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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,

-and-

ASPEN AMERICAN INSURANCE COMPANY, ENDURANCE AMERICAN SPECIALTY,

No. 236, 2026

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

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.

APPELLEES' ANSWERING BRIEF

Dated: September 28, 2026

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NATURE OF PROCEEDINGS

Appellants ("Meta") are defendants in thousands of underlying lawsuits alleging Meta deliberately designed its social media platforms to be addictive, resulting in various harms (the "Social Media Litigation"). Meta demanded its commercial general liability insurers fund Meta's defense in the Social Media Litigation; the Superior Court found no duty to defend, granting partial summary judgment to Meta's insurers, Hartford and Chubb ("Insurers").[1]

The Superior Court correctly held—applying well-established principles of California law—that the Insurers have no duty to defend Meta in the Social Media Litigation because the policies issued to Meta cover only damages caused by an "accident," and the plaintiffs in the Social Media Litigation do not allege harms caused by any "accident." Rather, they assert that Meta "deliberately embedded in their products an array of design features aimed at maximizing youth engagement," that "Meta has invested its vast resources to intentionally design Facebook and Instagram to be addictive to adolescents," and that there is "a direct line between Defendants' conscious, intentional design choices and the

[1] "Hartford" refers to Hartford Casualty Insurance Company and Sentinel Insurance Company, Ltd. "Chubb" refers to Federal Insurance Company, Westchester Surplus Lines Insurance Company, Westchester Fire Insurance Company, and ACE Property and Casualty Insurance Company. The other insurers who joined (or whom the Superior Court effectively treated as joining) Hartford's and Chubb's motion are identified in footnote 11 of the Superior Court's order and anticipate filing joinders to this Answering Brief. All emphases are added unless otherwise noted.

youth mental health crisis gripping our nation." A00417-18; A01034-35; A01596-97. The Superior Court entered partial final judgment; Meta appealed.

SUMMARY OF ARGUMENT

1. **Denied**. The Superior Court's analysis was a straightforward application of settled California law to the underlying complaints in the Social Media Litigation, which seek to hold Meta liable for a youth mental health crisis allegedly driven by Meta's intentional design choices for its platforms Facebook and Instagram.

The policies at issue provide coverage only for certain sums "for" or "because of" bodily injury or property damage "caused by an 'occurrence.'" "Occurrence" means an "accident." Under "settled" California law, "the word 'accident' in the coverage clause of a liability policy refers to the *conduct of the insured* for which liability is sought to be imposed." *Liberty Surplus Ins. Corp. v. Ledesma & Meyer Constr. Co.*, 418 P.3d 400, 403 (Cal. 2018) (emphasis in original), *as modified* (July 25, 2018) (quoting *Delgado v. Interins. Exch. of Auto. Club of S. Cal.*, 211 P.3d 1083, 1088 (Cal. 2009)). And "an injury-producing event is not an 'accident' … 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.

The underlying complaints do not seek to hold Meta liable for any "accident." They allege that, "[b]orrowing heavily from the behavioral and neurobiological techniques used by slot machines and exploited by the cigarette industry, Defendants deliberately embedded in their products an array of design features aimed at maximizing youth engagement to drive advertising revenue."

A00741; A01034; A01596; *see also* A00417. Thus, the alleged "explosion in usage ***is no accident***. It is the result of Defendants' ***studied efforts*** to induce young people to compulsively use their products." A00741; A01034; A01596; *see also* A00417. Meta allegedly "invested its vast resources to ***intentionally design*** Facebook and Instagram ***to be addictive*** to adolescents," employing teams who "spent years fine-tuning" the platforms "to addict users," and Meta "***chose*** to ignore" these concerns and chose not to adopt safer designs. A00542, A00456; A01692, A01671, A01626; A00851, A00829, A00781; A01110-11, A01060. Plaintiffs thus draw "***a direct line*** between" Meta's "conscious, intentional design choices and the youth mental health crisis gripping our nation." A00418; A00723-24; A01035; A01597; *see also* A00742. As the Superior Court held, it is "unassailable that the complaints allege that Meta's conduct was a purposeful effort to operate and maximize its platforms." Opinion ("Op.") 45.[2]

The duty to defend is determined "by comparing the allegations of the complaint with the terms of the policy." *Waller v. Truck Ins. Exch., Inc.*, 900 P.2d 619, 632 (Cal. 1995). That comparison is clear here, and it dictates the conclusion the Superior Court reached. Tellingly, Meta barely addresses the actual allegations in the underlying suits. Instead, it misdescribes long-established principles of California law.

[2] Meta attached the Opinion as Exhibit A to its opening brief (the "Meta.Br.").

First, Meta's premise—that "[t]he touchstone of an 'accident' is not whether the insured intended the *conduct*, but whether it intended the *consequence*" (Meta.Br.1 (emphasis in original))—inverts California law. "[T]he term 'accident' does not apply to an act's consequences, but instead applies to the act itself," *State Farm Gen. Ins. Co. v. Frake*, 128 Cal. Rptr. 3d 301, 309 (Ct. App. 2011), and Meta's "subjective intent" concerning the consequences of its act "is irrelevant," *Albert v. Mid-Century Ins. Co.*, 187 Cal. Rptr. 3d 211, 219 (Ct. App. 2015). Nor does the fact that the underlying complaints contain counts labeled as "negligence" matter—there is no duty to defend where "the underlying action alleges a cause of action for negligence, [but] the factual allegations reflect intentional acts." *Ghukasian v. Aegis Sec. Ins. Co.*, 292 Cal. Rptr. 3d 923, 928 (Ct. App. 2022).

Second, Meta attacks the two-step framework the Superior Court applied as having "no footing in California law." Meta.Br.28. Wrong again. The California Supreme Court is clear that "[a]n accident … is never present when [1] the insured performs a deliberate act unless [2] some additional, unexpected, independent, and unforeseen happening occurs that produces the damage." *Delgado*, 211 P.3d at 1091 (internal citation omitted); *see, e.g.*, *AIU Ins. Co. v. McKesson Corp.*, 2024 WL 302182, at *1 (9th Cir. Jan. 26, 2024) ("[O]ur task is essentially a two-step inquiry.").

Third, Meta says the Superior Court applied "undue weight" to whether Meta's conduct was deliberate. Meta.Br.29. But whether the alleged conduct

was deliberate is a *necessary predicate* to the accident inquiry, *Delgado*, 211 P.3d at 1091. And the Superior Court did not stop there: it assessed "whether the complaints identify any 'additional, unexpected, independent, and unforeseen happening' that produced the damage," and correctly concluded they did not. Op.47 (quotation marks omitted).

Fourth, Meta's contention that the law requires that an insured be "actually aware" the injury is "practically certain to occur," Meta.Br.22-23, is drawn from cases relying on ***different*** policy language than the policies here. In fact, Meta's exact argument here has been rejected by the California Supreme Court. *Delgado*, 211 P.3d at 1088 (the phrase "neither expected nor intended from the standpoint of the insured" in earlier comprehensive general liability forms "has been construed as modifying the policy term 'injury and damages,' not 'accident,'" and the term was deleted from the standard form because "some courts" had wrongly "conclud[ed] that an 'accident' refers to an unexpected or unintended injury").

Fifth, Meta's argument that the "causal chain" is overly "attenuated" (Meta.Br.31) is incorrect. The "accident" inquiry looks to the insured's *own* injury-producing acts as "the starting point of the causal series of events," *Delgado*, 211 P.3d at 1091, and *all* harms at issue in the Social Media Litigation are alleged to be caused by "the functional and intended result of Meta's deliberate platform architecture." Op.50-51. The underlying plaintiffs allege Meta *designed* its platforms to intentionally create compulsive users and that the

features functioned as designed, successfully resulting in the compulsive use harming plaintiffs. No intervening accident is alleged.

Meta's own hypotheticals prove the point. Each describes a deliberate act that misfires: The batter hits a ball that slices foul and breaks a window, or the driver speeds but hits another car. The misfire is why California law considers *those* harms to be "accidents": "[T]he act directly responsible for the injury—hitting the other car—was not intended by the driver and was fortuitous." *Delgado*, 211 P.3d at 1091. But, as noted, "an accident ... is never present when the insured performs a deliberate act unless some additional, unexpected, independent, and unforeseen happening occurs that produces the damage." *Id.* That defines this case: no such intervening happening is alleged here. There is no alleged "unforeseen accident (such as a slip of the chainsaw) [that] caused the damage." *Albert*, 187 Cal. Rptr. 3d at 219. More apt hypotheticals given the allegations here would be a drag racer who deliberately strikes another car to knock it out of the way and win the race, causing the other driver to crash and become injured, or a bar patron who throws a punch at another patron, who falls and fatally hits his head. Neither is an "accident" under California law.

2. **Denied.** Certification to the California Supreme Court is inappropriate. Certification requires both that the question could determine the outcome and that "[t]here is no controlling precedent." Cal. R. Ct. 8.548(a). The California Supreme Court has declared "the meaning of the term 'accident' in a liability

insurance policy ***is settled*** in California." *Ledesma*, 418 P.3d at 403. Thus, because the question "involves the application of established principles of contract interpretation under California law … it does not present a question on which there is no controlling precedent." *Intel Corp. v. Am. Guarantee & Liab. Ins. Co.*, 51 A.3d 442, 451-52 (Del. 2012).

STATEMENT OF FACTS

A. The Policies Cover Only Damages Caused by an "Accident"

Meta is the corporate successor to Facebook and parent of Instagram. Hartford issued primary insurance policies to The Face Book, Inc. for policy years 2004-2007 and Instagram for 2011-2012. A03989-4589; A05180-5375. Federal Insurance Company issued primary policies to Facebook, Inc. for policy years 2007-2016. A01983-3822. Certain of the Insurers also issued umbrella or excess policies. *See, e.g.*, A00367-98.

The policies have multiple common requirements for coverage. While the precise wording varies, each policy covers only those sums that the insured becomes "legally obligated to pay by reason of liability: imposed by law ... for **bodily injury** or **property damage** caused by an **occurrence** to which this coverage applies." *E.g.*, A00367-98. The policies define "occurrence" to mean, in relevant part, "an accident[.]" *Id.*

B. The Social Media Litigation

1. Multiple plaintiff groups bring suit against Meta.

The Social Media Litigation comprises thousands of lawsuits, many of which are consolidated in a multidistrict litigation in the United States District Court for the Northern District of California ("MDL") and a coordinated proceeding in California state court.

As Judge Rennie explained, "[t]he Social Media Litigation has three classes of plaintiffs." Op.5. These are: (1) "individuals suing on behalf of

children who used Meta's platforms (the 'Individual Plaintiffs')"; (2) "school districts and local governments (the 'School District Plaintiffs')"; and (3) dozens of state attorneys general lawsuits (the "State Plaintiffs"). *Id.* "The Individual Plaintiffs seek recovery for the harms children exposed to the platforms allegedly experienced," and "[t]he School District Plaintiffs and the State Plaintiffs seek recovery for the resources they expended to respond to the youth mental health crisis that allegedly arose out of children's exposure to Meta's platforms." *Id.*

2. The Social Media Plaintiffs allege that Meta designed Facebook and Instagram to be addictive.

Across the various complaints, the relevant allegations are common. The lawsuits "generally allege that Meta: (i) designed its platforms to maximize engagement by exploiting psychological vulnerabilities and embedding addictive features into the platforms; and (ii) intentionally targeted minors with these design choices." Op.4.

The underlying plaintiffs claim Meta "develops and implements features to attract young users and keep them engaged on its Social Media Platforms for as long as possible." A07822. Plaintiffs allege that the dramatic increase in social media use "***is no accident***" but rather "the result of Defendants' studied efforts to induce young people to compulsively use their products." A00741; A01034; A01596; *see* A00417. The plaintiffs thus allege "a direct line between Defendants' conscious, intentional design choices and the youth mental health crisis gripping our nation." A00418, A00723-24; A00742; A01035; A01597.

The complaints detail the alleged "array of design features aimed at maximizing youth engagement" that Meta and others "***deliberately*** embedded in their products," despite allegedly "know[ing] children are in a developmental stage that leaves them particularly vulnerable to the addictive effects of these features." *E.g.*, A01034; A01596; *see also* A00417; A01113; A07804. Plaintiffs allege that although Meta could have implemented various safety controls on its products, "Meta has ***chosen*** not to" implement them. A00837; A01145; A01679-80; *see also* A00501; A07902, A07906, A07908-09. "By capturing users' attention and engagement when they are young, Meta ensures future engagement and monetization as those young users grow up." A07822; *see also* A00442, A00516; A07814-17.

Based on these allegations, the Individual Plaintiffs assert numerous claims, including strict liability, negligence, fraudulent concealment, and misrepresentation. A01267-302; A01850-87. But those claims are predicated on the same allegations of deliberate design choices that the plaintiffs detail throughout their complaints. For instance, allegations specific to the negligence claims state Meta's conduct "was intentional, fraudulent, willful, wanton, reckless, malicious, fraudulent, oppressive, extreme, and outrageous." A01279, A01281, A01287, A01293, A01296; A01863, A01865, A01872, A01874, A01881, A01883.

The School District Plaintiffs assert public nuisance and negligence claims. A00710-29; A01007-25; A09062-66. The allegations within or explaining those

"negligence" counts, like those interposed by the Individual Plaintiffs, are premised on Defendants "purposefully addicting children to their platforms, thereby foreseeably causing harm to Local Government and School District Plaintiffs." A00425; *see* A00729 (alleging conduct "willful, wanton, malicious, fraudulent, and/or grossly negligent"); A01021.

Finally, the State Plaintiffs seek to penalize Meta for alleged violations of the Child Online Privacy Protection Act ("COPPA") and other consumer-protection statutes. A07944-8019; *see also, e.g.*, A01926-30; A01969-81; A08088-94; A08181-92; A08287-96; A08386-91; A08506-11; A08749-68; A08851-53; A08968-74. Most State Plaintiffs do not bring negligence claims, and the three that do base those claims on the same allegations of deliberate design. *See* A08101 (New Hampshire) (specifying "[t]he wrongful acts of Defendants ... were committed intentionally, wantonly, maliciously, and/or oppressively"); A08514, A08976 (Nevada) (similar); A08393 (Mississippi) (specifying that Meta "breached [its] duty by making [its] [p]latforms addictive").

C. Proceedings Below

1. The Insurers initiate this action.

On November 1, 2024, Hartford filed this action seeking a declaration that Hartford has no duty to defend Meta for the Social Media Litigation. On December 20, 2024, Chubb answered and filed crossclaims and a third-party complaint, seeking similar declarations.

On December 30, 2024, Meta filed a parallel action in the United States District Court for the Northern District of California. Op.6-7. Despite being Delaware citizens, Meta removed this action to federal court and moved the Judicial Panel on Multidistrict Litigation to transfer this action to the MDL. *Id*. at 6. Ultimately, the MDL judge granted the Insurers' motion to remand this action back to Superior Court and dismissed Meta's parallel second-filed action. *Id*. at 7. In July 2025, Meta filed yet another parallel action in California *state* court, with a motion to dismiss hearing set for August 2027. *Id.*

After Meta's forum-shopping failed, the Insurers filed a motion for partial summary judgment because the underlying claims did not allege an "accident." The motion advanced several other independent grounds for summary judgment. Meta also moved to dismiss or stay.

2. The Superior Court grants summary judgment and Meta appeals.

On February 27, 2026,[3] the Superior Court issued an opinion denying Meta's motion to stay and granting the Insurers' motion for partial summary judgment.[4]

Judge Rennie recognized that "'[o]ccurrence' is synonymous with accident" and California has "extensive jurisprudence defining an accident in the context of liability insurance." Op.34, 39. Judge Rennie applied the established

[3] The Superior Court issued a corrected opinion on March 5, 2026.

[4] Meta does not appeal the Superior Court's denial of its stay motion.

two-step analysis under California law to discern whether the duty to defend was triggered: whether the underlying complaints allege (1) "anything other than strictly deliberate conduct" by Meta, and if not, (2) whether they identify "some additional, unexpected, independent, and unforeseen happening" that may have produced the damage. Op.40.

At step one, the Superior Court concluded the complaints uniformly allege that Meta intentionally designed its platforms "to maximize engagement," and that Meta's design choices were "voluntary business decisions aimed at increasing engagement" that "fall squarely within this broad definition of deliberate conduct." Op.44, 45. At step two, the court found no "additional, unexpected, independent, and unforeseen happening" that produced the damage: it was not a "'mere fortuity' that youth-oriented platforms—deliberately designed to maximize engagement through algorithmic consumption—would result in children becoming addicted or otherwise suffering the alleged harms." Op.47, 49.[5]

Meta filed a motion for reargument, which the Superior Court denied. After the Superior Court entered a partial final judgment under Rule 54(b), Meta appealed.

[5] The Opinion did not address the Insurers' alternative bases for partial summary judgment. Op.34.

ARGUMENT

I. The Social Media Litigation Does Not Allege Harm Caused by an "Accident"

A. Question Presented

Whether the Superior Court correctly held that the Insurers have no duty to defend Meta for the Social Media Litigation because the underlying plaintiffs do not seek to hold Meta liable for any "accident." Preserved at A00341-52.

B. Scope of Review

This Court reviews a trial court's grant of summary judgment *de novo*. *Certain Underwriters at Lloyd's, London v. Chemtura Corp.*, 160 A.3d 457, 464 (Del. 2017). The interpretation of an insurance policy is a question of law subject to *de novo* review. *ConAgra Foods, Inc. v. Lexington Ins. Co.*, 21 A.3d 62, 68 (Del. 2011).

California law is well developed on what constitutes an "accident" in an insurance policy. As it did below, Meta insists California law applies. Meta.Br.15. For purposes of the issue on appeal, the Insurers do not dispute that California law applies and thus focus their arguments accordingly.

C. Merits of Argument

"[T]he meaning of the term 'accident' in a liability insurance policy is settled in California." *Ledesma*, 418 P.3d at 403. The word "accident" "refers to the *conduct of the insured* for which liability is sought to be imposed," *id.* (emphasis in original), and when assessing the conduct at issue, California courts

have "repeatedly held that the term 'accident' *does not* apply to an act's consequences, but instead applies to the act *itself*," *Frake*, 128 Cal. Rptr. 3d at 309 (quotation marks omitted).

Therefore, "[w]hen an insured intends the acts resulting in the injury or damage, it is not an accident merely because the insured did not intend to cause injury." *Albert*, 187 Cal. Rptr. 3d at 219 (quotation marks omitted). "Because the term 'accident' refers to the insured's intent to commit the act giving rise to liability, as opposed to his or her intent to cause the consequences of that act, the courts have recognized—virtually without exception—that deliberate conduct is not an 'accident' or 'occurrence' irrespective of the insured's state of mind." *State Farm Fire & Cas. Co. v. Diblin*, 337 Cal. Rptr. 3d 688, 698 (Ct. App. 2025).

1. Affirmance results even under Meta's standard.

Meta primarily argues that an "accident" is alleged because Meta did not intend to cause any person any specific injury. *See* Meta.Br.19, 25, 26, 28, 33. That is wrong in several ways. *First*, it ignores the allegations, which claim Meta "intentionally design[ed] Facebook and Instagram to be addictive." A00542; A00851; A01692; *see also* A00456; A00781, A00829; A01060, A01110-11; A01626, A01671.

Second, for determining whether an "accident" is alleged, "the insured's subjective intent is irrelevant." *Albert*, 187 Cal. Rptr. 3d at 219; *Frake*, 128 Cal. Rptr. 3d at 309 ("[W]here the insured intended all of the acts that resulted in the victim's injury, the event may not be deemed an 'accident' merely because the

insured did not intend to cause injury." (quoting *Fire Ins. Exch. v. Superior Ct.*, 104 Cal. Rptr. 3d 534, 537 (Ct. App. 2010))). "[W]hether [Meta] intended to cause injury or mistakenly believed its deliberate conduct would not or could not produce injury is ***irrelevant*** to determining whether an insurable accident occurred." *The Travelers Prop. Cas. Co. of Am. v. Actavis, Inc.*, 225 Cal. Rptr. 3d 5, 18 (Ct. App. 2017).

Third, Meta could not prevail even under its incorrect recitation of the standard. The determination of whether an insurer owes a duty to defend is made "by comparing the allegations of the complaint with the terms of the policy." *Waller*, 900 P.2d at 632. Meta is alleged to have deliberately designed its platform to create compulsive, addictive use among youth, the root of the very harm the plaintiffs are seeking to remedy. For example, Meta allegedly "deliberately tweaked the design and operation of [its] apps to ***exploit*** the psychology and neurophysiology of kids" and, knowing children are "uniquely susceptible to addictive features," "wrote code ***designed*** to manipulate dopamine release in children's developing brains" to "create compulsive use." A01037; A01599. "Defendants' platforms are ***designed*** and ***engineered*** to methodically, but unpredictably, space out dopamine-triggering rewards ***with dopamine gaps***." A00448; A00771; A01052; A01616. The Social Media Litigation alleges that Meta "***intentionally*** design[ed] its [p]latforms to ***manipulate dopamine responses*** in its young users to maximize time spent on its [p]latforms" and

"***create an addictive cycle*** of engagement." A07833. Thus, the same outcome obtains under Meta's standard.

Meta's two hypotheticals illustrate the problem with its position. One is a baseball batter who hits a foul ball that accidentally breaks a window; the other a speeding car that accidentally hits another car. But in neither scenario are "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. More apt hypotheticals for these allegations would be where a drag racing car hit another to knock it out of the way in order to win the race but the other driver crashed and became injured, or where a person gets into a bar fight and strikes another patron who falls and hits his head and dies. That the drag racer only intended to force the other car off the road or the bar patron who threw the punch did not intend to kill does not convert those claims into accidents. The drag racer deliberately ran into the other racer's car and the person who landed the blow deliberately threw a punch. Under California law, those are not accidents, even if the drag racer or bar patron never intended the specific harms or the harms were worse than anticipated. *Albert*, 187 Cal. Rptr. 3d at 219; *Frake*, 128 Cal. Rptr. 3d at 310.

Instead of using a fist, Meta allegedly used algorithms. And instead of landing a punch, Meta allegedly designed its platform to drive compulsive use among youth—the very harm the underlying complaints seek to remedy.

2. The Superior Court correctly applied the two-part framework.

Moreover, even if Meta designed its platform and did *not* intend compulsive use—contrary to the Social Media Litigation plaintiffs' plain allegations—that does not mean there is an accident. If the insured acted deliberately, even *without* intent to harm, there is no accident unless the insured's action is followed by a happening that is unexpected, independent, and unforeseen.

> [O]ur task is essentially a two-step inquiry: do the complaints in the Exemplar Suits allege anything other than strictly deliberate conduct? And if not, do they countenance "some additional, unexpected, independent, and unforeseen happening" which may have produced the damage?

McKesson, 2024 WL 302182, at *1. Where, as the Superior Court correctly concluded, the answer to both questions is "no," the complaint does not allege an accident, and the insurer has no duty to defend. California courts regularly and consistently apply this test.[6]

[6] *Fire Ins. Exch.*, 104 Cal. Rptr. 3d at 537 ("Where the insured intended all of the acts that resulted in the victim's injury, the event may not be deemed an 'accident' merely because the insured did not intend to cause injury. The insured's subjective intent is irrelevant." (internal citations omitted)); *Albert*, 187 Cal. Rptr. 3d at 219 ("[I]t is completely irrelevant that plaintiff did not intend to damage the trees, because she intended for them to be pruned."); *Ghukasian*, 292 Cal. Rptr. 3d at 927 ("Ghukasian's mistaken belief about the boundaries of her property is irrelevant to determining whether the conduct itself—leveling land and cutting trees—was intentional.").

Meta attacks the two-step analytical framework as having "no footing in California law." Meta.Br.28. That is surprising, since Meta's arguments below were made *within* that framework. A07769-76. Regardless, Meta is wrong.

The two-step formulation originated in *Merced Mutual Insurance Co. v. Mendez*, where the Court of Appeal held that "[a]n accident … is never present when the insured performs a deliberate act unless some additional, unexpected, independent, and unforeseen happening occurs that produces the damage." 261 Cal. Rptr. 273, 279 (Ct. App. 1989). The California Supreme Court quoted that formulation with approval in *Delgado*, 211 P.3d at 1091; *see Navigators Specialty Ins. Co. v. Moorefield Constr., Inc.*, 212 Cal. Rptr. 3d 231, 246-49 (Ct. App. 2016) (applying test). And in *Ledesma*, the California Supreme Court explained "*Merced*'s definition of what constitutes an accident is consistent with *Delgado.*" 418 P.3d at 406; *see also McKesson*, 2024 WL 302182, at *1 (citing, *e.g.*, *Ledesma* and *Navigators*); *Actavis*, 225 Cal. Rptr. 3d at 18("[W]e look to whether the [complaints] allege, directly or by inference, it was Watson's deliberate conduct, or an additional, unexpected independent, and unforeseen happening, that produced the alleged injuries.").

The Superior Court faithfully applied that same standard using the same two steps, by first considering whether non-deliberate conduct was alleged, and if not, whether some "unforeseen happening" produced the damage.

a. Meta's acts are alleged to be deliberate.

The Superior Court "conclude[d] that the underlying actions exclusively allege harm arising from deliberate conduct." Op.40. Specifically, "the conduct at issue is [Meta's] intentional design and implementation of the platform features aimed at maximizing user engagement." *Id*. That conclusion was compelled by the record at summary judgment, and Meta all but concedes the same in its brief. Meta.Br.1 (plaintiffs "contend ... Meta intended to design its services in a particular way").

Across the underlying complaints, there is no allegation that the key features of Meta's social media products appeared *accidentally*. To the contrary, all three groups of plaintiffs—Individual, School District, and State—allege that Meta deliberately designed its platforms to be addictive, causing widespread harm.

> In the past decade, Americans' engagement with social media grew exponentially, nowhere more dramatically than among our country's youth. That explosion in usage ***is no accident***.... Defendants ***deliberately*** embedded in their products an array of design features ***aimed*** at maximizing youth engagement to drive advertising revenue. Defendants know children are in a developmental stage that leaves them particularly vulnerable to the addictive effects of these features. Defendants target them anyway[.]

A01034; A00741; A00417 ("That explosion in usage is no accident. Defendants, through their social media platforms ... intentionally induced young people to use

their platforms compulsively."); *see* A07831 (State Plaintiffs alleging Meta designed its algorithms "to maximize youth engagement in several ways").[7]

Consider the specifics. *First*, plaintiffs uniformly allege Meta ***intentionally designed*** its platforms to be addictive to young users.

- The Individual and School District Plaintiffs allege "Meta has invested its vast resources to ***intentionally design*** Facebook and Instagram to be addictive to adolescents, all the while concealing these facts from its users." A01111; A01692; A00542; A00851; *see* A00530 (titled "Meta intentionally designed its platforms to addict children and adolescents"); A01596, A01650, A01671, A01685-86 (describing Meta's implementation of addictive features).
- The State Plaintiffs allege the same: "Meta continued to ***intentionally design*** its Platforms to manipulate dopamine responses in its young users to maximize time spent on its Platforms." A07833; *see, e.g.*, A07843; A01914, A01916-18; A01936-37, A01943, A01979-80.

Second, plaintiffs allege that those were ***deliberate*** business decisions:

[7] The complaints' repeated declaration that Meta's conduct was "no accident" (*e.g.*, A00417; A01034) amounts to an express disclaimer of accidental conduct. That disclaimer recalls this Court's opioid coverage decision in *ACE American Insurance Co. v. Rite Aid Corp.*, 270 A.3d 239, 252 (Del. 2022), where "the Counties expressly disclaim[ed] injuries suffered by others and instead claim their own increased economic costs."

- The School District Plaintiffs allege they "are on the front lines of redressing the damage caused by Defendants' ***deliberate choice*** to design, develop, operate, promote, distribute, and market their social media platforms to attract and addict youth." A00415.
- The State Plaintiffs allege that "Meta's ***business model*** is based on maximizing the time that young users spend on its Social Media Platforms" and "Meta ***targets*** young users and incentivizes its employees to develop ways to increase the time that young users spend on its Platforms." A07805; *see* A01900; A01943.
- The Individual Plaintiffs allege Meta employs "[l]arge teams of expert data scientists, user experience ('UX') researchers, and similar professionals [who] have spent years fine-tuning [Instagram and Facebook] to addict users," A01110, A01671, including through "infinite scrolling," A01091, A01650, and how the platform "calibrates" and "chooses to display" the notifications pushed out by its apps, A01120, A01685.

Third, plaintiffs allege Meta knew of the resulting harm and ***chose*** not to adopt safer designs.

- The Individual Plaintiffs allege Meta was aware of research connecting extensive social media use to various harms but "***chose*** to ignore or brush it off," A01060, and that in its "bid for higher profits, Meta ignored the harms resulting from its ***overuse-oriented*** business model,

which are widespread, serious, long-term, and in tragic instances fatal," A01096.

- The School District Plaintiffs allege Meta "consistently ignored concerns about user safety," instead making the "business decision to pursue[] compulsive use [of social media] by children[.]" A00559; *see also* A00762-63, A00781, A00815, A00828-29, A00840, A00851. This, even though Meta's internal researchers "were clear-eyed about the consequences," warning that "'[m]ental health outcomes … can be severe,' and can include 'eating disorders,' 'body dysmorphia,' 'body dissatisfaction,' 'depression,' and 'loneliness,'" A00566; *see* A00575-77; A00839-47.
- Similarly, both the Individual and State Plaintiffs allege Meta was or should have been aware of designs that could make its products safer, but "***chooses*** not to" use them. A01137; A07922; *see* A01139-40, A01168 (Meta did not include "effective age verification measures" despite "ha[ving]…effective age verification tools at its disposal"); A00533; A00832; A01173-74; A01626, A01656, A0167, A01740; A01917.

The Superior Court thus correctly concluded that the Social Media Litigation "exclusively allege[s] harm arising from deliberate conduct." Op.40.

McKesson is instructive. There, the Ninth Circuit held that insurers had no duty to defend a pharmaceutical distributor for underlying suits that sought to

hold it liable for allegedly contributing to the nationwide opioid crisis. 2024 WL 302182, at *1. Because the allegations described "exclusively deliberate conduct," 2024 WL 302182, at *2, there was no duty to defend even though McKesson may not have "intended to cause injury, or mistakenly believed its deliberate conduct would not or could not produce injury," *id.* at *3 (quotation marks omitted.)

So too here: The Social Media Litigation "seek[s] to hold [Meta] accountable for the deliberate manner in which it [designed its platforms]: by flooding the market, concealing facts, disregarding its duties, and ignoring risks," which "is not conduct [Meta] plausibly could have engaged in by accident, and more importantly, the complaints never allege that [Meta] engaged in such conduct by accident." *Id.* at *2. And *McKesson* is among a host of California authority confirming the law on occurrence. *Actavis*, 225 Cal. Rptr. 3d at 17 (a "common, sophisticated, and highly deceptive marketing campaign" to increase opioid sales "can only describe deliberate, intentional acts" (internal quotation marks omitted)); *Ghukasian*, 292 Cal. Rptr. 3d at 927 ("Ghukasian specifically instructed her contractor to level certain land and cut trees, which is exactly what was done."); *Albert*, 187 Cal. Rptr. 3d at 219 ("[A]bsolutely no facts exist, in the complaint or otherwise, indicating that some unforeseen accident (such as a slip of the chainsaw) caused the damage[.]").

Meta's attempts to escape this straightforward conclusion fail.

The presence of "negligence" claims does not alter the conclusion.

The Superior Court correctly rejected Meta's reliance on underlying "negligence" claims because "the mere labeling of claims as negligence does not automatically establish a potential for coverage or an accident." Op.32.

The California Supreme Court long ago confirmed that if injury-causing conduct is deliberate, it can be negligent, but that does not make it an accident. *Hogan v. Midland Nat'l Ins. Co.*, 476 P.2d 825, 828-29 (Cal. 1970) (en banc) (despite negligence verdict, "the conduct being calculated and deliberate, no *accident* occurred"). That is because "it is not the form or title of a cause of action that determines the carrier's duty to defend, but the potential liability suggested by the facts alleged." *Actavis*, 225 Cal. Rptr. 3d at 20 (quotation marks omitted). In fact, it is a "misapprehension that all claims for negligence must at least potentially come within [a] policy and therefore give rise to a duty to defend." *Quan v. Truck Ins. Exch.*, 79 Cal. Rptr. 2d 134, 141 (Ct. App. 1998) (quotation marks omitted).[8]

Accordingly, California courts "***reject*** [the insured's] contention that because the underlying action alleges a cause of action for negligence, the complaint alleges an 'occurrence.'" *Ghukasian*, 292 Cal. Rptr. 3d at 928.

[8] *See also Am. Int'l Bank v. Fid. & Deposit Co.*, 57 Cal. Rptr. 2d 567, 575 (Ct. App. 1996) (same); *AIU Ins. Co. v. McKesson Corp.*, 598 F. Supp. 3d 774, 794 (N.D. Cal. 2022) (same).

Instead, there is no "accident" where "the underlying action alleges a cause of action for negligence, [but] the factual allegations reflect intentional acts." *Id.*

Meta halfheartedly acknowledges this law (Meta.Br.19), but in practice ignores the principle. The claims labeled "negligence" across the Social Media Litigation rest on the same allegations of deliberate conduct as the other claims—Meta's purposeful design and operation of its platforms to cause compulsive use. In fact, the allegations *within* the "negligence" counts confirm that those claims are premised on alleged deliberate conduct. *E.g.*, A00425-26 ("Defendants were also negligent. They breached their duty to the Local Government and School District Plaintiffs ***by purposefully addicting children to their platforms***, thereby foreseeably causing harm to Local Government and School District Plaintiffs[.]"); A01282 ("[E]ach Defendant ***developed***, ***set up***, ***managed***, ***maintained***, ***operated*** ... and benefitted from its respective platforms used by Plaintiffs."). And those negligence counts themselves specify they are premised on allegations of "conduct [that] was intentional, fraudulent, willful, wanton, reckless, malicious, fraudulent, oppressive, extreme and outrageous." A01287; *see* A00729; A08097, A08101; *supra* 11-12.

Nor is it relevant that the complaints allege that Meta "'should have known its services were harmful." Meta.Br.22 (quoting A07093). These allegations refer only to the harm (or potential for harm) which Meta "knew or should have known" would result from Meta's deliberate design choices, A01601, which is "irrelevant" because subjective intent plays no role in the analysis, *Albert*, 187

Cal. Rptr. 3d at 219; *McKesson*, 598 F. Supp. 3d at 795 ("[T]he 'knew or should have known' language shows that the complaints allege the harm was foreseeable. It is not dispositive of whether the complaints allege that the injury-producing conduct was deliberate.").

For similar reasons, the fact that "a jury has already found Meta liable for negligence" in the *KGM* trial is irrelevant. *Contra* Meta.Br.3-4, 11-12. *Frake* and *Diblin* illustrate the point. In *Frake*, the underlying jury "f[ound] that Frake had acted negligently" and awarded damages. Nevertheless, the Court of Appeal held there was no duty to defend because the underlying "injuries were the direct and immediate result of an intended … event" and "[t]he mere fact that Frake did not intend to injure [plaintiff] does not transform his intentional conduct into an accident." *Frake*, 128 Cal. Rptr. 3d at 31 (quotation marks omitted). And in *Diblin*, the underlying jury found the insured liable for negligence, but the negligence finding did not establish an "accident" because "every cause of action asserted by [plaintiff], including the cause of action for negligence, was based on [the insured]'s physical attack—not other conduct." *Diblin*, 337 Cal. Rptr. 3d at 701. Accordingly, that Meta's allegedly calculated and deliberate conduct is cognizable in a "negligence" claim is immaterial; intentional conduct may result in liability for negligence, but intentional conduct is not an "accident."

Meta's reliance on the *KGM* verdict is puzzling for other reasons. As a threshold matter, neither the verdict nor Meta's trial strategy (*e.g.*, that it disputes the allegations, Meta.Br.23-24) matters, because, as a matter of law, the duty to

defend is determined by looking at the allegations and the facts known at the time of tender. *Waller*, 900 P.2d at 632; Meta Ex. B (Order on Reargument) 2-4; *The Upper Deck Co., v. Fed. Ins. Co.*, 358 F.3d 608, 613 (9th Cir. 2004). Even if considered, the *KGM* verdict confirms there was no alleged accident: that jury awarded ***punitive*** damages on the negligence claim, which required finding that "Meta acted with malice, oppression, or fraud[.]" A10201-02 (instructions); A10392 (verdict); *see* Cal. Civ. Code § 3294.

Next, Meta quotes the MDL court's statement that negligence is "core to these cases." Meta.Br.3, 12. This, too, is a distraction. The MDL court explained what it meant: "Plaintiffs' negligence core theory of injury seeks to impose liability only on defendants' non-expressive and ***intentional*** design choices to foster compulsive use," and "[t]hese plaintiffs do not claim defendants failed to 'prevent addiction,' but instead ***intentionally cultivated*** addiction and compulsive use. An intentional course of conduct with known and likely risks resulting from that conduct raises the question of whether that course of conduct is carried out with reasonable care." *In re Soc. Media*, 777 F. Supp. 3d 1016, 1028-29 (N.D. Cal. 2025) (quotation marks omitted).

The Superior Court did not place "undue weight" or misdescribe the law on deliberateness. Meta asserts the Superior Court "[e]rred" by placing undue weight on whether Meta's conduct was deliberate. Meta.Br.29. That contention is baseless. Meta cites no case reversing a duty-to-defend decision because a court placed "undue weight" on whether the conduct was deliberate. Nor would

that make any sense. "Whether Meta's [c]onduct [w]as [d]eliberate" (Meta.Br.29) is a *necessary* and essential first step in assessing whether an "accident" has been alleged. *Delgado*, 211 P.3d at 1091; *supra* 19-25.

Meta also suggests that the Superior Court misdescribed California law on deliberateness, because, according to Meta, the Superior Court acknowledged "earlier cases" held that "'accident' could refer to unintended conduct *or* unintended harm," but read *Delgado* as "overruling" those cases. Meta.Br.29 (emphasis in original). Meta says this was erroneous because "*Delgado* preceded *Ledesma*," and therefore the "reasoning in the latter case controls." *Id.* But it is Meta that misdescribes the law.

The "earlier cases" that Meta suggests support its position boil down to a single case, *State Farm Fire and Casualty Co. v. Superior Court*, 78 Cal. Rptr. 3d 828 (Ct. App. 2008) ("*Wright*"), which was overruled by *Delgado*. *Frake* explained that *Delgado* "clarified that an intentional act is not transformed into an accident merely because the insured was operating under some mistake of fact" and stated "[t]his holding stands in contrast to the reasoning of *Wright*, which ruled that Lint's mistake regarding the amount of force necessary to throw Wright far enough out into the pool was sufficient to transform his behavior into an accident." 128 Cal. Rptr. 3d at 313-14 (quotation marks omitted). Thus, "to the extent *Wright* ruled that the term 'accident' applies to deliberate acts that directly cause unintended harm, such a holding is contradictory to well-established California law." *Id.* at 314; *see Upasani v. State Farm Gen. Ins. Co.*,

173 Cal. Rptr. 3d 784, 792 (Ct. App. 2014) (finding "*Wright* to be of little precedential value."). In sum, Meta's suggestion that those "earlier cases" (*Wright*) remain in force is incorrect.

Finally, Meta suggests that the Superior Court held that "deliberate … conduct alone defeats coverage." Meta.Br.31. That too is wrong. Instead, the Superior Court proceeded to "step two" of the analysis: "whether the complaints identify any additional, unexpected, independent, and unforeseen happening that produced the damage." Op.47 (quotation marks omitted). As discussed below, the analysis at that second step was sound.

b. The damage is not alleged to be the result of an unforeseeable, unexpected, and independent event.

The second step of the analysis asks whether the complaints "countenance 'some additional, unexpected, independent, and unforeseen happening' which may have produced the damage." *McKesson*, 2024 WL 302182, at *1 (quoting *Navigators*, 212 Cal. Rptr. 3d at 245). "The test ... is not whether the consequences are normal" but instead "whether an additional, unexpected, independent, and unforeseen happening produced the consequences." *Actavis,* 225 Cal. Rptr. 3d at 19.

As the Superior Court correctly recognized, the Social Media Plaintiffs allege injuries that were not "'indirect unintended results' caused by 'fortuities outside Meta's control.'" Op.47 (quoting *McKesson*, 2024 WL 302182, at *3). Far from it: the complaints make clear that the alleged "injury-producing event"

is Meta's deliberate design choices, and that the *goal* of these design choices was to induce users to maximize their time on Meta's platforms—the exact outcome that plaintiffs allege harmed them. A01087 ("Since its inception, Facebook has implemented several changes, developments, and designs to its product to prolong user engagement."); A01120 (Meta "internally acknowledged that the goal of" a certain allegedly harmful display "feature was to optimize engagement"); *see also, e.g.*, A00435; A00763; A01943. Indeed, far from alleging harms caused by an "unforeseen happening," *Delgado*, 211 P.3d at 1091, the underlying plaintiffs allege "a ***direct line*** between Defendants' conscious, intentional design choices and the youth mental health crisis gripping our nation." A00418; A01035; A01597. And they allege that the crisis "***is no accident***"; rather, "[i]t is the result of Defendants' studied efforts to induce young people to compulsively use their products." A00741; A01034; A01596.

The lawsuits also allege that Meta works to minimize obstacles like parents and schools that might get in the way of engagement with its products. *E.g.*, A01146 ("Meta has intentionally designed many aspects of Instagram and Facebook to undermine parental supervision in an effort to maximize teen usage."); A00995-96 ("Meta planned to increase time spent [on Meta] by teens while teens are in school," and Instagram "intentionally reached into schools[.]").

Against this, Meta's principal step-two argument is that "unexpected" and "unforeseen" means that an "accident" is alleged unless the insured is "actually aware" the injury is "practically certain to occur." Meta.Br.22-23 (internal

citations omitted); *see generally id*. at 16-21. Not so. An "actual[] aware[ness]" standard, Meta.Br.22, would in effect import a subjective-intent requirement, but California law is clear that an "insured's subjective intent is irrelevant," *Fire Ins.*, 104 Cal. Rptr. 3d at 537; *Frake*, 128 Cal. Rptr. 3d at 309; *Navigators*, 212 Cal. Rptr. 3d at 245-46.[9]

Meta cites two cases in support of its (incorrect) "practically certain to occur" standard. Meta.Br.22 (citing *Armstrong World Indus., Inc. v. Aetna Cas. & Sur. Co.*, 52 Cal. Rptr. 2d 690 (Ct. App. 1996) and *California v. Allstate Ins. Co.*, 201 P.3d 1147, 1160-62 (Cal. 2009)). But those cases construed policies with different definitions of "accident." Specifically, those policies' definitions of "occurrence" expressly conditioned coverage on the harm being "neither expected nor intended from the standpoint of the insured." *Armstrong*, 52 Cal. Rptr. 2d at 699; *Allstate*, 201 P.3d at 1162. The Insurers' policies here contain no such qualifier. *See supra* 9.

In any event, in *Delgado*, the California Supreme Court explained that even where the phrase "neither expected nor intended from the standpoint of the insured" does appear in the "occurrence" definition, it "has been construed as

[9] Meta frames the issue as whether the complaints allege "bodily injury" or "property damage" caused by an "accident." Meta.Br.21-28. Meta does not address the ground for summary judgment the Insurers raised below (not ruled on by the Superior Court) that the State and School District plaintiffs do not seek "damages because of bodily injury or property damage." *See* A00352-57. The Insurers reserve the right to raise that ground (and additional coverage defenses), if ever necessary, on remand.

modifying the policy term 'injury and damages,' ***not 'accident***.'" 211 P.3d at 1088. In fact, the *Delgado* court further explained that the phrase Meta's argument relies upon was deleted from the standard form in 1985 because "some courts had *conflated the concept*" and thereby wrongly "conclud[ed] that an 'accident' refers to an unexpected or unintended injury." *Id*.

Moreover, both *Armstrong* and *Allstate* refute Meta's position that the "accident" inquiry focuses on consequences. *Armstrong*, 52 Cal. Rptr. 2d at 741 n.44 ("There is no dispute that in order for the policy to provide coverage it is the act or event that must be accidental, not the consequences." (collecting cases)); *Allstate*, 201 P.3d at 1156 ("We agree that in the sudden and accidental exception, accidental means an unexpected or unintended *discharge,* not unexpected or unintended *damage.*" (emphasis in original) (quotation marks omitted)).

Meta is also wrong that *Geddes* and *Ledesma* support reversal. *Geddes* involved aluminum doors that the insured deliberately designed and manufactured but that failed—sagging on their hinges, going out of shape, shedding parts, and ultimately falling apart. The Court held the damages were from an accident because the failures were "unexpected, undesigned, and unforeseen." *Geddes & Smith, Inc. v. St. Paul-Mercury Indem. Co.*, 334 P.2d 881, 884 (Cal. 1959). Nothing comparable is alleged here. To the contrary, unlike in *Geddes*, the complaints allege that the features Meta designed to maximize engagement worked *exactly as Meta intended* and that the alleged harms are the direct product of that intended operation. *Supra* 10-11, 22-24.

As noted above, *Ledesma* supports affirmance too. The *Ledesma* court found "the employee's molestation of [a] third party 'may be deemed an unexpected consequence of [the insured/employer's] independently tortious acts of neglig[ent hiring].'" *Ghukasian*, 292 Cal. Rptr. 3d at 928 (discussing *Ledesma*, 418 P.3d at 408).[10] That is not the case here. Rather, the complaints uniformly allege Meta—not some third party—committed the tortious acts, namely designing its products *in order to* maximize compulsive user engagement. The underlying complaints consistently allege Meta set out to make Facebook and Instagram addictive and succeeded—and that addiction, and the harms flowing from it, is the very harm the complaints seek redress for. That is a far cry from *Ledesma*, where the insured's challenged action was *hiring a construction worker*, and the plaintiff sought redress for sexual misconduct by that employee. *See id.* (distinguishing *Ledesma*); *see also McKesson*, 2024 WL 302182 at *3 n.2 (same).

Meta's arguments that third parties interrupted the causal chain, like in *Ledesma*, also fail. The underlying plaintiffs *disclaim* the very theory: "The claim is not that cat videos are irresistible, so Meta must screen for and warn users about

[10] Meta implies (*e.g.*, Meta.Br.29-30) that *Ledesma* changed the law on accident. Not so. *Ledesma* did not overrule, modify, or question any prior ruling, as various federal and state cases in California have explained. *See Henstooth Ranch, LLC v. Burlington Ins. Co.*, 770 F. App'x 804, 804-05 (9th Cir. 2019); *McKesson*, 2024 WL 302182, at *3 n.2; *Thompson v. Crestbook Ins. Co.*, 296 Cal. Rptr. 3d 138, 149 (Ct. App. 2022) (noting *Ledesma* "did not change the law in a respect that is material here.").

kitten content; it's that the design of Meta's platforms itself poses a risk of compulsive use, ***regardless of what content its users post***." A09546.

Meta's arguments are also irreconcilable with *McKesson*, *Actavis*, and *SureFire*. There, the insureds, like Meta, each argued that they did not intend to cause the specific injuries suffered by the plaintiffs or others. *McKesson*, 2024 WL 302182, at *3; *Actavis*, 225 Cal. Rptr. 3d at 21; *James River Ins. Co. v. SureFire, LLC*, 2025 WL 1287891 at *10-11 (C.D. Cal. Mar. 6, 2025). That did not mean there was an insurable accident. As the Ninth Circuit explained, although "McKesson may not have intended to cause injury, or mistakenly believed its deliberate conduct would not or could not produce injury, ... such injuries were 'not unexpected or unforeseen' in light of McKesson's intentional acts." *McKesson*, 2024 WL 302182, at *3 (quotation marks omitted); *see Actavis*, 225 Cal. Rptr. 3d at 22 (similar). Similarly, although SureFire may not have intended to cause injury and death in a mass shooting, that did not matter because "SureFire deliberately marketed its products to appeal to young men who are prone to violence"; *that* act was deliberate and "the underlying lawsuits allege that the shooting and its scale of violence were dependent on SureFire's advertising," *SureFire*, 2025 WL 1287891 at *11.

Thus, Meta's point that it did not "intend[] the *consequence*," Meta.Br.1 (emphasis in original), is irrelevant. The underlying plaintiffs allege Meta "deliberately" designed its apps "to exploit the psychology and neurophysiology" of kids, and that this "strategy paid off" with users "now number[ing] in the

billions." A01037; A01599; *see also* A00418-19; A00743. Plaintiffs allege "[t]hey are the *direct* victims of the intentional product design choices made by each Defendant," A01037; A01599, and "draw[] a *direct* line between Defendants' conscious, intentional design choices and the youth mental health crisis gripping our nation," A01035. This is akin to what was alleged in *McKesson*, *Actavis*, and *SureFire*. *See McKesson*, 2024 WL 302182, at *3 ("[T]he complaints exhaustively demonstrate [the alleged injuries] were the direct result of [McKesson's] alleged scheme to increase the sale of opioids." (quotation marks and alteration omitted)); *Actavis*, 225 Cal. Rptr. at 22 ("[T]he complaints allege a direct connection between the statements and representations made by Watson … and the abuse, addiction, death, and other injuries caused by those products."); *SureFire*, 2025 WL 1287891 at *10-11 (similar).

Meta attempts to distinguish *McKesson* and *Actavis* because there, "the insured had access to scientific studies, detailed prescription data, and reports of adverse events," while Meta says it "is not alleged to have had any comparable knowledge." Meta.Br.35 (quotation marks omitted). Even if this was a relevant distinction (it is not), the allegations refute it. The underlying complaints allege the suits follow[] on a "growing body of scientific research, including [Meta's] own (previously concealed) studies[.]" A00418; A00723; A00742; *see also* A00586; A00883; A01156; A01597; A01722. The allegations, thus, are precisely

that Meta specifically knew of the harms to its users, yet chose not to change its conduct. *Supra* 22-24.[11]

Moreover, the few allegations Meta cites to suggest these harms resulted from unforeseen "third-party content" backfire. For instance, Meta cites allegations referring to "thinspiration" content, Meta.Br.11, but those allegations attribute harms to *Meta's*—not third parties'—acts. *E.g.*, A01059-60 (Meta "has long been aware of this research" regarding "dangerous features engineered into Defendants' platforms" and "hid their unfavorable findings"); A01066 ("Defendants"—*i.e.*, Meta, not thinspiration content creators—"have created nothing short of a national crisis."). And the allegation Meta cites about "bullying content," Meta.Br.11 (quoting A06786), does not allege harm from third-party bullies; it centers on misrepresentation *by Meta* of the harassment taking place on its platform. A07880 ("This representation created the impression that it was very rare for users to experience bullying or harassment[.]"); *see also* A07876.

Next, Meta argues that the Social Media plaintiffs allege an "accident" because they seek to recover for the acts of sexual predators. In the first place, Meta failed to raise that argument below, so it is waived. *E.g.*, *Turner v. State*, 5

[11] Meta also attempts to downplay *Actavis* by claiming that it "predated" *Ledesma*. Meta.Br.35. To the contrary, the California Supreme Court left *Actavis* intact after *Ledesma*, *see Traveler's Prop. Cas. Co. of Am. v. Actavis*, 427 P.3d 744 (Cal. 2018), so there is no inconsistency between the two. *Actavis* thus became final after *Ledesma*. *See* Cal. R. Ct. 8.528(b)(2).

A.3d 612, 615 (Del. 2010) ("We generally decline to review contentions not raised below and not fairly presented to the trial court for decision.").

Regardless, the allegations Meta cites, like the others, seek to hold Meta liable for deliberate design choices that allegedly directly harm users. The complaints allege Meta "***knowingly and foreseeably*** place children in the pathways of sexual predators," A01071, and that Meta "could have, but ***purposely failed*** to, design its products to protect and avoid injury to kids and adolescent users," A01078; *see also* A01173 ("Meta knowingly possessed the capabilities and technologies to incorporate other automatic actions into its product designs to protect children (including but not limited to immediately disabling or deleting harmful content to minors) but Meta ***deliberately and willfully*** failed to do so. Instead, Meta allowed the sexualization and exploitation of minors on their products to brazenly continue."); A01733 ("Meta not only tolerates child exploitation; it ***knowingly*** assists, supports, and/or facilitates child exploitation through its defective product features."). Meta cites the State of New Mexico's complaint as an example of this "theory," Meta.Br.11 (citing A08522), but New Mexico similarly alleges "Meta profits from its exposure of young users to harmful material and its ***refusal*** to implement design features that would protect children from sexual exploitation and mental health harm," A08523.

For the same reasons, Meta is mistaken when it argues the School District and State Plaintiffs (who are suing pursuant to consumer-protection statutes, *supra* 12), seek to recover for "property damage" caused by an "accident"

because of alleged "vandalism." Meta.Br.27. Those allegations also assert that "[e]ncouraging dangerous and destructive 'viral' challenges is another harmful ramification of Defendants' addictive design decisions." A00473. Moreover, the specific "challenge" Meta cites regarding "stolen urinals" and "smashed floor tiles" is from allegations that do not relate to Meta at all, but only to its co-defendant Tik-Tok. Meta.Br.27 (citing A06683).

Meta's policy arguments fare no better. It draws a distinction between "foreseen" and "foreseeable," and then argues that the Superior Court's ruling collapses the accident inquiry into one about "foreseeability," that "if accepted, would negate insurance coverage" for "negligence claims in common tort cases." Meta.Br.32-33. That argument attacks a position no one has taken. The point is not that the alleged harm here is simply claimed by the underlying plaintiffs to have been "foreseeable" (or "foreseen"). It is that Meta allegedly made deliberate design choices, those features operated as intended, and there was no "additional, unexpected, independent, and unforeseen happening … that produce[d] the damage." *Delgado*, 211 P.3d at 1091 (quotation marks omitted).

Finally, Meta's *amici* offer arguments that are irrelevant or redundant. The "Insurance Law Scholars" admit they "do not address the proper interpretation of California precedent," Scholars.Br.8, which is an admission of irrelevance. Instead, they purport to provide information about the "drafting history of the CGL form," and cite a section of a Restatement's discussion of the "expected or intended" exclusion, not the definition of accident. *Id.* at 9, 14-15. And *Delgado*

explained that the words "unexpected or unintended" found in other "occurrence" definitions modify damages, not "accident." 211 P.3d at 1088. The United Policyholders' brief, like Meta's, misstates California law and asks this Court to ignore the settled principles addressed above.

* * *

The Social Media Litigation does not seek to hold Meta liable for any accident. There is no allegation that Meta meant to design the platform with safety features to limit compulsive use by minors but accidentally designed it in a different (and more addictive) way, or that those safety features failed in practice in a way that was not foreseeable to Meta. Rather, the Social Media Litigation alleges that Meta designed its platforms with the *goal* of maximizing compulsive youth engagement and addict children, and that those features worked as intended. *See, e.g.*, A00417, A00508, A00529; A00741; A07831. To quote the complaints themselves, that is "no accident." *E.g.*, A01034.

II. Certification is Unwarranted

A. Question Presented

Whether, in the alternative, this Court should certify to the California Supreme Court Meta's proposed question: "[W]hether an insured's deliberate conduct constitutes an 'accident' where the consequences of that conduct are unexpected or unintended." Meta.Br.37.

Meta says it "preserved this issue below." Meta.Br.37 (citing A07625-31, A09583). That is incorrect. Its citations to the appendix are inapposite—in neither place did Meta preserve this issue or argue that California law is unsettled. By contrast, the Insurers have consistently argued, as they do herein, that the meaning of the term accident is settled under California law (which would preclude certification). *See, e.g.*, A00341.

B. Scope of Review

California Rule of Court 8.548 permits certification when "the decision could determine the outcome" of a pending matter and "[t]here is no controlling precedent."

C. Merits of Argument

Recognizing the weakness of its position, Meta asks this Court to certify the duty-to-defend question to the California Supreme Court. Meta.Br.37-39. But a certifiable question requires that (a) "[t]he decision could determine the outcome of a matter pending in the requesting court," and (b) "[t]here is no controlling precedent." Cal. R. Ct. 8.548(a). This case presents no such question.

This Court has recognized that where the "matter involves the application of established principles of contract interpretation under California law ... it does not present a question on which there is no controlling precedent." *Intel Corp. v. Am. Guarantee & Liab. Ins. Co.*, 51 A.3d 442, 451-52 (Del. 2012) (denying certification to the California Supreme Court on a question of insurance policy interpretation). That is so here.

According to Meta, "[t]his Court has certified important insurance-law questions to other states' highest courts" in the past. Meta.Br.38. That may be, but that does not mean that a question should be certified just because the insured asserts the issue is "important." Instead, the inquiry is whether the resolution rests on "significant and unsettled questions" under the law of another state. *In re Viking Pump Inc.*, 146 A.3d 1046, 1050 (Del. 2015). In *Viking Pump*, this Court determined the issues before it turned on unsettled questions of New York law regarding the proper allocation method (all sums versus *pro rata*) based on certain policy provisions (non-cumulation and prior insurance provisions) that had previously not been addressed in New York in that context. This Court determined the New York Court of Appeals should have the opportunity to decide that question "in the first instance." *Id.*

Unlike *Viking Pump*, this case does not present questions of first impression or unsettled issues of California law. In the California Supreme Court's own words, "[t]he meaning of the term 'accident' in a liability insurance policy is ***settled*** in California." *Ledesma*, 418 P.3d at 403. "This common law

construction of the term accident becomes part of the policy and precludes any assertion that the term is ambiguous." *Delgado*, 211 P.3d at 1086 (quotation marks omitted). This brief cites numerous decisions of California courts stating and restating California's interpretation of the accident requirement and applying it to various contexts. Indeed, in *McKesson*—which also recognized that the "meaning of the term 'accident'" was "settled in California," 2024 WL 302182 at *1 (quoting *Ledesma*, 418 P.3d at 403)—the policyholder sought in the alternative, but the Ninth Circuit declined, certification of the same fundamental question. *See* Opening Br. of McKesson Corp. at 58, *AIU Ins. Co. v. McKesson Corp.*, 2022 WL 17721843 (9th Cir. Dec. 7, 2022); *Key v. Qualcomm Inc.*, 129 F.4th 1129, 1146 n.7 (9th Cir. 2025) (declining certification because "[c]ontrolling precedent answers the questions before us"). Because California courts have interpreted coverage provisions similar to the policies' "accident" requirement, *supra* 15-16, certification should be "decline[d]." *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 15 F.4th 885, 890, n.3 (9th Cir. 2021); *see Liberty Mut. Ins. Co. v. Cont'l Ins. Co.*, 159 F. App'x 827, 831 (10th Cir. 2005) (declining certification where "California precedent provides sufficient guidance").

Meta's certification request is yet another attempt to have this dispute resolved outside of Delaware. That bid has already been rejected by (i) the MDL judge, who dismissed Meta's second-filed action, *In re Soc. Media*, 2025 WL 1518041, at *6 (N.D. Cal. May 27, 2025), and (ii) the Superior Court, Op.20. Meta "should not be allowed a second chance at victory" on the forum fight

"through certification[.]" *Thompson v. Paul*, 547 F.3d 1055, 1065 (9th Cir. 2008) (quotation marks omitted).

CONCLUSION

The allegations themselves fully resolve this appeal. The compulsive use of Meta's products is alleged to be "no accident." A01034. According to the complaints, that compulsive use "is the result of Defendants' studied efforts to induce young people to compulsively use their products," *id.*, which created a "direct line," A01035, to the harms the Social Media Litigation seeks redress for. Under settled California law, these allegations do not constitute an "accident." The judgment should be affirmed.

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