expected or intended any of the resulting harms.

Instead of engaging fully with *Ledesma* and these well-established principles, the Superior Court looked primarily to nonbinding federal cases for alleged "critical nuance." Ex. A at 50. That was error. Those cases do not displace *Ledesma*'s rule that deliberate conduct will not *per se* foreclose accident coverage where unexpected and independent third-party conduct produces damage. Moreover, in the Superior Court's preferred cases—which concern primarily opioid distribution and gun marketing—the bodily injury inexorably resulted from the challenged conduct itself. That direct link between conduct and injury is absent here.

The Superior Court relied heavily on *AIU Insurance Co. v. McKesson Corp.*, 2024 WL 302182 (9th Cir. Jan. 26, 2024). *McKesson* is unpublished, and in all events, it is nothing like this case. There, the Ninth Circuit held that manufacturers of opioids were alleged to have "intentionally flooded the market" with the drugs, "intentionally flouted safeguards," and worked to "conceal[]" the dangerous oversupply, which would lead to diversion and addiction and thus serve the manufacturers' "scheme to increase the sale of opioids." *Id.* at *2–3. Nothing even remotely of the sort can be said here. There are no allegations that Meta designed its social media services based on a scheme to harm minors who use them or to encourage property damage. Unlike the addiction and related harms alleged in *McKesson*, the harms in the Social Media Cases were neither intended nor expected, let alone "functionally inevitable." *Id.* at *4.

Billions of users engage with Facebook and Instagram without injury and in an enormous range of beneficial (or at least harmless) ways, sharing family moments, cat videos, and the like. Only a statistically small fraction, but nevertheless large number of users, are claimants in the Social Media Cases or linked to the sorts of harms that the complaints in those cases allege.

McKesson, like the Superior Court here, drew from *Travelers Property Casualty Co. of America v. Actavis, Inc.*, another case involving claims against manufacturers and distributors in connection with the opioid crisis. 225 Cal. Rptr.

3d 5, 18 (Cal. Ct. App. 2017). That case is distinguishable for the same reason. There, the insured had "access to scientific studies, detailed prescription data, and reports of adverse events" showing patients were "suffering from addictions, overdoses, and death in alarming numbers," such that the opioid harms were not "unexpected or unforeseen." *Id.* Meta is not alleged to have had any comparable knowledge that its design features inevitably would cause the alleged injuries. And, in any event, *Actavis* predated the California Supreme Court's guidance in *Ledesma*.

James River Insurance Co. v. SureFire, LLC, 2025 WL 1287891 (C.D. Cal. Mar. 6, 2025), *appeal pending*, is also distinguishable. The insured had "deliberately marketed its products to appeal to young men who are prone to violence" by "feed[ing] the desires of these young men to act out their militaristic fantasies on a civilian population." *Id.* at *1, *11. The conduct (targeted gun marketing glorifying violence) was directly linked to the harm (gun violence committed by the target audience). Here, however, Meta's design features bear no such direct connection to the alleged injuries.

In *McKesson*, *Actavis*, and *SureFire*, the insured's conduct was closely linked to the alleged harm—opioid over-distribution led to opioid addiction, gun marketing glorifying violence led to gun violence. There is no such link here. The causal chain between Meta's design choices and the alleged injuries is far more attenuated. Moreover, Meta's design features, unlike opioid over-prescription and gun

marketing featuring violence, are not inherently harmful; in fact, they *benefit* many users and are intertwined with protected speech. *See Packingham v. North Carolina*, 582 U.S. 98, 104 (2017). Social media services like Instagram and Facebook make it easier than ever to stay connected with friends and family, regardless of geographic distance. They give businesses and individuals the means to build brands and engage directly with customers. And they enable people to find community, access news and information, and participate in public discourse as never before. They do not make bodily injury or property damage "functionally inevitable"—far from it.

The Superior Court's flawed focus on "foreseeability" is not just wrong as a matter of law. As a practical matter, it will also virtually always result in a denial of coverage for tort-defendant insureds like Meta. Foreseeability under California law is necessary to establish proximate cause, which is an element of many torts. *See* 6 B.E. Witkin, Summary of Cal. Law Torts § 1335 (11th ed. 2024). To survive dismissal, most tort plaintiffs *must plead that the alleged harms were foreseeable*. If mere allegations of foreseeability were enough to defeat coverage, then insureds would virtually never receive the benefit of their insurance. That directly contradicts the California Supreme Court's recognition that insureds have a "legitimate[] expect[ation]" of coverage for negligent acts. *Ledesma*, 418 P.3d at 408. The Superior Court's decision is not, and cannot be, a correct statement of California law.

II. Alternatively, the Court Should Certify the Question to the California Supreme Court.

A. Question Presented

Whether, in the alternative, this Court should certify to the California Supreme Court the question of whether an insured's deliberate conduct constitutes an "accident" where the consequences of that conduct are unexpected or unintended. Meta preserved this issue below. *See* A07625-31, A09583.

B. Scope of Review

California Rule of Court 8.548 authorizes certification when "the decision could determine the outcome" of a pending matter and "[t]here is no controlling precedent." Certification of questions of law is governed by Supreme Court Rule 41.

C. Merits

Meta's position is straightforward: Meta neither expected nor intended for its conduct, or that of third parties using its services, to injure users or damage property. Under settled California law, there is, at minimum, a "bare 'potential'" that a covered "accident" produced those harms, so Insurers must defend. *See Montrose*, 861 P.2d 1160. This Court can and should note as much, reverse on that basis, and stop there.

If, however, this Court has doubts about whether the Superior Court's approach is consistent with California law, it should certify the question to the California Supreme Court rather than adopt the Superior Court's incorrect reasoning. The issue meets both requirements for certification: it is outcome-determinative,

and—on this hypothesis—no controlling California Supreme Court decision directly addresses how the "accident" standard applies to unintended harms arising from deliberate design choices of social media companies and intervening third-party conduct. *See* Cal. R. Ct. 8.548.

The sweeping effects of the decision reinforce the case for certification. If deliberate conduct alone defeats coverage, liability insurance provides little protection for ordinary business risks. *See supra* p. 31. If foreseeability alone defeats coverage, insureds will have no legitimate expectation of protection for negligent acts—because tort plaintiffs must always plead that alleged harms were foreseeable. *See supra* p. 36. These industry-wide implications warrant resolution by California's court of last resort. *Cf. Doe v. Uber Techs., Inc.*, 90 F.4th 946, 949 (9th Cir. 2024) (certifying issue with "profound implications for online platform companies").

This Court has certified important insurance-law questions to other states' highest courts. *See, e.g.*, *In re Viking Pump, Inc.*, 146 A.3d 1046, 1050 (Del. 2015). Certification "save[s] time, energy, and resources and helps build a cooperative judicial federalism." *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974).

The California Supreme Court has accepted such questions when the case law is unsettled. In *Ledesma* itself, the Ninth Circuit certified whether the negligent hiring of a known sex offender could constitute an "accident," explaining that "certification seems particularly appropriate to determine this consequential matter

of state law." 834 F.3d at 1003. In *Yahoo! Inc. v. National Union Fire Insurance Co. of Pittsburgh*, the Ninth Circuit certified an insurance-law question after concluding that "tension between . . . two California Court of Appeal decisions inhibited its ability to predict how the California Supreme Court would decide" the issue. 913 F.3d 923, 925 (9th Cir. 2019) (cleaned up). The same considerations support certification here.

CONCLUSION

This Court should reverse the judgment of the Superior Court. Alternatively, it should certify the question to the California Supreme Court.

[Signature on next page.]

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Respectfully submitted,

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