Case No.: **26-996**

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSEPH J. DEAN,
Plaintiff-Appellant,
v.
META PLATFORMS, INC.,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of California
Case No. 5:25-cv-10597-NC (Hon. Nathanael M. Cousins)

APPELLANT'S OPENING BRIEF

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STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Appellant is aware of no case pending in this Court that is related to this appeal within the meaning of Circuit Rule 28-2.6.

Appellant notes for the Court's awareness that two proceedings in other circuits involve overlapping factual allegations and legal issues:

(1) *FTC v. Meta Platforms, Inc.*, No. 1:20-cv-03590 (D.D.C.), appeal filed (D.C. Cir. Jan. 20, 2026), which addressed Meta's pattern of competitive exclusion of third-party developers; and

(2) *Dean v. Roku, Inc.*, No. 25-12890 (11th Cir.), in which Appellant raises analogous individual developer standing issues currently pending before the Eleventh Circuit. Neither is pending in this Court.

Appellant also notes that a prior related action, Veamcast Corp. v. Facebook, Inc., No. 8:20-cv-2667 (M.D. Fla.), involving overlapping facts, was dismissed without prejudice in 2020 and is not pending in any court.

STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully requests oral argument. This appeal presents important questions regarding the standing of individual developers to bring antitrust claims against dominant platform operators and the application of the fraudulent concealment doctrine to anticompetitive API restrictions. These issues have implications beyond this case and would benefit from the Court's consideration at oral argument.

TABLE OF CONTENTS

STATEMENT OF RELATED CASES ii
STATEMENT REGARDING ORAL ARGUMENT iii
TABLE OF CONTENTS iv
TABLE OF AUTHORITIES vi

I. JURISDICTIONAL STATEMENT 1

II. ISSUES PRESENTED 2

III. STANDARD OF REVIEW 4

IV. STATEMENT OF THE CASE 5

A. Meta's Open Platform Promise 5
B. Veamcast: A Competing Application 6
C. The App Review and Competitive Intelligence Harvest 7
D. The Fabricated Errors and Selective Revocation 8
E. The Concealment 9
F. Procedural Posture 10

V. SUMMARY OF ARGUMENT 11

VI. ARGUMENT 16

A. THE DISTRICT COURT ERRED IN DISMISSING ON TIMELINESS GROUNDS 16

1. The District Court Failed to Address the Complaint's Fraudulent Concealment Allegations 16
2. The District Court Misread Exhibit C and Ignored Evidence of Concealment 21
3. The Statute-of-Limitations Defense Cannot Be Resolved on the Pleadings 22
4. The Record Demonstrates Continuing Anticompetitive Conduct Within the Limitations Period Because the November 7, 2020 Selective API Denial Constituted a New Overt Act 23
5. The District Court Applied Laches Without Any Finding of Prejudice 27

B. THE DISTRICT COURT ERRED IN HOLDING APPELLANT LACKED ARTICLE III STANDING 32

1. The Complaint Alleged Direct Personal Injury 32
2. The District Court Improperly Applied the Shareholder-Derivative Rule Absent Any Corporate Injury 33
3. The District Court Created an Impermissible Catch-22 39
4. The District Court's Reliance on the Roku Decision Was Improper 41

C. THE COMPLAINT PLAUSIBLY ALLEGED ANTITRUST INJURY 42

1. Appellant Alleged a Cognizable Relevant Market 42
2. Appellant Alleged Exclusionary Conduct, Not Mere Refusal to Deal 45
3. The District Court Ignored Allegations of Market-Wide Harm and Mischaracterized the Complaint as Alleging Only Individual Injury 48
4. The District Court's Duplicative Recovery Concern Was Unfounded 51
5. Damages Quantification Is Inappropriate at the Pleading Stage 52

D. THE DENIAL OF LEAVE TO AMEND WAS AN ABUSE OF DISCRETION 54

E. THE DISTRICT COURT ERRED IN DISMISSING THE CLAYTON ACT § 3 CLAIM WITHOUT ANALYSIS 58

VII. CONCLUSION 60

CERTIFICATE OF COMPLIANCE 61
CERTIFICATE OF SERVICE 62

TABLE OF AUTHORITIES

Supreme Court of the United States

Aspen Skiing Co. v. Aspen Highlands Skiing Corp.,
472 U.S. 585 (1985) 14, 46
Associated General Contractors of California, Inc. v. California State Council of Carpenters,
459 U.S. 519 (1983) 38
Bell Atlantic Corp. v. Twombly,
550 U.S. 544 (2007) 49, 53
Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.,
429 U.S. 477 (1977) 50
Erickson v. Pardus,
551 U.S. 89 (2007) 4, 38, 40
Foman v. Davis,
371 U.S. 178 (1962) 4
Lujan v. Defenders of Wildlife,
504 U.S. 555 (1992) 32
Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP,
540 U.S. 398 (2004) 46
Zenith Radio Corp. v. Hazeltine Research, Inc.,
401 U.S. 321 (1971) 23, 53

United States Courts of Appeals

Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of Cal.,
190 F.3d 1051 (9th Cir. 1999) 4,45
Beneficial Standard Life Ins. Co. v. Madariaga,
851 F.2d 271 (9th Cir. 1988) 16,17
Bhan v. NME Hosps., Inc.,
772 F.2d 1467 (9th Cir. 1985) 42
Danjaq LLC v. Sony Corp.,
263 F.3d 942 (9th Cir. 2001) 12, 27, 31

Eldridge v. Block,
832 F.2d 1132 (9th Cir. 1987) 54
Eminence Capital, LLC v. Aspeon, Inc.,
316 F.3d 1048 (9th Cir. 2003) 54
Hart v. Massanari,
266 F.3d 1155 (9th Cir. 2001) 56
Hennegan v. Pacifico Creative Service, Inc.,
787 F.2d 1299 (9th Cir. 1986) 23, 24
Hexcel Corp. v. Ineos Polymers, Inc.,
681 F.3d 1055 (9th Cir. 2012) 12, 17, 20
Knievel v. ESPN,
393 F.3d 1068 (9th Cir. 2005) 4
Lopez v. Smith,
203 F.3d 1122 (9th Cir. 2000) (en banc) 40, 54, 56, 59
Mayfield v. United States,
599 F.3d 964 (9th Cir. 2010) 4
Newcal Indus., Inc. v. Ikon Office Sol., Inc.,
513 F.3d 1038 (9th Cir. 2008) 43
Oliver v. SD-3C LLC,
751 F.3d 1081 (9th Cir. 2014) 27
Pace Indus., Inc. v. Three Phoenix Co.,
813 F.2d 234 (9th Cir. 1987) 23
Palazzo v. Gulf Oil Corp.,
764 F.2d 1381 (11th Cir. 1985) 28
Polich v. Burlington N., Inc.,
942 F.2d 1467 (9th Cir. 1991) 4, 40
Retail Prop. Trust v. United Bd. of Carpenters,
768 F.3d 938 (9th Cir. 2014) 45
Samsung Electronics Co. v. Panasonic Corp.,
747 F.3d 1199 (9th Cir. 2014) 23

Supermail Cargo, Inc. v. United States,
68 F.3d 1204 (9th Cir. 1995) 4, 22, 26
Terrado v. U.S. Bank N.A. (*unpublished memorandum disposition),*
801 F. App'x 580 (9th Cir. 2020) 56, 57
Vinci v. Waste Management, Inc.,
80 F.3d 1372 (9th Cir. 1996) 13, 35, 36, 37, 52
Von Saher v. Norton Simon Museum of Art at Pasadena,
592 F.3d 954 (9th Cir. 2010) 22

United States District Courts

Animation Workers Antitrust Litigation,
87 F. Supp. 3d 1195 (N.D. Cal. 2015) 16
Coronavirus Reporter v. Apple Inc.,
2021 WL 5936910 (N.D. Cal. Dec. 16, 2021) 48, 51
Dean v. Roku, Inc.,
2025 WL 2299403 (M.D. Fla. Aug. 8, 2025) 41
FTC v. Facebook, Inc.,
560 F. Supp. 3d 1, 21 (D.D.C. 2021). 6
FTC v. Facebook, Inc.,
581 F. Supp. 3d 34 (D.D.C. 2022) 3, 5, 6, 7, 14, 41, 42, 46, 49, 50
FTC v. Meta Platforms, Inc.,
2025 WL 3211725 (D.D.C. Nov. 18, 2025) 6, 48, 49
Golden v. Intel Corp.,
642 F. Supp. 3d 1066 (N.D. Cal. 2022) 55
Reilly v. Apple Inc.,
578 F. Supp. 3d 1098 (N.D. Cal. 2022) 43, 48, 49
Reveal Chat Holdco LLC v. Facebook, Inc.,
2021 WL 1615349 (N.D. Cal. Apr. 26, 2021) 9, 19
Veamcast Corp. v. Facebook, Inc., No. 8:20-cv-02667-CEH-AEP
(M.D. Fla. Dec. 9, 2020) 28, 39, 41, 52

Statutes

15 U.S.C. § 2 (Sherman Act § 2) 1
15 U.S.C. § 14 (Clayton Act § 3) 58, 59
15 U.S.C. § 15 (Clayton Act § 4) 1
15 U.S.C. § 15(a) 33
15 U.S.C. § 26 (Clayton Act § 16) 1
28 U.S.C. § 1291 1
28 U.S.C. § 1331 1
28 U.S.C. § 1915(e)(2) 15, 31, 55, 56

Rules

Fed. R. App. P. 4(a)(1)(A) 1
Fed. R. App. P. 32(a)(5) 61
Fed. R. App. P. 32(a)(6) 61
Fed. R. App. P. 32(a)(7)(B) 61
Fed. R. App. P. 32(f) 61
Fed. R. App. P. 32(g) 61
Fed. R. App. P. 32.1(a) 54
Fed. R. Civ. P. 12(b)(6) 4, 22, 26
Fed. R. Civ. P. 15(a)(2) 52
9th Cir. R. 32-1 61
9th Cir. R. 36-3(a) 54

I. JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction under 28 U.S.C. § 1331 (federal question), 15 U.S.C. § 15 (Clayton Act private antitrust actions), and 15 U.S.C. § 26 (Clayton Act injunctive relief).

On February 12, 2026, the district court entered an Order Granting Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint Without Leave to Amend (ECF No. 71), which constitutes a final judgment disposing of all claims. Appellant timely filed a Notice of Appeal pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A) on February 15, 2026.

This Court has appellate jurisdiction under 28 U.S.C. § 1291, which confers jurisdiction over appeals from all final decisions of the district courts.

II. ISSUES PRESENTED

1. Whether the district court erred in holding the claims time-barred under the four-year statute of limitations where (a) the complaint alleged that the actionable injury did not accrue until September 25, 2020, the date Defendant closed Plaintiff's support ticket and conclusively excluded him from access, and separately alleged fraudulent concealment through fabricated error messages, misleading support responses, and deletion of evidence, tolling arguments the district court's order failed to address despite Plaintiff having raised them; (b) the complaint alleged that Defendant's anticompetitive blocking of Appellant's application was still actively occurring in November 2020, within four years of filing; and (c) the court applied the doctrine of laches without making any finding of prejudice to Defendant.

2. Whether the district court erred in dismissing for lack of Article III standing where the complaint alleged that Appellant personally developed, owned, and funded the Veamcast platform for twelve years, beginning years before any corporate entity was formed, retained all intellectual property rights without any assignment to any corporate entity, and was directly excluded from competition by Appellee's conduct; and where the court, having identified a pleading deficiency, simultaneously refused to consider Appellant's opposition brief clarifications

establishing the absence of any IP assignment *and* denied leave to amend, creating an irremediable procedural trap.

3. Whether the district court erred in dismissing for lack of antitrust standing where the complaint identified the personal social networking services market, the same market accepted as plausible at the pleading stage in *FTC v. Facebook, Inc.*, 581 F. Supp. 3d 34, 57–60 (D.D.C. 2022), and alleged exclusionary revocation of API access to eliminate a nascent competitor, as part of a documented pattern of systematic developer elimination.

4. Whether the district court erred in denying leave to amend where (a) the court's own legal standard recognized that leave should be granted unless the pleading could not possibly be cured by the allegation of other facts (b) Appellant had not previously been afforded an opportunity to address the specific standing deficiencies identified, (c) another federal judge had reviewed the same complaint and found it sufficient to survive § 1915(e)(2) screening, and (d) the court's futility rationale depended on an unpublished, non-precedential memorandum disposition.

5. Whether the district court erred in dismissing the Clayton Act § 3 exclusive dealing claim with prejudice on futility grounds without ever examining its substantive sufficiency, where the court's futility determination was made solely by reference to its standing and limitations rulings, without any analysis of whether the § 3 claim's pleading deficiencies, if any, could be cured by amendment.

III. STANDARD OF REVIEW

Each of the district court's dispositive holdings is reviewed de novo. A dismissal under Rule 12(b)(6) for failure to state a claim is reviewed de novo. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). Whether a plaintiff has alleged sufficient facts to establish Article III standing is a question of law reviewed de novo. *Mayfield v. United States*, 599 F.3d 964, 969 (9th Cir. 2010). Antitrust standing is likewise reviewed de novo. *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of Cal.*, 190 F.3d 1051, 1054 (9th Cir. 1999). Whether claims are barred by the statute of limitations when resolved on a Rule 12(b)(6) motion is reviewed de novo. *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206 (9th Cir. 1995). Denial of leave to amend is reviewed for abuse of discretion, but dismissal without leave to amend is improper unless, upon de novo review, it is absolutely clear that the deficiencies of the complaint could not be cured by amendment. *Polich v. Burlington N., Inc.*, 942 F.2d 1467, 1472 (9th Cir. 1991). The factors governing leave to amend, including futility, undue delay, bad faith, and prejudice, are reviewed de novo to the extent they turn on legal conclusions. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Pro se pleadings are held to less stringent standards than formal pleadings drafted by lawyers and must be construed liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

IV. STATEMENT OF THE CASE

This case does not challenge Meta's right to control its platform. It challenges Meta's selective and deceptive revocation of API access from a competing application, after reviewing that application's competitive features through a mandatory disclosure process, while attributing the exclusion to fabricated policy violations and promising ongoing technical resolution.

A. Meta's Open Platform Promise

Meta built its dominance in the personal social networking services market in part by inviting third-party developers to build applications on the Facebook platform through its Graph API. Meta promised developers an open ecosystem: access to powerful APIs, tools for social integration, and a pathway to reach Facebook's billions of users. Developers invested years of labor and capital building applications in reliance on these promises. SAC ¶¶ 6, 28–29.

But Meta's openness was strategic, not permanent. When third-party applications demonstrated features that competed with Facebook's core functionality, Meta systematically identified those applications as competitive threats and eliminated them, not through superior products, but through selective revocation of the API access on which those applications depended. SAC ¶¶ 28–31. The plausibility of this exclusionary mechanism is corroborated by the Federal Trade Commission's enforcement action in *FTC v. Meta Platforms, Inc*., No. 1:20-

cv-03590 (D.D.C.), which survived a motion to dismiss on allegations that Meta pursued precisely this pattern of conduct across multiple developers. See *FTC v. Facebook, Inc.,* 581 F. Supp. 3d 34, 57–60 (D.D.C. 2022). Although the district court later entered judgment for Meta after trial, that ruling addressed present monopoly power, not the historical exclusionary conduct alleged here. *FTC v. Meta Platforms, Inc.*, No. 1:20-cv-03590-JEB, slip op. (D.D.C. Nov. 18, 2025), ECF No. 693, *appeal filed* (D.C. Cir. Jan. 20, 2026). The FTC's decision to appeal confirms that the agency continues to maintain Meta engaged in a decade-long pattern of anticompetitive exclusion of competing developers, precisely the historical conduct at issue in this case, conduct that Judge Boasberg himself acknowledged "might have violated Section 2" when a platform "revoked a competitor's API permissions (after previously providing it access)." *FTC v. Facebook, Inc.*, 560 F. Supp. 3d 1, 21 (D.D.C. 2021).

B. Veamcast: A Competing Application

Beginning in 2010, before Veamcast Corporation was formed and six years before Veamcast Corp., Appellant Joseph Dean personally developed a platform of applications and an API for video, voice, and photo publishing and sharing services. SAC ¶ 5; ECF 66 at 6. Over a period of twelve years, Appellant made 2,132 code changes and 34,741 file operations to the application. ECF 66 at 18.

Appellant maintained 100% ownership and control throughout all iterations of the platform's development, with no outside investors or employees. ECF 66 at 5–6.

Video, voice, and photo publishing and sharing are core features of Facebook's social networking platform. Veamcast integrated with Meta's Facebook Graph API and offered features directly competitive with Facebook's core services, which is precisely why Meta targeted it. SAC ¶¶ 22–24 (alleging Meta exploited its control over essential APIs to eliminate potential competitors including Veamcast, whose functionality overlapped with Facebook's own); see also SAC ¶ 6.

C. The App Review and Competitive Intelligence Harvest

Appellant submitted Veamcast to Meta's mandatory App Review process. SAC ¶¶ 7–8. During this process, Meta's employees tested the application using internal tfbnw.net accounts, gaining direct access to Veamcast's competitive features and functionality. SAC ¶ 8; Exhibit A. This review process, which Meta required as a condition of continued API access, gave Meta's employees a detailed understanding of exactly how Veamcast competed with Facebook.

This pattern is consistent with the conduct the FTC alleged across multiple developers: Meta required disclosure of competitive features as a condition of API access, then used that intelligence to target competitors for elimination. SAC ¶¶ 28–31. The FTC's allegations of this systematic pattern were found plausible at the motion-to-dismiss stage. See *FTC v. Facebook, Inc.,* 581 F. Supp. 3d at 57–60.

D. The Fabricated Errors and Selective Revocation

After reviewing Veamcast's functionality, Meta engaged in a pattern of systematic conduct targeting the platform. Specifically, Meta: (a) systematically disabled several API functionalities that Veamcast relied upon, SAC ¶ 9(a); (b) generated false "reported as abusive" errors for content posted through the Veamcast application, SAC ¶ 9(b), Exhibit B; and (c) unilaterally deleted all Veamcast-related content from its platform without prior notice or justification, SAC ¶ 9(c).

The fabricated error messages are critical to understanding the nature of Meta's conduct. Meta generated "reported as abusive" errors for content that had just been created through the Veamcast application, content that no Facebook user had yet viewed, let alone reported. SAC ¶ 9(b); Exhibit B. It is implausible that content could have been reported as abusive before any user had seen it. These error messages were not the product of legitimate content moderation; they were fabricated to disguise competitive exclusion as routine policy enforcement. The API functions used by Veamcast to post content remained fully available to other applications and to Facebook's own services. Only Veamcast's access was blocked. SAC ¶¶ 9(a)–(b).

E. The Concealment

Critically, Meta did not simply deny Appellant access. Instead, Meta engaged in affirmative concealment of the anticompetitive nature of its actions. When Appellant initiated support tickets seeking resolution, Meta's agents responded with misleading and evasive responses, acknowledged escalation of the issues, and created the impression that technical resolution was forthcoming, while never intending to restore access. SAC ¶ 10; Exhibit C.

This conduct stands in stark contrast to Meta's treatment of developers in *Reveal Chat Holdco LLC v. Facebook, Inc.*, 2021 WL 1615349 (N.D. Cal. Apr. 26, 2021), where Facebook publicly announced the deprecation of specific APIs through support channels, giving developers constructive notice. Here, Meta never publicly deprecated the API functions Veamcast used because they remained available to all other applications. Meta could not publicly announce this without exposing it was selectively targeting competitors. Instead, Meta actively concealed its conduct through fabricated error messages, misleading support responses, and ultimately, deletion of the support thread evidence. SAC ¶¶ 9(d), 10; Exhibit C.

By September 25, 2020, Meta replaced the entire support thread with a summary "Bug Closed" notation, deleting the evidence of its misleading representations. SAC Ex. C, Thread [4] (pages 49–55); ECF 66 at 8. This conduct destroyed the user base Appellant had developed, rendered years of investment in

Facebook API integration worthless, foreclosed capital formation, and eliminated Appellant's ability to compete in the social media market. SAC ¶ 13.

F. Procedural Posture

Appellant filed this lawsuit on September 22, 2024, in the Middle District of Florida. ECF 1. Appellant filed a First Amended Complaint, ECF 9, which received no merits review. The only ruling addressed Appellant's IFP application, not the substance of the pleading. ECF 15, 16. Without the benefit of any merits ruling on the First Amended Complaint, Appellant filed the Second Amended Complaint. ECF 14. Appellee then filed a motion to dismiss and a motion to transfer venue. ECF 26, 28. The transferring court deferred all merits review and transferred the case to the Northern District of California without any substantive ruling on the Second Amended Complaint. ECF 55. Appellee filed an amended motion to dismiss. ECF 64. Appellant opposed. ECF 66. Appellee replied. ECF 67. On February 12, 2026, the district court granted the motion to dismiss without leave to amend, the first and only merits ruling on any version of the complaint. ECF 71.

V. SUMMARY OF ARGUMENT

The district court committed five independent errors, any one of which requires reversal.

First, the district court's timeliness analysis rests on multiple legal errors that independently warrant reversal. The court applied a rigid injury-accrual rule and held the claims time-barred without once mentioning, let alone analyzing, the complaint's detailed allegations of fraudulent concealment. Those allegations were not peripheral to the SAC. They were its foundation. The SAC was built on the premise that Meta's affirmative concealment prevented Appellant from discovering the anticompetitive nature of the restrictions until September 25, 2020, when Meta closed the support ticket and the concealment ended. The SAC alleged that Meta generated fabricated "reported as abusive" error messages on content no user had seen, provided misleading support responses suggesting resolution was forthcoming, and then deleted the support thread evidence on that date. Throughout the restriction period, Meta’s support representatives acknowledged the issues, represented that tickets had been escalated, and attributed the problems to technical causes under investigation, providing an affirmative, innocent explanation that concealed the competitive motivation entirely. A plaintiff who receives repeated assurances that his technical problems are being investigated cannot determine

whether his suspicions reflect a deliberate anticompetitive campaign or a genuine technical failure.

These allegations satisfy each element of the fraudulent concealment doctrine under *Hexcel Corp. v. Ineos Polymers, Inc.*, 681 F.3d 1055, 1060 (9th Cir. 2012). By ignoring them entirely, the district court failed to engage with the theory on which the complaint's timeliness principally depended. That failure constituted reversible error.

Second, the court applied laches without making any finding of prejudice to Meta, as required by *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 955 (9th Cir. 2001). The order contains no finding that any witness, document, or evidence was lost due to the timing of this filing. Moreover, the delay was not inexcusable: Appellant filed the original complaint just 48 days after Meta closed his support ticket, and the gap between that filing and the present action resulted directly from compliance with a federal court's directive to refile as an individual plaintiff, not from inattention or neglect.

Third, on Article III standing, the district court mischaracterized Appellant's injury as purely corporate. The court's order began by describing Veamcast as "Plaintiff's company," framing the entire analysis around a corporate entity rather than the individual who created the platform. But the complaint alleged that

Appellant personally developed Veamcast over twelve years beginning in 2010, years before any corporate entity existed. SAC ¶ 5; ECF 66 at 6.

The court compounded this error by applying *Vinci v. Waste Management, Inc.*, 80 F.3d 1372 (9th Cir. 1996), without first establishing *Vinci*'s predicate: an identifiable corporate injury from which a shareholder's harm derives. That predicate was never established, and notably, even Meta could not identify the correct corporate entity. Meta's motion cited Florida Sunbiz records for "Veamcast Corporation" while simultaneously relying on the 2020 lawsuit filed by "Veamcast Corp.", two entirely separate legal entities. The district court collapsed both into "Plaintiff's company, Veamcast" without identifying either. A shareholder-derivative bar that cannot identify the corporation whose injury it supposedly derives from cannot apply. Neither corporate entity ever received an assignment of Appellant's intellectual property. Neither had employees, bank accounts, investors, or independent operations. Without a corporate injury at the threshold, the shareholder-derivative bar never activates. The court further created an impermissible procedural Catch-22 by refusing to consider Appellant's standing clarifications in his opposition while simultaneously denying leave to amend — leaving Appellant no procedural path to cure a deficiency that was, by the court's own implicit acknowledgment, curable.

Fourth, on antitrust standing, the district court dismissed the FTC's documented findings as "threadbare recitals" despite those findings being the conclusions of a federal enforcement agency after years of investigation, findings that a federal court found sufficiently plausible to survive dismissal and proceed through extensive discovery and trial. The court found the relevant market inadequately defined despite Appellant's identification of the personal social networking services market, the same market accepted as plausible at the pleading stage in *FTC v. Facebook, Inc.*, 581 F. Supp. 3d 34, 58–60 (D.D.C. 2022). SAC ¶¶ 11(d), 21 (incorporating the FTC's definition of the personal social networking market). The court concluded Veamcast did not compete with Facebook based on the SAC's descriptive label while disregarding that the same complaint's App Review submission demonstrated user authentication, friend feeds, wall posting, Facebook group synchronization, and channel sharing, the precise functional architecture of a social networking service, and that Meta had personally tested those competitive features before selectively disabling the very API functions they relied upon. The complaint alleged exclusionary revocation of API access to eliminate a nascent competitive threat, conduct analyzed under *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985), not the unilateral refusal-to-deal framework of *Trinko*. The complaint further alleged that Appellant's exclusion was part of a systematic pattern experienced by multiple independent developers,

including Phhhoto, Six4Three, and Reveal Chat, establishing harm to the competitive process, not merely harm to an individual competitor. SAC ¶¶ 11–12, 28–31; ECF No. 36, Ex. U

Fifth, the district court abused its discretion by denying leave to amend. The court's own order acknowledged that it "might be inclined to provide an opportunity" to expand the allegations if this were Appellant's first attempt, but it was, in every legally meaningful sense. The prior 2020 action was dismissed without prejudice solely because a non-lawyer may not represent a corporation; it was never evaluated on the merits. The court's directive in that case was for Appellant to refile as an individual plaintiff, precisely what this action represents. Counting a procedurally defective corporate filing as a prior attempt to litigate individual standing claims is a category error: no court had ever reached the substance of those claims before. Futility cannot rest on a record that has never been substantively examined.

The Second Amended Complaint was reviewed by Judge Scriven of the Middle District of Florida under the mandatory screening provision of 28 U.S.C. § 1915(e)(2)(B), which requires dismissal of any complaint that is frivolous or fails to state a claim. Judge Scriven declined to dismiss, granted in forma pauperis status, and ordered service on Meta. This weighs strongly against a conclusion that no amendment could save it. The court also dismissed the Clayton Act § 3

exclusive dealing claim with prejudice without ever analyzing its substantive sufficiency. Futility cannot be determined for a claim that was never examined.

For these reasons, the judgment should be reversed.

VI. ARGUMENT

A. THE DISTRICT COURT ERRED IN DISMISSING ON TIMELINESS GROUNDS

The district court's timeliness analysis rests on multiple independent legal errors. The court committed clear legal errors in both its statute-of-limitations and laches analyses that independently warrant reversal.

1. The District Court Failed to Address the Complaint's Fraudulent Concealment Allegations

The district court applied the general rule that "antitrust claims accrue at the time of injury," and that "[t]he plaintiff's knowledge is generally irrelevant to accrual," quoting In re Animation Workers Antitrust Litig., 87 F. Supp. 3d 1195, 1208 (N.D. Cal. 2015) (citing *Beneficial Standard Life Ins. Co. v. Madariaga*, 851 F.2d 271, 274–75 (9th Cir. 1988)). ECF 71 at 6. The court then treated this general rule as dispositive without acknowledging, let alone analyzing, its recognized exceptions.

This was incorrect for two reasons. First, the district court's primary authority, Animation *Workers*, is a district court opinion, not binding Ninth Circuit precedent. Second, and more fundamentally, the authorities the district court cited do not support its categorical approach. *Madariaga* itself used the word "generally" precisely because the Ninth Circuit recognized that established exceptions exist, including fraudulent concealment, equitable tolling, and the discovery rule. The district court quoted the qualifier but applied the rule as though the qualifier did not exist. A court cannot invoke an authority that recognizes exceptions and then apply the rule as if those exceptions do not exist. In the Ninth Circuit, fraudulent concealment tolls the statute of limitations where the plaintiff establishes that "(1) the defendant took affirmative acts to mislead the plaintiff; (2) the plaintiff did not have actual or constructive knowledge of the facts giving rise to its claim; and (3) the plaintiff acted diligently in trying to uncover the facts giving rise to its claim." *Hexcel Corp. v. Ineos Polymers, Inc.*, 681 F.3d 1055, 1060 (9th Cir. 2012).

The SAC alleged facts satisfying each element.

Element One: Affirmative acts to mislead. Meta took multiple affirmative steps to conceal the anticompetitive nature of its conduct. First, Meta generated fabricated “reported as abusive” error messages for content posted through Veamcast. SAC ¶ 9(b); Exhibit B. These errors appeared on content that had just been created—content no Facebook user had yet viewed, let alone reported. It is

technically impossible for content to be "reported as abusive" before any user has seen it. These fabricated errors constituted affirmative misrepresentations that the restrictions were content-based rather than competitive. Second, when Appellant initiated support tickets, Meta's agents responded with misleading and evasive responses, acknowledged escalation of the issues, and created the impression that technical resolution was forthcoming. SAC ¶ 10; Exhibit C. Third, Meta deleted the entire support thread by September 25, 2020, replacing it with a summary "Bug Closed" notation and destroying evidence of its misleading representations. SAC Ex. C, Thread [4] (pages 49–55); ECF 66 at 8. The deletion is independently significant. A company does not erase the record of a technical support dispute. It erases the record of a deception it needs to conceal. The inference that Meta deleted this thread to destroy evidence of its own false representations, on the same day it closed the ticket without resolution, is not speculative. It is the most reasonable inference of the timeline.

Element Two: Lack of actual or constructive knowledge. Appellant did not and could not have known the anticompetitive nature of Meta's conduct while Meta was actively attributing the restrictions to content violations and promising technical resolution. The fabricated error messages provided a false alternative explanation, content violations that Meta never identified or substantiated, that concealed the true competitive motivation. A developer receiving fabricated error

messages and assurances that the problem is being investigated has no reason to suspect that he is the target of a deliberate anticompetitive campaign. Unlike the developers in *Reveal Chat Holdco LLC v. Facebook, Inc.,* 2021 WL 1615349 (N.D. Cal. Apr. 26, 2021), who received constructive notice when Facebook publicly deprecated their APIs at its developer conference, Appellant received no such public notice because the API functions Veamcast used were never deprecated. They remained fully available to other applications. Meta could not publicly announce the selective targeting of competitive applications without exposing its anticompetitive purpose.

That Reveal Chat separately litigated its own exclusion does not establish that Appellant knew or should have known that his distinct API restrictions, actively attributed by Meta to content violations under ongoing technical investigation, shared the same anticompetitive character. The district court's reliance on Reveal Chat conflated two entirely different forms of notice: the public deprecation announcement that gave Reveal Chat's developers constructive notice of their exclusion, and the private, concealed, individually targeted conduct directed at Appellant.

Although Appellant suspected that Meta's conduct might be anticompetitive, Meta repeatedly represented that the restrictions were the result of automated

policy enforcement and ongoing technical investigation, thereby concealing the deliberate nature of the exclusion.

Element Three: Diligent pursuit of the claim. Appellant persistently pursued resolution through Meta's support channels throughout the period of concealment. When Meta finally closed the support ticket without resolution on September 25, 2020, the point at which the concealment ended, Appellant filed the original Veamcast Corporation complaint just 48 days later, on November 12, 2020. This prompt action demonstrates the diligence the doctrine requires.

The district court's order never addressed the complaint's fraudulent concealment allegations, even though those allegations triggered the tolling framework the court was required to analyze under Hexcel. It did not analyze the fabricated error messages, the misleading support responses, or the deleted evidence. By failing to address those allegations, the district court never applied the fraudulent concealment framework required by Hexcel.

The SAC pleads these affirmative acts with particularity, identifying the specific error language, the dates of support communications, and the September 25, 2020 deletion of the support thread. See SAC ¶¶ 9–10; Exs. B–C.

Because the complaint plausibly alleged fraudulent concealment, continuing overt acts within the limitations period, and diligence in pursuing the claim, dismissal on timeliness grounds at the pleading stage was error.

2. The District Court Misread Exhibit C and Ignored Evidence of Concealment

The district court relied on Exhibit C to the SAC for the proposition that Meta "had been 'blocking' Veamcast since 2018 and includes correspondence dating back to July 2019." ECF 71 at 6. But Exhibit C is a double-edged document. While it shows the timeline of restrictions, it also shows Meta's ongoing misleading conduct: the support agents who acknowledged the issues, the escalation promises, the protracted engagement that kept Appellant believing technical resolution was possible.

Far from establishing that Appellant knew of the anticompetitive nature of the restrictions in 2018 or 2019, Exhibit C demonstrates that Meta was actively concealing that nature through a pretense of technical support. A plaintiff cannot "discover" that he is being deliberately targeted when the defendant's own representatives are actively telling him the issue is being fixed. Meta cannot run the limitations clock while simultaneously assuring Appellant his technical problems were under investigation. The district court relied on Exhibit C for the timeline of restrictions while disregarding the same exhibit's evidence of ongoing concealment. This selective reading was error.

3. The Statute-of-Limitations Defense Cannot Be Resolved on the Pleadings

The district court concluded that "[b]ecause the alleged injury occurred as early as 2018 or July 2019, the Court concludes the statute of limitations has run on Plaintiff's claims." ECF 71 at 6. Even setting aside the court's failure to address fraudulent concealment, resolution at the 12(b)(6) stage was premature.

"The applicability of the equitable tolling doctrine often depends on matters outside the pleadings, so it is not generally amenable to resolution on a Rule 12(b)(6) motion." *Supermail Cargo*, 68 F.3d at 1207. Whether Meta's support responses were genuinely misleading, whether Appellant exercised reasonable diligence, and whether the fabricated error messages constituted affirmative concealment are quintessential fact questions that cannot be resolved on the pleadings alone.

The Ninth Circuit has repeatedly held that a statute-of-limitations defense should be resolved at the pleading stage only where the running of the statute is "apparent on the face of the complaint." *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010). Here, the face of the complaint includes detailed concealment allegations that, if credited, plausibly toll the limitations period through at least September 25, 2020—placing the September 22, 2024 filing within the four-year window.

4. The Record Demonstrates Continuing Anticompetitive Conduct Within the Limitations Period Because the November 7, 2020 Selective API Denial Constituted a New Overt Act

Even apart from fraudulent concealment and the discovery rule, the claims are timely because Meta committed overt acts within the limitations period.

Under the Supreme Court's holding in *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971), in a continuing antitrust violation, each new overt act that injures the plaintiff starts the statutory period running anew, permitting recovery for damages caused by that act. The Ninth Circuit applies this framework: a qualifying overt act must be (1) a new and independent act that is not merely a reaffirmation of a previous act, and (2) one that inflicts new and accumulating injury on the plaintiff. *Samsung Elecs. Co. v. Panasonic Corp.*, 747 F.3d 1199, 1202 (9th Cir. 2014); *Pace Indus., Inc. v. Three Phoenix Co.*, 813 F.2d 234, 238 (9th Cir. 1987).

The paradigm application is *Hennegan v. Pacifico Creative Service, Inc.*, 787 F.2d 1299 (9th Cir. 1986), which *Pace* itself endorses: each instance in which tour guides actively steered tourists away from a competitor's shop constituted a new overt act, even though the underlying decision predated the limitations period, because each instance required affirmative conduct and caused fresh, discrete injury. *Id.* at 1301.

The API-based exclusion alleged here fits *Hennegan*, not the passive-continuation cases *Pace* distinguished. Meta's Graph API is a transactional system: each time an application makes an API call, Meta's servers process the request and return a response. Each API denial is therefore an independent decision by Meta's system, either to permit interoperability or to refuse it. When Meta's system returns a fabricated error message in response to a Veamcast API call, it is not the lingering effect of a prior refusal; it is a contemporaneous act of exclusion. Meta's servers received the request, identified it as originating from Veamcast, and generated a false response, active conduct at the moment of each call, not inertia.

The SAC alleged, and the record confirms, that Meta was still committing such acts well within the limitations period. On November 7, 2020, Appellant recorded a video demonstrating in real time that Meta's selective API denial was ongoing. Exhibit B. In the video, Appellant creates a voice message through the Veamcast application and shares it to his Facebook wall. Within seconds, Meta's system generates the same fabricated error: "your message cannot be sent because it includes content that other people on Facebook have reported as abusive." The content had just been created, no Facebook user had viewed it, let alone reported it. Appellant then tests a second function, publishing to a Facebook page through Veamcast, and receives a "service temporarily unavailable" error.

Critically, the video demonstrates that this denial was selective: the same API functions remained available to other applications and to Facebook's own services. As Appellant explains in the video, the wall posting was "blocked just for us," the page publishing was "done just for me," while Meta blocked groups and friends functionality "for everybody." This selective targeting, disabling functions only when accessed through Veamcast while maintaining them for all other applications, is consistent with exclusionary conduct, not legitimate content moderation or technical deprecation.

Each of the November 7, 2020 API denials constitutes a new overt act. Each was a separate server-side response to a distinct API request. Each inflicted a fresh, independent injury: the denial of interoperability on that specific occasion, preventing Appellant from reaching Facebook users with that specific content at that specific time. These are not the lingering consequences of an earlier block. They are active refusals by Meta's system, occurring within seconds of each request.

Moreover, the continuing pattern of fraudulent concealment confirms that Meta's conduct was not passive continuation of a prior decision but active, ongoing exclusion requiring continuous affirmative effort. Meta did not merely configure a block in 2018 and walk away. It generated fabricated error messages on each new API call, responded to each new support ticket with fresh misleading

representations, and ultimately deleted the support thread on September 25, 2020, an affirmative act of evidence destruction itself falling within the limitations period. Fraudulent concealment cannot be passive. Every act required to maintain it is an independent affirmative act. Meta cannot credibly argue that its conduct was a stale, inertial prior decision while simultaneously arguing that it was actively deceiving Appellant about the nature of that conduct throughout the same period. The two positions are irreconcilable: a defendant who must keep acting to maintain a deception is not a defendant who acted once and stopped.

Whether the November 7 denials stemmed from an earlier policy configuration or from contemporaneous enforcement is a factual question inappropriate for resolution on a Rule 12(b)(6) motion. Under Rule 12(b)(6), the court was required to draw all reasonable inferences in Appellant's favor. *See Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1207 (9th Cir. 1995) (equitable tolling questions often depend on matters outside the pleadings and are not generally amenable to resolution on a Rule 12(b)(6) motion). The reasonable inference from a system that returns a fabricated "reported as abusive" error on just-created content, while continuing to process identical requests from other applications, is active exclusion rather than passive continuation of a stale decision.

November 7, 2020 falls within four years of the September 22, 2024 filing date. Dismissal on limitations grounds was legally improper.

5. The District Court Applied Laches Without Any Finding of Prejudice

The district court held that "[t]he doctrine of laches further prohibits Plaintiff's claims because his delay in filing the present suit is inexcusable," citing *Oliver v. SD-3C LLC*, 751 F.3d 1081, 1085 n.4 (9th Cir. 2014). ECF 71 at 6–7. This analysis was deficient in two independent respects.

First, laches requires both inexcusable delay and prejudice to the defendant. *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 955 (9th Cir. 2001). The district court addressed only delay without making any finding of prejudice to Meta. The order identifies no witness who became unavailable, no document that was lost, and no position Meta changed in reliance on the timing of this lawsuit. Absent a finding that Meta was prejudiced by the timing of the filing, laches cannot bar the claims. *Id.*

Second, the delay was not inexcusable. Appellant filed the original Veamcast Corporation complaint in November 2020, just 48 days after Meta closed his support ticket on September 25, 2020. That case was dismissed not for lack of diligence but because a corporation cannot proceed pro se, a fact the district court's order obscured by describing the dismissal as being for "plaintiff's failure to timely file an amended complaint." ECF 71 at 4 n.2. That characterization is inaccurate on the record.

The predecessor case was not a single coherent proceeding. The compliance period was set by Judge Honeywell, who signed the adopting order on December 9, 2020. The case was then reassigned on January 7, 2021 to Judge Kathryn Kimball Mizelle, a judge with no prior involvement in the matter. *Veamcast Corp. v. Facebook, Inc.*, No. 8:20-cv-02667-KKM-AEP, ECF No. 8 (M.D. Fla. Jan. 7, 2021). The extension request was denied by Judge Mizelle, who had just inherited the case. ECF No. 10 (M.D. Fla. Jan. 13, 2021). When the February 8, 2021 deadline passed, Judge Mizelle dismissed the action on February 11, 2021**,** but on a narrow, procedural basis: solely because a corporation cannot appear pro se, citing *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985). ECF No. 12 (M.D. Fla. Feb. 11, 2021). The dismissal was without prejudice. No merits finding was made. No finding of bad faith was made. No finding of inexcusable delay was made. The court applied one rule and closed the file.

Critically, in the predecessor case, Judge Honeywell, adopting the Report and Recommendation of Magistrate Judge Porcelli, expressly directed that if Dean seeks to proceed on his own behalf, rather than on behalf of Veamcast, he should be given sixty days to submit an amended complaint setting forth individual claims. *Veamcast Corp. v. Facebook, Inc.*, No. 8:20-cv-02667-CEH-AEP, Order (M.D. Fla. Dec. 9, 2020), ECF No. 7 (adopting in full Report and Recommendation, ECF No. 6). That directive did not simply grant sixty days to

refile. It directed Appellant to familiarize himself with the Federal Rules of Civil Procedure and the Local Rules, referred him to the Federal Bar Association's pro bono program, and encouraged him to consult the court's own pro se handbook and "Litigants Without Lawyers" guidelines. The court recognized that proceeding individually as a pro se litigant required preparation — preparation the court itself directed.

Judge Mizelle's subsequent order confirmed the same understanding. Denying the extension request, she expressly noted that Dean retained "additional time to submit an amended complaint alleging claims that he maintains on behalf of himself rather than on behalf of Veamcast." ECF No. 10 at 1. Two separate federal judges thus recognized the legal availability of individual claims before any court ever examined their substance.

The compliance period was not a period of inaction. On January 7, 2021, within thirty days of Judge Honeywell's directive, and on the very day the case was reassigned to Judge Mizelle, Appellant filed a letter motion documenting his concrete efforts to obtain counsel: he had contacted multiple attorneys, used the Federal Bar Tampa pro bono link the court itself had recommended in its December 9 order, and received no actionable response from any of those efforts. ECF No. 9 (M.D. Fla. Jan. 7, 2021). The letter also expressly stated Appellant's intention to continue pursuing the claims in another jurisdiction if the case were

dismissed. *Id.* The record reflects a pro se litigant actively following a federal court's procedural instructions under circumstances that would challenge any unrepresented party.

Judge Mizelle denied the extension request on January 13, 2021, holding to a February 8, 2021 deadline, ECF No. 10, and dismissed the case three days after that deadline passed, on February 11, 2021, with no finding of bad faith or inexcusable delay. ECF No. 12. When Cousins made the finding about inexcusable delay, he did so without addressing the Honeywell directive that Appellant had squarely raised in his opposition, ECF 66 at 8, without identifying any prejudice to Meta, and based on a characterization of the predecessor dismissal, "plaintiff's failure to timely file an amended complaint," ECF 71 at 4 n.2, that the actual docket record does not support. The dismissing court made no such finding, it applied the *Palazzo* pro se corporation rule, dismissed without prejudice, and closed the file. Cousins drew his own inference of inexcusable delay from that procedural dismissal, but the characterization on which he relied, 'failure to timely file an amended complaint,' ECF 71 at 4 n.2, misreads what actually happened. The dismissal was not a sanction for neglect. It was the mechanical application of a procedural rule that the dismissing court itself described as the sole basis for its order. A without-prejudice dismissal on a procedural ground cannot bear the weight of a laches finding.

A delay caused by compliance with a federal court's procedural directive, followed by documented but unsuccessful efforts to obtain counsel, followed by a dismissal entered on the narrow procedural ground that a corporation cannot appear pro se, by a newly-assigned judge three days after a court-imposed deadline is not inexcusable delay. *See Danjaq*, 263 F.3d at 954–55. Appellant raised Judge Honeywell's directive in his opposition. ECF 66 at 8. The district court did not address it.

The continuity of Appellant's pursuit of these claims is further confirmed by the fact that upon refiling, Judge Scriven of the Middle District of Florida granted IFP status and ordered service of the complaint, a determination under the mandatory screening provision of 28 U.S.C. § 1915(e)(2)(B) that the claims had sufficient merit to proceed. ECF No. 19 (M.D. Fla. Feb. 25, 2025). A litigant who documents active compliance efforts during the court-ordered period, promptly refiles after a procedural dismissal, and obtains a judicial determination that his claims are non-frivolous has not engaged in inexcusable delay. And a district court that finds inexcusable delay without identifying prejudice, without engaging the court directive raised in opposition, and based on a factually inaccurate account of the predecessor proceeding has not applied laches. It has applied an unsupported conclusion.

B. THE DISTRICT COURT ERRED IN HOLDING APPELLANT LACKED ARTICLE III STANDING

1. The Complaint Alleged Direct Personal Injury

To establish Article III standing, a plaintiff must show "(1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). At the pleading stage, the plaintiff need only make "general factual allegations of injury resulting from the defendant's conduct" to satisfy Article III. *Id.* at 561.

The district court held that "Plaintiff cannot satisfy Article III standing because he does not allege any concrete injury to himself, rather than to Veamcast." ECF 71 at 3. This does not match the record.

The court's analysis was infected from the outset by a framing error. The very first sentence of the order described Veamcast as "Plaintiff's company." ECF 71 at 1. Having characterized Veamcast as a corporate entity in its opening line, the court then reasoned backward from that characterization to conclude that all injuries to "Veamcast" were corporate injuries. But the SAC alleged that Veamcast was a platform, the name of the application Appellant built, not merely a corporate entity. The court conflated a product name with a legal entity.

The SAC alleged each element of standing. As to injury in fact, the complaint alleged that Appellant personally developed the Veamcast platform beginning in 2010, SAC ¶ 5; ECF 66 at 6, before any corporate entity existed. Appellant invested twelve years of personal labor and resources into the application. Appellee's conduct directly prevented Appellant from "building a user base through the Facebook platform," "utilizing resources invested in Facebook API integration," "raising capital," and "competing in the social media market." SAC ¶ 13. These are concrete, particularized injuries to Appellant personally, the loss of competitive opportunity, the destruction of personal investment, and exclusion from the market. As to causation, the complaint alleged that Appellee specifically targeted Veamcast by disabling its API access, generating fabricated error messages, and deleting its content. SAC ¶ 9. As to redressability, damages under Section 4 of the Clayton Act would compensate Appellant for these losses. 15 U.S.C. § 15(a).

2. The District Court Improperly Applied the Shareholder-Derivative Rule Absent Any Corporate Injury

The district court's standing analysis rested on the proposition that "the SAC is silent as to any injury Plaintiff himself suffered that would be distinct from injury to Veamcast." ECF 71 at 3. In support, the court pointed to allegations that Appellee's conduct "target[ed] Veamcast," "imposed restrictive policies on

Veamcast," and "disabled Veamcast's API access." Id. (citing SAC ¶¶ 9, 22, 30). But the fact that the platform was called "Veamcast" does not mean the injury was only to a corporate entity. Veamcast was the name of Appellant's personal creation, an application he developed over twelve years. Reading "Veamcast" as a corporate plaintiff conflates a product name with a legal entity and disregards the complaint's allegation that Appellant was the sole developer and the person directly excluded from competition.

The SAC alleges that Appellant personally developed the Veamcast platform beginning in 2010, before any entity was formed. Although two corporate entities were later organized, the complaint does not allege, and no agreement reflects, any assignment of the underlying intellectual property to those entities. The injury alleged is therefore not derivative of a distinct corporate loss, but arises from Appellant's own exclusion from competition and destruction of personally created intellectual property.

The SAC's attachments further support that the operative interaction with Meta occurred through Appellant personally. Exhibit C reflects support communications displayed under "Joe Dean · Creator," with Meta representatives addressing Appellant directly. See SAC Ex. C. The record does not reflect a separate corporate login or entity-controlled developer account. Although the application was branded "Veamcast," the developer-account interaction reflected in

the SAC attachments was personal. To the extent the SAC did not expressly distinguish app branding from account identity, that clarification was presented and is readily curable by amendment. ECF 66 at 5–6, 17–18.

The court relied on *Vinci v. Waste Management, Inc*., 80 F.3d 1372, 1375 (9th Cir. 1996), for the rule that a shareholder of a corporation injured by antitrust violations has no standing to sue in his own name. ECF 71 at 5. But Vinci has a predicate the district court skipped entirely: it presupposes the existence of a corporation that was itself injured by the anticompetitive conduct, from which the shareholder's harm then derives. 80 F.3d at 1375. The framework only operates once that predicate corporate injury is identified. Here, the district court never identified which corporate entity was injured, never identified what injury that entity suffered, and never explained how Appellant's alleged harm derives from that corporate loss, because no such analysis is possible. That predicate was never established, and notably, even Meta could not identify the correct corporate entity. Meta's motion cited Florida Sunbiz records for "Veamcast Corporation" while simultaneously relying on the 2020 lawsuit filed by "Veamcast Corp.", two entirely separate legal entities. The district court collapsed both into "Plaintiff's company, Veamcast" without identifying either. A shareholder-derivative bar that cannot identify the corporation whose injury it supposedly derives from has no foundation to stand on. Neither "Veamcast Corporation" nor "Veamcast Corp." ever received

an assignment of the intellectual property Appellant created. Neither entity employed personnel, held bank accounts, conducted independent operations, or had any assets. ECF 66 at 5–6. A corporation with no assets, no IP, and no operations cannot be the injured party from which a shareholder's harm derives. Without an identifiable corporate injury at the predicate level, Vinci's shareholder-derivative bar never activates. The district court applied the rule's conclusion without establishing its precondition.

This distinction is dispositive. Vinci exists to prevent double recovery—one judgment for the corporation, another for its shareholders, for the same injury. 80 F.3d at 1375. That concern has no application here because there is no corporate injury to double. No corporate entity has a pending claim. No corporate entity ever held the IP. No corporate entity ever could have brought this suit, because no corporate entity owned what Meta destroyed. There is nothing for Appellant to be "derivative" of. His injury is the injury itself.

Meta will likely invoke *Vinci*'s statement that the shareholder-derivative bar applies "even if the injured shareholder is the sole shareholder, or if the shareholder alleges that the antitrust violations were intended to drive the individual out of the industry." 80 F.3d at 1375. But that language does not save the district court's analysis. *Vinci*'s "sole shareholder" and "drive out of industry" scenarios still presuppose the existence of a corporation that was itself the target of

antitrust injury, from which the shareholder's harm then derives. A shareholder who is driven out of the industry by harm to his corporation is still a *shareholder*, his injury flows through a corporate intermediary. Here, there is no corporate intermediary. Neither Veamcast Corporation nor Veamcast Corp. held the intellectual property, employed personnel, or had any assets that Meta's conduct could have injured. A shareholder-derivative bar cannot operate in the absence of the corporate injury it presupposes.

The court's reliance was misplaced for three additional reasons.

First, Appellant does not seek recovery for diminution in share value or corporate loss. He seeks recovery for his own exclusion from competition and destruction of personally owned intellectual property. Vinci addresses the scenario where a shareholder seeks to recover for depreciation in stock value caused by injury to the corporation. 80 F.3d at 1375. Appellant did not allege injury to shares; he alleged the destruction of his personal competitive position and twelve years of personal labor and investment. The existence of entities formed and never used does not extinguish Appellant's individual standing to sue for direct injuries to his own competitive opportunity and personally created work product.

The temporal record reinforces this point. Appellant began developing Veamcast in 2010. Any corporate formation occurred years later. The intellectual property, the code, the design, and the competitive effort originated with, and as

alleged, remained with the Appellant personally. Meta's conduct foreclosed competition before any outside investment or independent corporate activity could occur. The injury alleged is the loss of Appellant's own competitive opportunity and labor, not a derivative decline in corporate value.

Courts recognize that the relevant inquiry is whether the plaintiff was directly or indirectly injured by the anticompetitive conduct. *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 540 (1983). Here, the directness of Appellant's injury is evident from the allegations and attachments: Appellant personally created the platform, personally interacted with Meta's review and support process, and was personally prevented from building a user base, raising capital, and competing. SAC ¶¶ 5, 7–8, 10, 13; Ex. C. The shareholder-derivative framework exists to prevent double recovery where a corporation and its shareholders claim the same loss. That concern has no application where no corporate entity has a viable pending claim for the same injury and where the alleged harm is direct exclusion of the individual developer from competition. There is no more direct plaintiff. No corporate intermediary stands between Meta's conduct and Appellant's injury.

Second, the district court failed to construe the complaint liberally as required for pro se litigants. *Erickson v. Pardus,* 551 U.S. 89, 94 (2007). A liberal reading of the SAC—alleging personal development beginning in 2010, personal

interaction with Meta's processes, and personal exclusion from competition—states direct injury independent of any corporate entity.

That individual claims were legally cognizable here is not a novel position invented on appeal. In the predecessor action, Judge Honeywell expressly directed that Dean "is given a period of sixty (60) days from the date of this Order to submit an amended complaint setting forth claims he maintains on behalf of himself, rather than on behalf of Veamcast." *Veamcast Corp. v. Facebook, Inc*., No. 8:20-cv-02667, ECF No. 7, at 2 (M.D. Fla. Dec. 9, 2020). That directive enforced only the rule that a corporation may not litigate pro se — it made no finding on the merits of individual antitrust standing, and could not have, because no individual complaint was before the court. A federal court's express recognition that individual claims were available is irreconcilable with the current district court's holding that such claims are categorically barred.

3. The District Court Created an Impermissible Catch-22

In footnote 1 of its Order, the district court declined to consider Appellant's standing clarifications because they appeared in the opposition rather than in the complaint, stating that "it is not permissible for Plaintiff[] to amend [his] complaint through motion practice." ECF 71 at 3 n.1. The court then denied leave to amend on futility grounds. Id. at 7.

That sequence created a procedural Catch-22. In response to Defendant's motion to dismiss, which raised the shareholder-derivative theory, Appellant explained that he personally developed the platform beginning in 2010, retained ownership of the intellectual property, and suffered direct competitive exclusion distinct from any corporate injury. ECF 66 at 5–6, 17–18. The court refused to consider those allegations because they were not pled in the SAC, yet denied the opportunity to add them through amendment. A court cannot simultaneously refuse to consider facts outside the complaint and deny amendment that would place those facts inside the complaint. That procedural trap, applied against a pro se litigant whose pleadings are entitled to liberal construction under *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), constitutes independent reversible error.

This is precisely the circumstance in which leave to amend is required. The Ninth Circuit has repeatedly held that dismissal with prejudice is improper unless it is "absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Polich v. Burlington N., Inc.*, 942 F.2d 1467, 1472 (9th Cir. 1991); *accord Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (leave to amend should be granted unless the pleading "could not possibly be cured by the allegation of other facts"). Here, the court's own reasoning confirms that the perceived deficiency concerned clarification of ownership and injury, not a legal

impossibility. Where the asserted defect is factual precision, not doctrinal bar, amendment is the appropriate remedy.

The procedural posture further underscores the error. In the predecessor Florida action, the court expressly directed Appellant that if he wished to proceed individually rather than through a corporation, he should file individual claims. *Veamcast Corp. v. Facebook, Inc.,* No. 8:20-cv-02667-CEH-AEP, ECF No. 7 (M.D. Fla. Dec. 9, 2020). Appellant did so. Having followed that directive, he should not have been denied the opportunity to clarify individual standing once the issue was squarely raised.

At minimum, even if this Court concludes that the SAC did not sufficiently distinguish personal from corporate injury, the proper disposition would be remand with leave to amend rather than dismissal with prejudice.

4. The District Court's Reliance on the Roku Decision Was Improper

The district court cited *Dean v. Roku, Inc.*, 2025 WL 2299403 (M.D. Fla. Aug. 8, 2025), for two propositions: that "any personal harm Mr. Dean suffered was the indirect result of the allegedly anticompetitive conduct that directly concerns Veamcast," *id.* at *4, and that "Mr. Dean and Veamcast are not interchangeable plaintiffs," *id.* ECF 71 at 4.

This reliance was misplaced. The Roku decision is a district court opinion from another circuit and is not binding in the Ninth Circuit. It is currently on

appeal before the Eleventh Circuit (Case No. 25-12890), where Appellant has challenged the same standing analysis.

The decision is distinguishable on its own terms. The Roku court struck Appellant's supporting appendix without citing any legal authority, and then rested its insufficiency finding on the evidentiary gap that striking created, a bootstrapping problem that is itself at issue on appeal in the Eleventh Circuit. A standing analysis built on an evidentiary record the court itself improperly truncated carries no persuasive weight as adverse authority.

More fundamentally, the Roku court's analysis suffers from the same flaw as the district court's here: it conflates the individual developer with a corporate shareholder without engaging with the distinct nature of Appellant's personal injuries as the platform's twelve-year sole developer. It is not persuasive authority for the proposition it was cited to support, and to the extent it reflects an error of law, it is an error this Court should decline to adopt.

C. THE COMPLAINT PLAUSIBLY ALLEGED ANTITRUST INJURY

1. Appellant Alleged a Cognizable Relevant Market

The district court faulted Appellant for "vaguely characteriz[ing]" the relevant market as the "social media market" and held that Appellant "has not alleged that he is a participant in the same market as Defendant." ECF 71 at 5–6 (citing *Bhan v. NME Hosps., Inc.*, 772 F.2d 1467, 1470 (9th Cir. 1985)). The court

further cited *Reilly v. Apple Inc.*, 578 F. Supp. 3d 1098, 1106 (N.D. Cal. 2022), for the proposition that antitrust claims must be dismissed where the complaint fails to adequately allege a relevant market. ECF 71 at 5–6.

These holdings ignore that the complaint identified the personal social networking services market, the same market that Judge Boasberg accepted as plausible in *FTC v. Facebook, Inc.*, 581 F. Supp. 3d 34, 58–60 (D.D.C. 2022). SAC ¶¶ 11(d), 21. That market definition has since survived a motion to dismiss, proceeded beyond the pleading stage and through extensive fact development in *FTC v. Meta Platforms, Inc.*, No. 1:20-cv-03590 (D.D.C.), where the FTC presented extensive economic evidence and expert testimony supporting the market's contours. At the motion-to-dismiss stage, a plaintiff need only "plausibly suggest the contours" of the relevant market. *Newcal Indus., Inc. v. Ikon Office Sol., Inc.*, 513 F.3d 1038, 1044–45 (9th Cir. 2008). The district court applied an overly demanding standard.

The court's reliance on *Reilly* was misplaced. *Reilly* involved an individual consumer, not a competing developer, who brought antitrust claims about Apple's App Store and failed to connect his personal purchases to competitive harm in any defined market. 578 F. Supp. 3d at 1106, 1110. Here, by contrast, Appellant is an excluded competitor who built an application with features directly competitive with Facebook's core functionality and whose exclusion was part of Meta's

documented systematic pattern of eliminating nascent competitive threats. That is precisely the kind of competitive participation the *Bhan* requirement contemplates.

The court further held that Appellant had not alleged that Veamcast competes with Facebook, quoting Appellant's own SAC description of Veamcast as "a platform of apps and an API for video/voice/photo publishing and sharing services" to support the conclusion that Veamcast is not a social media platform. ECF 71 at 6. This reasoning is circular and legally erroneous in two respects.

First, the court used Appellant's product description as a market exclusion device, but the description confirms market participation, not its absence. "Video/voice/photo publishing and sharing services" are not peripheral to Facebook's business. They are the core functionality through which Facebook generates user engagement and advertising revenue. A platform that enables users to publish video, voice, and photo content to social networks is, by definition, operating in the personal social networking services market. The court's logic would exclude Instagram, YouTube, and Snapchat from the social networking market on the same basis, because each could be described as a "video/photo publishing and sharing service." Functional description does not determine market boundaries; competitive significance does.

Second, the court's conclusion that Veamcast did not compete with Facebook cannot be reconciled with Meta's own conduct. If Veamcast posed no

competitive threat, why did Meta require it to undergo App Review, during which Meta's employees personally tested its features using internal tfbnw.net accounts? SAC ¶ 8; Exhibit A. Why did Meta selectively disable API functions for Veamcast specifically, while maintaining those same functions for all other applications? SAC ¶¶ 9(a)–(b). A monopolist does not surgically target applications it does not perceive as competitive threats. Meta's selective conduct is itself evidence of competitive significance. At the pleading stage, the court was required to draw reasonable inferences in Appellant's favor. *Retail Prop. Trust v. United Bd. of Carpenters*, 768 F.3d 938, 945 (9th Cir. 2014). The inference that Meta's targeted conduct reflects perceived competition is not only reasonable, it is the most natural reading of the facts alleged.

Appellant's injury was experienced in the same personal social networking services market where Meta exercised monopoly power, not in a separate or downstream market, because Veamcast was an excluded *competitor* in that market, not a consumer or supplier in an adjacent one. See *Am. Ad Mgmt.*, 190 F.3d at 1057.

2. Appellant Alleged Exclusionary Conduct, Not Mere Refusal to Deal

The district court declined to analyze the "substantive elements" of Appellant's antitrust claims, holding that antitrust standing was a "required threshold showing." ECF 71 at 6. But the court's threshold analysis was itself

flawed, because it treated the conduct alleged as a passive refusal to deal, which it was not. The nature of the exclusionary conduct goes directly to whether Appellant plausibly alleged antitrust injury of the type the Sherman Act was designed to prevent.

This is not a refusal-to-deal case governed by *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004). Trinko addressed a monopolist's bare failure to share its infrastructure with rivals. The SAC alleged something categorically different: that Appellee voluntarily provided API access, required disclosure of Veamcast's competitive features during the mandatory App Review process, and then selectively revoked access while generating fabricated HTTP error messages and maintaining a false pretense of technical support. SAC ¶¶ 7–10. A monopolist that affirmatively deceives a competitor about the reason for exclusion, manufacturing technical cover for a business decision, is not passively refusing to deal. It is engaging in conduct designed to conceal the anticompetitive purpose of the exclusion. That distinction is what takes this case outside Trinko and into the territory governed by *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.,* 472 U.S. 585, 608 (1985), which recognized that a monopolist's termination of a voluntary, profitable course of dealing, particularly where the only rational explanation is the desire to suppress competition, can constitute unlawful exclusionary conduct under Section 2.

The exclusionary mechanism alleged here is not novel. Internal Meta documents from the FTC trial record confirm that selective API revocation was deliberate competitive strategy directed from the highest levels of the company. In February 2013, Mark Zuckerberg told Meta's board of directors that the "biggest competitive vector" the company faced was any app that could build out messaging functionality and "transform[] that into a broader social network," and that he wanted Meta to "use M&A to build a competitive moat around us on mobile and ads." *FTC v. Meta Platforms, Inc.,* No. 1:20-cv-03590 (D.D.C.), Trial Ex. PX2521. That moat was enforced at the API level: Dan Rose, addressing whether to block competing apps from purchasing ads, wrote that regardless of the ad decision, "we're going to continue blocking messenger apps from accessing friends.get..." Id., Trial Ex. PX12108 at FB_FTC_CID_01409579-580 (Jan. 9, 2013). Meta conceded at the summary judgment stage that this quoted language is undisputed. ECF 379-2 at ¶ 1806(c), No. 1:20-cv-03590.

Veamcast was not a peripheral application seeking incidental API access. It was a video, voice, and photo publishing platform integrated with Facebook's social graph, precisely the architectural combination Zuckerberg identified as the "biggest competitive vector" Meta faced: an application that begins with communication and content sharing among connected users and thereby "transform[s] that into a broader social network." Trial Ex. PX2521. Meta's App

Review process required Appellant to disclose exactly these features before access was selectively revoked. The fabricated error messages that followed were not a coincidence. They were the mechanism by which Meta suppressed the specific competitive threat its own CEO had identified and committed to neutralize.

This conduct is also consistent with the exclusionary mechanism the FTC found plausible at the pleading stage: Meta invited developers onto its platform, granted API access, and then selectively revoked it to blunt perceived competitive threats. See *FTC v. Facebook, Inc*., 581 F. Supp. 3d 34, 57–60 (D.D.C. 2022). The SAC expressly alleged that Appellant's experience was part of this broader pattern. SAC ¶¶ 28–31. The district court's failure to engage with these allegations before dismissing on antitrust standing grounds was error. Antitrust standing analysis cannot proceed in a vacuum divorced from the nature of the conduct alleged.

3. The District Court Ignored Allegations of Market-Wide Harm and Mischaracterized the Complaint as Alleging Only Individual Injury

The district court held that Appellant pointed only to "specific harms experienced by Plaintiff[]…, rather than harm to the market," citing *Coronavirus Reporter*, 2021 WL 5936910, at *14, and *Reilly*, 578 F. Supp. 3d at 1110 (finding plaintiff failed "to connect his supposed injury to injury to competition generally"). ECF 71 at 5. This analysis inverted the proper inquiry at the pleading stage.

An antitrust plaintiff need not prove harm to competition at the motion-to-dismiss stage; the plaintiff need only allege facts that plausibly suggest competitive harm. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). The SAC alleged that Meta's selective elimination of third-party developers who offered competing features reduced consumer choice, prevented innovation, and maintained Meta's monopoly power in the personal social networking services market. SAC ¶¶ 22–24, 28–31.

The *Reilly* and *Coronavirus Reporter* cases on which the district court relied are factually inapposite. *Reilly* involved an individual iPhone consumer who alleged personal financial losses from App Store pricing policies but could not connect those losses to competitive harm in any defined market. 578 F. Supp. 3d at 1110. *Coronavirus Reporter* involved a fledgling app developer whose claims were dismissed as conclusory recitals of antitrust elements. 2021 WL 5936910, at *14. Here, by contrast, Appellant relies on allegations advanced by a federal enforcement agency and found plausible at the pleading stage, findings that Meta engaged in a systematic campaign of identifying competitive threats through developer interactions and then eliminating those threats through selective API revocation.

Critically, the SAC alleged that Veamcast's experience was not isolated. The complaint identified Meta's systematic pattern of eliminating nascent competitors

through selective API revocation. This conduct was experienced by multiple independent developers and applications, including Phhhoto (photo sharing), Six4Three (social features), Reveal Chat (messaging), and others. SAC ¶¶ 11–12, 28–31; Second Notice of Newly Discovered Evidence, ECF No.36, Ex. U. The allegation that Appellant's exclusion was part of this documented pattern transforms this case from a complaint about harm to an individual competitor into a claim about harm to the competitive process itself. *See Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977).

A threshold clarification is warranted regarding the FTC proceedings. The district court in *FTC v. Meta Platforms, Inc*. ultimately entered judgment for Meta after a bench trial, finding the FTC had not proved current monopoly power. 2025 WL 3211725 (D.D.C. Nov. 18, 2025). Meta will likely argue this post-trial ruling negates the evidentiary weight of the FTC's pleading-stage findings. That argument conflates two distinct legal questions. The post-trial ruling addressed whether the FTC proved present-day monopoly power sufficient to support prospective injunctive relief, a forward-looking merits question requiring proof of current market conditions. It says nothing about whether Meta's historical pattern of API revocation against competitive developers was anticompetitive conduct, which is the question the pleading-stage order addressed. *FTC v. Facebook, Inc*., 581 F. Supp. 3d 34, 57–60 (D.D.C. 2022). Additionally, while that district court decision

carries no binding authority in this Circuit, it is persuasive evidence that the factual theory Appellant advances, systematic competitive exclusion through selective API revocation. It is not frivolous, novel, or conclusory. It is a theory that a federal court found sufficiently plausible to survive dismissal and proceed through years of discovery and trial. At the pleading stage, that is precisely the kind of factual corroboration that distinguishes a plausible complaint from a conclusory one.

The district court characterized Appellant's references to FTC findings as "threadbare recitals of the elements of antitrust injury that are insufficient to state a claim." ECF 71 at 5 (quoting Coronavirus Rep.). This characterization was wrong. Appellant did not merely recite legal elements; he identified specific allegations from a federal enforcement action, allegations that a federal court found plausible at the motion-to-dismiss stage*, FTC v. Facebook, Inc*., 581 F. Supp. 3d at 57–60, and alleged that his own experience was part of that same pattern of conduct. SAC ¶¶ 28–31. Incorporating the factual allegations of a parallel federal enforcement action to corroborate the plausibility of one's own claims is not conclusory pleading; it is precisely the kind of factual context that distinguishes a plausible complaint from a threadbare one.

4. The District Court's Duplicative Recovery Concern Was Unfounded

The district court found "a great risk of duplicative recovery" because Appellant "and Veamcast can and have both sought damages," citing *Veamcast*

Corp. v. Facebook, Inc., No. 8:20-cv-02667-CEH-AEP, ECF No. 7 (M.D. Fla. Dec. 9, 2020), and *Vinci*, 80 F.3d at 1375 ("If shareholders were permitted to recover their losses directly, there would be the possibility of a double recovery, once by the shareholder and again by the corporation."). ECF 71 at 5.

This concern was misplaced. The 2020 case, filed by Veamcast Corp., a separate entity from Veamcast Corporation, was dismissed procedurally because a corporation cannot proceed pro se, not on the merits. No damages were awarded. No judgment on the merits was entered. There is no existing recovery against which a second recovery could be duplicative. The risk identified in Vinci arises when both a corporation and its shareholder have viable claims for the same injury. Here, neither Veamcast Corp. nor Veamcast Corporation has a pending claim or any ability to pursue one, both are unrepresented corporations that cannot proceed pro se, and any new action would itself be time-barred. There is zero risk of duplicative recovery on these facts.

5. Damages Quantification Is Inappropriate at the Pleading Stage

The district court stated that "Plaintiff has not offered any explanation of how alleged damages of hundreds of millions of dollars are non-speculative or easy to apportion." ECF 71 at 5. This misstated the applicable standard and mischaracterized the record.

At the motion-to-dismiss stage, a plaintiff is not required to prove damages or explain their apportionment. See Twombly, 550 U.S. at 556. The question of whether damages are speculative is a merits issue for summary judgment or trial, not for resolution on the pleadings. See *Zenith Radio Corp. v. Hazeltine Research, Inc.,* 401 U.S. 321, 339 (1971) (antitrust damages need not be proven with exactitude). The district court imposed a proof requirement that has no application at the Rule 12(b)(6) stage.

Moreover, the district court's characterization of the damages figure as unexplained is factually incorrect. Appellant submitted an Economic Impact Assessment employing three independent valuation methodologies: a direct cost method based on fifteen years of documented development effort comprising 2,132 code changes; a market comparison method anchored to comparable social platform acquisitions; Those methodologies yield damages scenarios ranging from $65 million on a conservative basis to over $100 million under full comparable-platform valuation. *Id.* § 4.2. Whether the methodology is ultimately persuasive is a merits question. That it exists defeats any suggestion that the damages figure was a bare assertion.

The damages figure is further grounded in the objective development record: 2,132 code changes and 34,741 file operations over twelve years of personal labor constitute a concrete factual basis for quantifying the value of the work Meta's

conduct rendered worthless. ECF 66 at 18. Taken together, the development history and the economic methodology provide two independent anchors for the damages claimed, neither of which the district court acknowledged.

D. THE DENIAL OF LEAVE TO AMEND WAS AN ABUSE OF DISCRETION

Leave to amend should be "freely given when justice so requires." Fed. R. Civ. P. 15(a)(2). In the Ninth Circuit, "[d]ismissal with prejudice and without leave to amend is not appropriate unless it is clear that the complaint could not be saved by amendment." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). This standard applies with particular force to pro se litigants. *See Eldridge v. Block*, 832 F.2d 1132, 1135–36 (9th Cir. 1987).

The district court itself recognized this standard, citing *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000), for the proposition that "leave to amend should be granted unless the pleading could not possibly be cured by the allegation of other facts." ECF 71 at 3. The court then failed to apply its own stated standard.

The court held that "[l]eave to amend will not change the fact that Plaintiff lacks Article III and antitrust standing and that the statute of limitations has run." ECF 71 at 7. But this conclusion assumed the correctness of the court's substantive holdings. Because those holdings are wrong for the reasons argued above, the futility rationale cannot stand.

Notably, the court's own order acknowledged that it "might be inclined to provide an opportunity for [Appellant] to expand" his allegations if this were his first attempt. ECF 71 at 7. This is an implicit concession that the complaint could be cured by additional factual allegations, the very standard the court articulated for granting leave to amend. Having acknowledged curability, the court could not consistently deny leave on futility grounds.

The futility finding is further undermined by the procedural history of this case. Before transfer, the Second Amended Complaint was reviewed by Judge Scriven of the Middle District of Florida under 28 U.S.C. § 1915(e)(2)(B), which mandates that a court dismiss any IFP complaint that is "frivolous or malicious" or "fails to state a claim on which relief may be granted." Magistrate Judge Wilson recommended dismissal, questioning whether "the Sherman Act... give[s] an individual a right to commence a civil lawsuit." ECF No. 13 at 5. That premise was legally incorrect, the private right of action under the Sherman Act has been established since the enactment of Section 4 of the Clayton Act and is not open to question. Judge Scriven conducted de novo review, expressly rejected that recommendation, and found that the SAC "clearly identifies two causes of action against the Defendant, details the Defendant's actions that give rise to the allegations, and supports each assertion with case law," and that it "pleads sufficient facts permitting the Defendant to file an answer." ECF No. 19 at 3 (M.D.

Fla. Feb. 25, 2025). She granted in forma pauperis status and directed the United States Marshals to serve Meta with the Second Amended Complaint. While § 1915(e)(2) screening is not identical to the Rule 12(b)(6) standard, it requires the court to evaluate whether the complaint states a claim. A complaint that survived that evaluation, after de novo rejection of a recommendation grounded in a fundamental misstatement of law, weighs strongly against a finding that no amendment could save it. Futility must be clear and beyond doubt.

The court cited *Terrado v. U.S. Bank N.A.*, 801 F. App'x 580 (9th Cir. 2020), for the proposition that leave to amend may be denied when a pro se plaintiff lacks standing. ECF 71 at 7. This reliance was misplaced for three independent reasons.

First, *Terrado* is an unpublished memorandum disposition that, under Federal Rule of Appellate Procedure 32.1 and Ninth Circuit Rule 36-3, is not precedential. Although it may be cited for whatever persuasive value it may have, it does not constitute binding authority and cannot displace controlling circuit precedent. See, e.g., *Hart v. Massanari,* 266 F.3d 1155, 1177 (9th Cir. 2001) (explaining that unpublished dispositions are not precedent and do not bind future panels). The district court therefore erred in relying on a nonprecedential disposition instead of applying the governing en banc standard set forth in *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000).

Second, the district court's denial of leave to amend appears to have been drawn from its own prior order in *Golden v. Intel Corp*., 642 F. Supp. 3d 1066 (N.D. Cal. 2022), which used identical language and the same Terrado citation in denying leave to a plaintiff whose nearly identical patent claims had been dismissed as frivolous across multiple courts in multiple circuits. Golden involved a serial pro se filer whose standing defect was legally incurable, no amendment could have established that a CMDC patent holder competed in Intel's CPU market. That bear no resemblance to this case, where the standing deficiency concerns factual precision, the distinction between personal and corporate injury that is directly curable by amendment, and which a separate federal judge already found sufficient to survive screening.

Third, Terrado itself involved a consumer banking dispute with no antitrust dimensions. The standing defect there was structural and incurable as a matter of law. Here, by contrast, Appellant is an individual developer with twelve years of documented personal development history whose standing deficiency, if any, is factual rather than doctrinal. Where the defect is factual, not legal, Terrado provides no support for denial of leave to amend.

The court reasoned that "Plaintiff has made multiple attempts to bring claims against Defendant and failed to do so." ECF 71 at 7. But the prior proceedings the court referenced did not put Appellant on notice of the specific deficiency this

court identified. The 2020 Veamcast case was dismissed because a corporation cannot proceed pro se, not for any deficiency in the individual standing allegations, and the district court's characterization of that dismissal as being for "failure to timely file an amended complaint" (ECF 71 at 4 n.2) obscures what actually happened. Far from constituting a "failed attempt," the 2020 case produced an express judicial directive to file individually: Judge Honeywell ordered that if Dean seeks to proceed on his own behalf, he should be given sixty days to submit an amended complaint setting forth individual claims. *Veamcast Corp* Order (M.D. Fla. Dec. 9, 2020), ECF No. 7 (adopting in full Report and Recommendation, ECF No. 6), at *3. Appellant followed that directive and raised Judge Honeywell's order in his opposition (ECF 66 at 8), but the district court did not address it. The Roku case was decided by a different court in a different circuit applying different law against a different defendant. Appellant had never been told by any court that his individual complaint needed to more clearly distinguish personal injury from corporate injury.

E. THE DISTRICT COURT ERRED IN DISMISSING THE CLAYTON ACT § 3 CLAIM WITHOUT ANALYSIS

The Second Amended Complaint alleged two independent federal claims: monopolization under Sherman Act § 2 and exclusive dealing under Clayton Act § 3. Meta's amended motion to dismiss addressed both. ECF 64 at 12–15. The

district court dismissed the entire action without analyzing the substantive elements of either claim, having disposed of the case on standing and timeliness grounds alone. ECF 71 at 3–7.

This was reversible error as to the § 3 claim for an independent reason: a court cannot conclude that amendment of an unanalyzed claim would be futile. The futility standard asks whether the pleading "could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). That determination requires the court to assess what the claim requires and whether the complaint satisfies it. The district court never reached that analysis. By dismissing the § 3 claim with prejudice without evaluating its substantive sufficiency, the court made a futility finding about a claim it never examined.

Clayton Act § 3 prohibits exclusive dealing arrangements that substantially lessen competition. The SAC alleged that Meta conditioned continued API access on terms that effectively required third-party developers to refrain from offering functionality competitive with Facebook's core services, and that Meta enforced this exclusivity through selective API revocation when developers, like Appellant, demonstrated competitive features during the App Review process. SAC ¶¶ 7–10, 28–31. These allegations describe an exclusive dealing arrangement in substance if not in form: Meta leveraged its control over platform access to foreclose

competition in the personal social networking services market. That theory was not addressed by the district court at all.

At minimum, this Court should reverse the dismissal of the § 3 claim and remand for the district court to analyze its sufficiency on the merits before concluding that no amendment could save it.

VII. CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court:

1. Reverse the district court's order dismissing the Second Amended Complaint; or, in the alternative,

2. Vacate the order and remand with instructions to grant leave to amend.

Dated: March 29, 2026

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g) and Ninth Circuit Rule 32-1, I certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains approximately 12,988 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

Dated: March 29, 2026



Joseph J. Dean

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record, including:

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