EFiled: Nov 05 2026 04:13PM EST
Filing ID 81284504
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, FIREMANS 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' CORRECTED REPLY BRIEF

Dated: November 5, 2026

BERGER MCDERMOTT LLP

David J. Baldwin (No. 1010)
Periann Doko (No. 5476)
Peter C. McGivney (No. 5779)
1105 North Market Street, Suite 1100
Wilmington, Delaware 19801
Tel.: (302) 655-1140
Fax: (302) 655-1131
dbaldwin@bergermcdermott.com
pdoko@bergermcdermott.com
pmcgivney@bergermcdermott.com

Attorneys for Defendants-Below/ Appellants Meta Platforms, Inc. and Instagram, LLC

Of Counsel (*pro hac vice*):

Mark W. Mosier
COVINGTON & BURLING LLP
850 10th St. NW
Washington, D.C. 20001
Telephone: (202) 662-6000
mmosier@cov.com

Martin H. Myers
COVINGTON & BURLING LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, California 94105
Telephone: (415) 591-6000
mmyers@cov.com

Heather W. Habes
COVINGTON & BURLING LLP
1999 Avenue of the Stars
Los Angeles, California 90067
Telephone: (424) 332-4800
hhabes@cov.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

ARGUMENT 5

I. The Insurers Must Defend Meta in the Social Media Cases. 5

A. Under California Law, Unintended Harms Are "Accidents." 6

B. The Social Media Cases Allege That Meta's Design Choices Resulted in Unintended Harms. 12

II. The Proper Alternative to Reversal Is Certification. 22

CONCLUSION 24

Ruling on Meta and YouTube's Mots. for JNOV and New Trial (K.G.M.), *Social Media Cases*, JCCP No. 5255 (Cal. Super. Ct. L.A. Cnty. June 9, 2026)…Exhibit 1

TABLE OF AUTHORITIES

Page(s)

Cases

AIU Insurance Co. v. McKesson Corp.,
2024 WL 302182 (9th Cir. Jan. 26, 2024) 11, 12

Albert v. Mid-Century Ins. Co.,
187 Cal. Rptr. 3d 211 (Cal. Ct. App. 2015) 11

Delgado v. Interinsurance Exch. of the Auto. Club of S. Cal.,
211 P.3d 1083 (Cal. 2009) 7

Hogan v. Midland Nat'l Ins. Co.,
476 P.2d 825 (Cal. 1970) 12

James River Ins. Co. v. SureFire, LLC,
2025 WL 1287891 (C.D. Cal. Mar. 6, 2025) 11, 12

Liberty Surplus Ins. Corp. v. Ledesma & Meyer Constr. Co.,
834 F.3d 998 (9th Cir. 2016) 8

Liberty Surplus Ins. Corp. v. Ledesma & Meyer Construction Co.,
418 P.3d 400 (Cal. 2018) ..... *passim*

Montrose Chem. Corp. v. Super. Ct.,
861 P.2d 1153 (Cal. 1993) 17, 18, 20, 21

Mundy v. Holden,
204 A.2d 83 (Del. 1964) 17

Peterson v. Super. Ct.,
642 P.2d 1305 (Cal. 1982) 20

State Farm Fire & Cas. Co. v. Diblin,
337 Cal. Rptr. 3d 688 (Cal. Ct. App. 2025) 11

State Farm Gen. Ins. Co. v. Frake,
128 Cal. Rptr. 3d 301 (Cal. Ct. App. 2011) 7, 11

Travelers Prop. Cas. Co. of Am. v. Actavis, Inc.,
225 Cal. Rptr. 3d 5 (Cal. Ct. App. 2017) 12

Other Authorities

Cal. R. Ct. 8.548(a) 23

INTRODUCTION

In selling standard-form commercial general liability policies to Meta in exchange for large premiums, the Insurers pledged to defend the company against any claims even potentially arising from an "accident," a term with a well-settled meaning in California law. That duty readily applies in the Social Media Cases, which allege that teen users suffered bodily injury from use of Meta's platforms but *not* that Meta intended to cause such injury. The Insurers nonetheless ask this Court to carve out of the term "accident" any claims of injuries that (they say) stem from deliberate choices and were foreseeable. That contrived carveout flouts California law, which asks whether the insured acted with the *intent to cause the injury*—not whether the insured merely acted volitionally or should have foreseen certain harms.

Despite repeatedly insisting that whether Meta intended to cause injury is "irrelevant" (Ins. Br.[1] 5, 16, 17, 27, 33, 36), the Insurers ultimately admit that the insured's intent is critical. They agree that the term "accident" covers a "batter" who "hits a ball that slices foul and breaks a window" and a "driver" who "speeds but hits another car." *Id.* at 7. As the Insurers concede, "California law considers *those* harms to be 'accidents'" precisely because "'[t]he act directly responsible for the injury . . . was not intended'" by the insured even though the insured's initial *conduct* (hitting and speeding) was deliberate. *Id.* (citation omitted).

[1] "Ins. Br." refers to Appellees' Answering Brief.

Plain meaning and California precedent alike compel that conclusion. The Insurers barely engage with the controlling decision, *Liberty Surplus Insurance Corp. v. Ledesma & Meyer Construction Co.*, 418 P.3d 400 (Cal. 2018). There, the California Supreme Court held that an employer that had deliberately hired someone with a known sexual-assault history—who then sexually assaulted a student at the work site—nevertheless faced claims arising from an "accident" because the employer did not intend the harm that occurred. *Id.* at 406.

Boxed in by binding case law, the Insurers try to reframe the alleged injuries. They maintain that Meta did intend to cause the injuries and damage asserted in the Social Media Cases because some of the claims allege that Meta deliberately maximized teens' *usage* of its platforms. On that basis, the Insurers declare that the challenged "design choices" worked "as intended" and that Meta therefore meant to cause *injuries*, too. Ins. Br. 40. That reframing fails for at least two reasons.

First, increased usage is not the "bodily injury" or "property damage" the Social Media Cases assert. The plaintiffs instead allege that increased usage in turn *led* to the complained-of bodily injury (like depression or eating disorders) or property damage (like vandalism). Conflating increased usage with indirect injuries distorts the "accident" inquiry: No suit alleges that Meta intended to cause the alleged downstream harms themselves. And the Insurers have no answer to the point that, to defeat coverage, Meta must have intended each act in the causal chain that produced

the injury—including the conduct of third parties and users themselves. The claims against Meta for *unintended* effects of its design choices look nothing like the Insurers' cases or hypotheticals where an insured's "intentional" act, like punching another bar patron or ramming another car on purpose, directly produced the immediate injury or damage.

Second, even if *some* of the allegations in the Social Media Cases asserted that Meta intentionally caused harm, that does not absolve the Insurers of their duty to defend because numerous other allegations unquestionably do not. That is dispositive in a California coverage dispute: The duty to defend is triggered so long as *any* of the allegations may potentially result in damages from unintentional or negligent conduct. Here, many do. Cherry-picked portrayals of the claims, such as those mentioning "addiction," do not erase the Insurers' legal obligation to defend the unintended alleged injury and damage from Meta's platform design choices. The Insurers focus on the complaints' general assertions without grappling with how they connect to the specific allegations of harm alleged by the thousands of individual personal injury plaintiffs. Even accepting the general allegations of addiction, nothing suggests that Meta intended the specific harms alleged for individual plaintiffs.

Settled California law resolves this insurance-coverage dispute. The California Supreme Court has spoken clearly on the meaning of "accident," and none of the authorities the Insurers invoke undermines that controlling precedent. The judgment

below should be reversed. But if this Court has any doubt, it should certify this question of California law to the California Supreme Court. Either way, this Court should decline the Insurers' invitation to upend the settled insurance law of the Nation's largest State—a position that, as *Ledesma* warned, would leave insureds without coverage for negligence claims they "may legitimately expect" to be covered. 418 P.3d at 409.

ARGUMENT

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

This duty-to-defend dispute should be straightforward. All agree that the policies the Insurers sold Meta cover "accident[s]," which California law has long defined as "unexpected, unforeseen, or undesigned happening[s] or consequence[s] from either a known or an unknown cause." *Ledesma*, 418 P.3d at 403. The parties also agree the Insurers' duty to defend Meta is triggered by mere "potential for coverage": "the insured need only show that the underlying claim may fall within policy coverage." *Id.* (citation and emphasis omitted). Those controlling principles resolve this dispute. The Social Media Cases allege that Meta negligently designed Facebook and Instagram, which caused plaintiffs (school districts, states, municipalities, and individuals) to suffer bodily injury or property damage. They do not allege that Meta *intended* to cause those injuries. The Social Media Cases thus concern accidents, triggering the Insurers' duty to defend.

The Insurers try to escape that conclusion in two ways, but both fail. First, they argue throughout their brief that whether Meta intended to cause harm does not matter. By their lights, so long as Meta's conduct in designing platforms was intentional and the alleged injuries were foreseeable, no accident is at issue, and they have no duty to defend. But the Insurers ultimately backpedal from that position, admitting (as they must) that California law regards unintended harms as accidents. As

they concede, a foul ball that breaks a window and a speeding driver's collision with another car *are* accidents because the actor did not intend the part of the causal chain that resulted in injury or damage (the ball's errant path or the other car's movements). That concession ends the case because no suit alleges that Meta intended the bodily injuries or property damage alleged.

Second, the Insurers reframe the Social Media Cases as alleging that Meta *did* intend to cause harm by reformulating the injuries the suits assert. The Insurers say that some claims accuse Meta of deliberately designing its platforms to maximize usage, and therefore Meta intended to cause the alleged injuries. This revisionist account does not work. The Social Media Cases do not allege increased usage as the injury; they assert other, downstream bodily injury and property damage—such as eating disorders or destruction of school property—that allegedly higher usage fomented. That distinction makes a world of difference. Whatever the suits allege regarding Meta's intent to increase usage, none claims that the company intended the injuries that allegedly resulted from that usage. Moreover, even if some of the claims and allegations could be repackaged as asserting that Meta intentionally caused the harms for which damages are sought, many others do not, which triggers the Insurers' duty to defend.

A. Under California Law, Unintended Harms Are "Accidents."

The Insurers endeavor to muddy the legal landscape, but the relevant,

controlling principles of California law are clear. An "accident" in California means an "unexpected, unforeseen, or undesigned happening or consequence." *Ledesma*, 418 P.3d at 403. An insured's deliberate conduct may result in an accident if "some additional, unexpected, independent, and unforeseen happening . . . produces the damage." *Id.* (citation omitted). For example, if "a driver intentionally speeds and, as a result, negligently hits another car, the speeding would be an intentional act," but "hitting the other car" is "an accident" because it "was not intended by the driver." *Delgado v. Interinsurance Exch. of the Auto. Club of S. Cal.*, 211 P.3d 1083, 1091 (Cal. 2009) (citation omitted). By contrast, if the "act directly responsible for the injury" *was* "intended" by the insured, that injury is not an accident, even if it is more severe than the insured expected. *Id.* (citation omitted). *See also*, *e.g.*, *id.* at 1085 (no accident where insured "hit and kicked" third party but claimed to act in self-defense); *State Farm Gen. Ins. Co. v. Frake*, 128 Cal. Rptr. 3d 301, 310-11 (Cal. Ct. App. 2011) (no accident where insured struck victim in groin but did not expect to cause serious injury).

The Insurers resist this simple rule. Although they recite the "unexpected, independent, and unforeseen" formulation, Ins. Br. 19, they assert repeatedly that whether the insured intended its conduct to cause the harm suffered is "irrelevant," *id.* at 5, 16, 17, 27, 33, 36. In their view, only the "insured's intent to commit" the first act in the causal chain matters. *Id.* at 16 (citation omitted). And they appear to

endorse the Superior Court's understanding that an insured's deliberate act cannot be an accident *unless* the resulting injury is "unforeseeable." *Id.* at 31; *id.* at 41 ("not foreseeable"); *but cf. id.* at 40. As Meta and *amici curiae* demonstrated, that is not consistent with California law or with the drafting history and documented intent of the insurance provisions at issue. Meta Br.[2] 15-28; Br. of Amici Curiae Ins. Law Scholars 14-20; Br. of Amicus Curiae United Policyholders 14-22.

The California Supreme Court's decision in *Ledesma* puts this issue to rest. There, a construction company contracted with a school district to manage a construction project. 418 P.3d at 402. The owner of the construction company hired his brother-in-law, whom the owner knew to be a registered sex offender, to supervise the project. *Liberty Surplus Ins. Corp. v. Ledesma & Meyer Constr. Co.*, 834 F.3d 998, 1000 n.1 (9th Cir. 2016). The brother-in-law sexually assaulted a student, who sued the construction company for negligently hiring, retaining, and supervising the brother-in-law. *Ledesma*, 418 P.3d at 402. The insurer argued that there was no duty to defend, but the California Supreme Court disagreed. The brother-in-law's actions were "directly responsible for the injury, while [the construction company's] negligence in hiring, retaining, and supervising him was an indirect cause." *Id.* at 405. The insured intentionally *hired* the brother-in-law, and the harm may have been

[2] "Meta Br." refers to Appellants' Opening Brief.

sufficiently foreseeable to support claims sounding in negligence. But the insured did not commit or intend the assault, so it was an accident. *Id.*

The Insurers have no answer to *Ledesma*. Despite its status as the California Supreme Court's most recent and directly applicable decision on the meaning of "accident," they address it only in passing, offering a single factual distinction rather than any account of how their initial conduct-only rule can be squared with its holding. That silence is telling. *Ledesma* held that an insured's deliberate choices, made with knowledge of a serious risk, still give rise to an "accident" when the injury was not intended. *Id.* at 406. Because *Ledesma* binds on this question of California law, the Insurers' rule can survive only if *Ledesma* supports it—and it does not.

Despite insisting that an insured's intent to cause harm does not matter, the Insurers ultimately acknowledge that unintended harm from an insured's deliberate act is an accident. They concede, as Meta argued, that if a "batter hits a ball that slices foul and breaks a window," or if a "driver speeds but hits another car," "California law considers *those* to be 'accidents'" because the action "'directly responsible for the injury . . . was not intended'" by the insured. Ins. Br. 7 (citation omitted); *see id.* at 18; Meta Br. 1-2. That concession is significant. Both examples involve intentional conduct by an insured: hitting the ball hard though it goes far off course, and driving over the speed limit when another car enters the frame. Both are accidents *because* although the insured intended the initial act (hitting the ball hard,

driving too fast), the insured did not intend the injury-producing outcome (the ball veering off course, the other car appearing).

The Insurers' labeling these examples as "misfires" adds nothing. *See* Ins. Br. 7. If by that descriptor the Insurers mean that the insured intended to engage in the conduct but did not intend the actions resulting in the harm, that is *the point*. If an insured simply hopes to hit a home run or save time commuting but does not intend to cause injury or damage, that is a textbook accident.

Or if by "misfires" the Insurers instead mean that neither the batter nor the speeding driver achieved their intended "objective," *id.* at 18, that is irrelevant. Exactly the same reasoning leads to the same result for an insured who *achieves* the goal but causes unintended harm in doing so: *e.g.*, a batter who hits a game-winning grand slam out of the park and into a car's sunroof in the parking lot, or a driver who speeds up to make a yellow light (and succeeds) but loses control and hits an oncoming car he did not see. Both insureds achieved their *objective*, but the adverse outcomes are still accidents because the insureds did not intend or expect the ensuing *injury*.

The Insurers also offer contrasting analogies to real and hypothetical cases where the insured engaged in intentional conduct that caused direct and immediate harm, but those counterexamples only confirm the rule. *See id.* at 7, 18. They posit a drag racer who "hit another car to knock it out of the way" or a bar patron who

"strikes another patron." *Id.* at 18. And they cite cases involving that kind of intentional conduct causing direct, immediate injury. *See id.* (citing *Frake*, 128 Cal. Rptr. 3d at 310 (insured struck former schoolmate in the groin), and *Albert v. Mid-Century Ins. Co.*, 187 Cal. Rptr. 3d 211 (Cal. Ct. App. 2015) (insured directed crew to cut neighbor's trees)); Ins. Br. 28 (citing *State Farm Fire & Cas. Co. v. Diblin*, 337 Cal. Rptr. 3d 688, 691 (Cal. Ct. App. 2025) (insured "bea[t]" a woman "over the head with a rubber mallet")).

Those examples, real and imagined, simply sharpen the line California law draws. They do not demonstrate the irrelevance of the insured's intent; in each, the insured's own intentional act was itself the direct and immediate cause of the harm. Here, by contrast, Meta's design choices are at most the starting point of a lengthy causal chain: a third party must create harmful content or seek out a minor, the user must encounter that content or person, and the user must then react in his or her own way before any injury results. *See* Meta Br. 21-28. No link in that chain resembles the drag racer's collision or the patron's blow, and none reflects conduct by Meta intended to cause harm.

The same goes for the Insurers' reliance on the Ninth Circuit's unpublished decision in *AIU Insurance Co. v. McKesson Corp.*, 2024 WL 302182 (9th Cir. Jan. 26, 2024), and a federal district court's decision in *James River Insurance Co. v. SureFire, LLC*, 2025 WL 1287891 (C.D. Cal. Mar. 6, 2025), *appeal pending*. *See*

Ins. Br. 19-20, 24-25, 35-37. Neither is an authoritative statement of California law, and neither moves the needle. *McKesson* involved an opioid distributor who "flood[ed] the market" with harmful drugs. 2024 WL 302182, at *2. *SureFire* involved a gun manufacturer who "deliberately marketed its products to appeal to young men who are prone to violence." 2025 WL 1287891, at *11. In the courts' view, neither case involved an accident because, as in the Insurers' intentional-tort examples, the injuries were not merely foreseeable, but *inevitable*. *See* Meta Br. 33-36. Whether or not *McKesson* and *SureFire* were correct to infer that the insureds intended those harms, neither one looks anything like the Social Media Cases here. Eating disorders, body dysmorphia, and damage to school property are not the inevitable result of increasing platform usage.[3]

B. The Social Media Cases Allege That Meta's Design Choices Resulted in Unintended Harms.

The duty to defend is triggered here because the underlying cases allege

[3] Nor does *Travelers Property Casualty Co. of America v. Actavis, Inc*., 225 Cal. Rptr. 3d 5 (Cal. Ct. App. 2017), help the Insurers. *Actavi*s concerned manufacturers' fraudulent marketing and misrepresentations designed to deceive prescribers into writing more opioid prescriptions, and the court itself recognized that claims premised on different conduct were "appreciably different." *Id*. at 19. The surviving core of the Social Media Cases is negligent design and failure to warn, not a scheme of deliberate deception. And *Hogan v. Midland National Insurance Co*., 476 P.2d 825 (Cal. 1970), is no more apt. *See* Ins. Br. 31. *Ledesma* itself distinguished *Hogan* because the deliberate acts there were the injured party's own, and *Hogan* "did not involve an insured's independent tort liability for damage deliberately caused by another tortfeasor." *Ledesma*, 418 P.3d at 408. The same distinction applies here.

unintended harms. Meta Br. 21-28. In fighting that straightforward conclusion, the Insurers' primary move is to reframe the Social Media Cases as alleging that Meta's "design choices" worked "as intended" by increasing usage, and that any resulting harms were thus "no accident." Ins. Br. 19-41. But there are at least two problems with this argument. The underlying cases do not allege that *increased usage* is the injury or damage, so the Insurers' contention that Meta pursued and achieved that goal is irrelevant. And, even if some of the allegations in the underlying cases *could* be read the way the Insurers suggest to assert intentional harm, the Insurers' burden is to demonstrate that *every* allegation *must* be read only in that way. The Insurers do not come close.

First, the Insurers argue that Meta intended to increase usage and therefore intended to cause harm. But the Social Media Cases do not allege that increased usage is itself a harm, much less the sole harm. The complaints instead are premised on purported *downstream* harms and allege that increased usage contributed to those injuries.

Consider just a few examples:

- Individual Plaintiffs allege that they suffer from "anxiety, depression, eating disorders, body dysmorphia, self-harm, sexual exploitation, suicidal

ideations, other serious diseases and injuries, and suicide itself." A01039 (¶ 18).[4]

- Individual Plaintiffs also allege that they suffer from "body image issues, eating disorders, body dysmorphia, and related harms" as a result of "Meta's defective product features" and "social comparison" that "creates a schism between the ideal self and the real self." A01133 (¶ 319).
- School District Plaintiffs allege that "common social-media challenge[s]" such as the Blackout Challenge, the "I Killed Myself" challenge, and the "Russian Roulette" challenge can lead to social-media users inadvertently causing themselves "catastrophic injury" or death. A00474 (¶ 185).[5]
- School District Plaintiffs also allege that "specific aspects" of social-media platforms "encourage users to participate in attention-seeking behaviors that have led to damage of school property," including vandalism. A00483-84 (¶ 209).

[4] These cites refer back to the appendix in Meta's opening brief.

[5] The Insurers incorrectly contend that "challenge" allegations are limited to Meta's co-defendant TikTok. Ins. Br. 40. Numerous complaints expressly allege that "Defendants" generally "caused harm to Plaintiffs by knowingly implementing dangerous platform features that promote viral challenges through financial and social rewards, which result in property damage and trauma to children in Plaintiffs' schools and communities." A06463 (¶ 109); *see also* A00474 (¶ 185).

- Tucson Unified School District alleges that social-media use has caused an increase in physical violence and fighting between students. A00483 (¶ 208).

None of the complaints alleges that Meta intended to cause *those* harms. The Insurers instead point only to allegations that Meta sought to maximize engagement. But pursuing an objective of increased usage proves nothing about an insured's intent to cause injuries and damage that usage might—but does not necessarily—make more likely.

That is especially true here because the purported harms alleged in the Social Media Cases resulted from third-party content users encountered or third-party users themselves—not directly from Meta's conduct. For example, many of the alleged body-image issues and eating disorders are linked to "thinspiration" and "fitspiration" posts, influencer interactions, and users' comparisons of themselves to images they see on social media. *See* A01065 (¶¶ 113-115). Other alleged injuries are linked to "bullying content." *See, e.g.*, A06786 (¶ 176).[6] And purported harms from undertaking dangerous challenges or attention-seeking behaviors are linked to users'

[6] The Insurers' attempt to recast the "bullying" allegations as relevant only to a misrepresentation theory (Ins. Br. 38) fails because the complaints tie them directly to bodily injury. The complaints allege that Meta's "recommendation algorithms" prioritize "bullying content," A06786 (¶ 176), which constitutes an "unfair" practice under numerous state consumer protection laws because it allegedly "causes unnecessary and unjustified harm to young users," A06905 (¶ 890).

desire to "impress[] others online" and "ge[t] views/likes/comments." *See* A01067-68 (¶ 125). Still other claims allege that adult predators used Meta's services to contact and groom minors, leading to "sexual exploitation, sexual abuse, and sextortion." *See* A06191 (¶ 144); A07229-30 (¶¶ 385, 390); Meta Br. 25-26. Each example illustrates the attenuated causal chain, in which a third party's content or conduct—and the user's own response to it—stands between Meta's design choices and the alleged injury. *See supra* p. 11. As in *Ledesma*, the acts "directly responsible" for alleged injuries inflicted would be the violence, bullying, sexual abuse, and actions depicted in third-party content, not platform design choices. 418 P.3d at 405.

The Insurers attempt to downplay the harm from third-party content by noting that some plaintiffs have attempted to disavow their reliance on such content. Ins. Br. 35-36. That fails for numerous reasons. For one, as the Insurers acknowledge, their duty to defend is determined based on the allegations in the complaints, *id.* at 28-29, not based on arguments that a plaintiff later makes in an attempt to avoid dismissal of their claims. For another, many plaintiffs *have not* disavowed reliance on third-party content and have been permitted to maintain claims based on such content, such as images created using cosmetic filters. *See* Ruling on Meta and YouTube's Mots. for JNOV and New Trial (K.G.M.), *Social Media Cases*, JCCP No. 5255 (Cal. Super. Ct. L.A. Cnty. June 9, 2026) (attached as Exhibit 1 at 5-6). In any event, the trial court did not base its ruling on these disavowals. It instead held

that Meta was not entitled to coverage, notwithstanding allegations of harm from third-party content, because that content was foreseeable. Ex. A at 49-50.[7]

A key point is that the goal of increased usage the Insurers impute to Meta does nothing to establish an intent to cause injuries that depend on third parties' conduct. The Insurers' shortcut of conflating Meta's asserted goal of maximized engagement with alleged downstream injuries simply does not work.

Second, even if the Insurers could succeed in showing that *some* of the claims allege that Meta intentionally caused harm, they still lose. To avoid their duty to defend, the Insurers must show that no claim is even potentially covered. California's duty to defend requires only a "bare 'potential'" for coverage. *Montrose Chem. Corp. v. Super. Ct.*, 861 P.2d 1153, 1160 (Cal. 1993); Meta Br. 15-16. Meta thus "need only show that [an] underlying claim *may* fall within policy coverage." *Ledesma*, 418 P.3d at 403. And any "[d]oubt about an insurer's duty to defend generally must be resolved in the insured's favor." *Id.* Unless the Social Media Cases

[7] "Ex. A" refers to Exhibit A to Meta's Opening Brief. The Insurers contend that Meta did not adequately raise a "sexual predator" theory in the trial court. Ins. Br. 38. But Meta argued that it is entitled to coverage where a complaint contains "allegations [that] involve the non-foreseeable intervening conduct of third parties." A07776. Meta thus does not raise a new argument on appeal. It merely relies on additional allegations—those involving sexual predators—to support the argument made in the trial court. *See, e.g.*, *Mundy v. Holden*, 204 A.2d 83, 85 (Del. 1964) (court may consider argument on appeal that "is merely an additional reason in support of a proposition urged below").

"can by no conceivable theory raise a *single issue* which could bring [them] within the policy coverage," the Insurers have a duty to defend. *Montrose*, 861 P.2d at 1160 (emphasis added) (citation omitted).

The Social Media Cases include myriad allegations raising the "bare 'potential'" for coverage. *Id.* The complaints are rife with allegations describing negligently—not intentionally—caused injuries, regardless of whether the claims are styled as negligence, as many are. The Insurers do not address the claims asserting that Meta failed to warn of risks about which Meta "knew or should have known," Meta Br. 24-26, and those only scratch the surface. Individual Plaintiffs, for instance, allege that Meta "knew or, by the exercise of reasonable care, should have known" that its products were dangerous to youth, breached its duty of care "by failing to use reasonable care in the design of its products by negligently designing them," and failed to adopt "cost-effective, reasonably feasible alternative designs." A01028-1895 (¶¶ 873-875, 882, 884, 887). They likewise allege that a "reasonable company . . . would have designed a safer product." *Id.* (¶ 886). Allegations about Meta's failure to exercise reasonable care, adopt reasonable alternative designs, or design a safer product are all quintessential allegations of negligent conduct—not allegations that Meta designed its services with the intent to harm those who used them. *See* Meta Br. 10-12, 16-17, 25-26.

School District Plaintiffs' allegations are more of the same. Brevard County

School Board lists various negligent actions Meta allegedly committed, including designing platforms "without thorough and adequate pre- and post-market testing," "[f]ailing to sufficiently study and conduct necessary tests," "[f]ailing to implement adequate safeguards," and "[f]ailing to take adequate steps to prevent under-13 use." A01018-19 (¶ 901). School District Plaintiffs likewise allege that Meta "failed to act as a reasonable person would under the circumstances" because "in the exercise of reasonable care, [it] should have known, of the hazards and dangers of [its] social media platforms," including that "the addictive, compulsive, and repetitive use of [its] platforms would negatively impact youth mental health and cause harm to the school districts and local communities." A00721 (¶ 1018). That allegation is especially far from one asserting that Meta intentionally harmed users—it alleges that Meta *should have known* its services *could* have negative effects on users.

As the MDL court aptly summarized, negligence is "core to these cases." A07046. The Insurers try to deflect that statement by observing that the MDL court also noted that Meta made "intentional design choices" that "intentionally cultivated addiction and compulsive use." Ins. Br. 29. But intentional design choices are not the same as intending to cause bodily injury or property damage, and the alleged bodily injuries include the alleged consequences of compulsive use, not the engagement itself. As in *Ledesma*, the insured's knowledge of a serious risk, which the underlying plaintiff pleaded was practically inevitable, does not defeat a potential

accident. In any event, the duty to defend turns on whether the complaints raise at least "a single issue which could bring [them] within the policy coverage." *Montrose*, 861 P.2d at 1160 (citation omitted). Claims of allegedly negligent conduct leading to harms are legion in the Social Media Cases. Whether other claims in the MDL also allege intentional harms does not absolve the Insurers of their duty.

The same goes for the Insurers' dismissive treatment of the *K.G.M.* verdict finding Meta liable for negligence. They claim that the jury's punitive damages award supersedes the jury's separate negligence findings. Ins. Br. 29. That is wrong. Conduct showing a conscious disregard of the safety of others may support punitive damages without constituting a "wilful act" that defeats coverage; in that situation, "only indemnification of the punitive damages portion of the recovery is prohibited," and the policy "would still cover the compensatory damage portion of plaintiff's recovery." *See Peterson v. Super. Ct.*, 642 P.2d 1305, 1311 (Cal. 1982). In any event, much of the *K.G.M.* trial concerned allegations and evidence that Meta's purportedly negligent actions in designing its services caused social-media addiction, ultimately resulting in K.G.M.'s injuries. Meta Br. 11-12.

At the end of the day, the Insurers' argument fails because it answers the wrong questions. The question is not whether the Social Media Cases include allegations that Meta acted deliberately in designing its services. Nor is it whether any of the claims assert that Meta intended to cause the alleged injuries. What matters

is whether the complaints raise a "bare 'potential'" for coverage. *Montrose*, 861 P.2d at 1160. The Insurers do not and cannot carry their heavy burden of showing that *none* of the claims at issue is potentially covered. Under settled California insurance law, their duty to defend the suits remains.

II. The Proper Alternative to Reversal Is Certification.

Because settled California law imposes a duty to defend on the Insurers for the Social Media Cases, the Court should reverse the judgment of the Superior Court. That ruling is contrary to controlling California precedent, including the California Supreme Court's decision in *Ledesma*. And the Insurers' attempts to leverage intermediate California cases and decisions from other courts do not alter or diminish that binding authority.

But if this Court concludes that the question is close, it should certify to the California Supreme Court the question whether an insured's deliberate conduct constitutes an "accident" where the consequences of that conduct are unexpected or unintended. That outcome would be far more prudent than accepting the Insurers' invitation to posit new exceptions to California insurance law that the California Supreme Court has never embraced.

The Insurers do not dispute the standard for certification. That test is easily met here if the Court determines that California precedent does not already clearly foreclose the Insurers' position. "[T]he decision could determine the outcome" of the pending matter—it is the only question in the case; and, if the Court concludes that the issue is not predetermined by California law, there necessarily would be "no

controlling precedent." Cal. R. Ct. 8.548(a)(2).[8]

The Insurers contend that a question should not be certified merely because the insured asserts it is "important," and that the real test is whether the question is "significant and unsettled." Ins. Br. 43. This question meets that test in any event. The Social Media Cases comprise thousands of pending suits and have already resulted in more than ten billion dollars of liability, with much more still at stake. The coverage issues will recur as disputes involving alleged harm from social media use make their way through the courts.

The Insurers also insist that "the meaning of the term 'accident' in a liability insurance policy is *settled* in California," *id.* (quoting *Ledesma*, 418 P.3d at 403). While Meta also believes that is true, it is settled *against* the Insurers' position, according to the very case they cite. And if there were any genuine uncertainty, the appropriate course would be to certify so that the California Supreme Court can address it. The least prudent course would be for this Court to accept the Insurers' invitation to improvise on another State's insurance law in a dispute with such far-reaching implications.

[8] The Insurers contend that Meta did not preserve its request for certification. Ins. Br. 42. But Meta could not have obtained certification from the Superior Court because the California Supreme Court may answer certified questions only, as relevant here, at the request of "the court of last resort of any state." Cal. R. Ct. 8.548(a).

CONCLUSION

The Court should reverse the judgment of the Superior Court or, alternatively, certify the question to the California Supreme Court.

Dated: November 5, 2026

Respectfully submitted,

BERGER MCDERMOTT LLP

/s/ David J. Baldwin

David J. Baldwin (No. 1010)
Periann Doko (No. 5476)
Peter C. McGivney (No. 5779)
1105 North Market Street, Suite 1100
Wilmington, Delaware 19801
Tel.: (302) 655-1140
Fax: (302) 655-1131
dbaldwin@bergermcdermott.com
pdoko@bergermcdermott.com
pmcgivney@bergermcdermott.com

Attorneys for Defendants-Below/ Appellants Meta Platforms, Inc. and Instagram, LLC

Of Counsel (*pro hac vice*):

Mark W. Mosier
COVINGTON & BURLING LLP
850 10th St. NW
Washington, D.C. 20001
Telephone: (202) 662-6000
mmosier@cov.com

Martin H. Myers
COVINGTON & BURLING LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, California 94105
Telephone: (415) 591-6000
mmyers@cov.com

Heather W. Habes
COVINGTON & BURLING LLP
1999 Avenue of the Stars
Los Angeles, California 90067
Telephone: (424) 332-4800
hhabes@cov.com

CERTIFICATE OF SERVICE

I, David J. Baldwin, hereby certify that on November 5, 2026, I caused a true and correct copy of the foregoing document to be served upon the following individuals in the manner indicated below:

VIA FILE AND SERVEXPRESS
Thad J. Bracegirdle
Sarah T. Andrade
Emily L. Skaug
Bayard P.A.
600 N. King St., Suite 400
Wilmington, Delaware 19801

VIA FILE AND SERVEXPRESS
Stamatios Stamoulis
Stamoulis & Weinblatt LLC
800 N. West Street, Third Floor
Wilmington, Delaware 19801

VIA FILE AND SERVEXPRESS
John D. Balaguer
Balaguer Milewski & Imbrogno LLP
2961 Centreville Road, Suite 300
Wilmington, Delaware 19808

VIA FILE AND SERVEXPRESS
Karine Sarkisian
Kennedys CMK LLP
222 Delaware Avenue, Suite 710
Wilmington, Delaware 19801

VIA FILE AND SERVEXPRESS
Kirsta M. Reale
Margolis Edelstein
300 Delaware Avenue, Suite 800
Wilmington, Delaware 19801

VIA FILE AND SERVEXPRESS
Carmella P. Keener
Cooch and Taylor, P.A.
The Brandywine Building
1000 N. West Street, Suite 1500
Wilmington, Delaware 19899-1680

VIA FILE AND SERVEXPRESS
John C. Phillips, Jr.
David A. Bilson
Phillips, McLaughlin & Halll, P.A.
1200 North Broom Street
Wilmington, Delaware 19806

VIA FILE AND SERVEXPRESS
Robert J. Cahall
McCormick & Priore, P.C.
200 Continental Drive, Suite 401
Newark, Delaware 19713

VIA FILE AND SERVEXPRESS

Julie M. O'Dell
Lauren A. Ferguson
Smith, Katzenstein & Jenkins LLP
1000 North West Street, Suite 1501
Wilmington, Delaware 19801

/s/ David J. Baldwin
David J. Baldwin (No. 1010)