No. 26-996

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

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

APPELLANT'S REPLY BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Plaintiff-Appellant Joseph J. Dean states that he is an individual proceeding *pro se* and is not a corporate party; accordingly, no corporate disclosure is required.

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INTRODUCTION

Meta's answering brief rests on a narrative: a disappointed developer whose company's claims were dismissed years ago has repackaged them as his own and filed them too late. That mischaracterization can be accepted only by ignoring the record. Meta treats as one undifferentiated course of conduct what the pleading alleges as two distinct categories; it urges an accrual date the pleading and exhibits contradict; and it recounts a procedural history that omits the two rulings most damaging to its position: Judge Honeywell's 2020 order authorizing Dean to refile individually, and District Judge Scriven's 2025 order, which reviewed the complaint de novo, rejected a magistrate's recommendation to dismiss it, and ordered it served, an order Meta's brief never addresses.

Two facts frame this appeal. First, the conduct the Second Amended Complaint challenges is not the platform-wide deprecation of API functions that affected developers generally; it is Meta's targeted conduct against Veamcast. Meta approved Veamcast through App Review for the very functions at issue—posting to Pages and to User Walls—then selectively disabled those functions while the same content still passed through Meta's own debugger, all the while telling Dean the failures were technical problems under investigation. It never formally revoked the approval; it disabled the functions covertly, through fabricated "reported as abusive" overlays, so the approval stood on paper while the functionality was sabotaged in

fact. Identical content passed through Meta's debugger but was blocked through the Veamcast application—evidence the trigger was the application's identity, not its content. That selectivity, tied in the pleading to the exclusionary pattern the FTC has alleged, makes the injury one to competition, not to a single firm.

Second, the order under review is the first ruling on the merits of any complaint in this litigation. The 2020 corporate suit was dismissed on a procedural ground—a corporation cannot appear without counsel—and the Florida court deferred its motion to dismiss on transfer. When the court below dismissed the Second Amended Complaint with prejudice in February 2026, it did so on a pleading District Judge Scriven had, a year earlier, found adequate and ordered served. That asymmetry is the question this appeal presents.

Reframed around the record, Meta's arguments fail in sequence: the limitations bar dissolves once the two categories are distinguished and is independently overcome by concealment and continuing violation (Parts I–III); repackaging and standing cannot survive the two orders Meta ignores or the absence of any corporate owner of the property Meta destroyed (Parts IV–VI); and the leave-to-amend denial rests on a "multiple attempts" premise the record refutes (Part VII).

ARGUMENT

I. THE CONDUCT CHALLENGED IS CATEGORICALLY DISTINCT FROM THE PRIOR CONDUCT META'S LIMITATIONS ARGUMENT DEPENDS ON.

A. The pleading distinguishes the broader API changes that form the backdrop from the targeted disabling of Veamcast's access.

The first category is platform-wide deprecation. Between 2018 and 2019, Meta deprecated certain Graph API functions across its developer ecosystem; developers using them lost access. SAC ¶ 6 (2-SER-198). That deprecation is the backdrop against which the challenged conduct occurred, not the conduct the Second Amended Complaint challenges as anticompetitive.

The second category is selective disabling. After those across-the-board changes, Meta denied Veamcast access to APIs that remained operational through Meta's own first-party developer tooling and for at least some other users. SAC ¶ 9(b) (2-SER-199). The pleading alleges that "some of the functionality was not removed from the API, but disabled for the Plaintiff's app by providing deceptive error messages claiming content was 'reported as abusive' when content was newly created and had not yet been viewed by users." *Id.* That conduct spans four support threads in Exhibit C, July 2019 through September 2020. 2-SER-225–251. The functions were not incidental: Veamcast had been approved through App Review

for them—its July 2018 review video, Exhibit A, demonstrated the very capabilities later disabled, including posting to Pages and to User Walls. SAC ¶ 7; 2-SER-222.

The distinction is structural, and the mechanism proves it. A deprecated endpoint simply returns a deprecation response, published in the changelog; it needs no concealment. The selective conduct here required fabricated overlays, "reported as abusive" and "Community Standards" messages, precisely because the endpoints were still functioning for everyone else. A manufactured error implies a working function. And Dean's numerous attempts to resolve the errors through Meta's support process drew only "evasive, non-responsive replies" amounting to constructive denial. SAC ¶ 10 (2-SER-200).

B. The statement Meta uses to start the clock, read in context, describes only the targeted conduct, and a record test proves the selectivity.

Meta's limitations argument turns on one sentence from the narrative of Exhibit C: that the software "had been functioning years prior but it no longer did and never did again." 2-SER-232. Meta presents that as a global admission that all of its conduct accrued by 2019. It cannot, for a reason visible on the page: the sentence sits directly beneath the heading "Correspondence with Facebook Support concerning the App Review," *id.*, and describes the App Review function, the second category, not the platform-wide deprecation. The next sentence confirms it: "Every time I posted, I would get a message saying the content had been reported as abusive

when it was brand new and could not have been seen yet." *Id.* That describes the fabricated overlay, not a deprecated endpoint. The phrase is descriptive, not a concession of accrual: Dean made it while recounting to App Review what had become of functionality he had earlier demonstrated to Meta in the July 2018 review video (Exhibit A) and that Meta had approved. SAC ¶ 7; 2-SER-222. Meta recasts one clause about specific demonstrated functions it disabled as an admission that every claim accrued by 2019.

The selectivity is not merely alleged; a test in the record demonstrates it, one Meta's own agent invited. On October 1, 2019, a Facebook support agent, Jack Anderson, told Dean his "question pertains to debugging tooling issues" and directed him to Meta's first-party Sharing Debugger to "further troubleshoot your issue." 2-SER-236. Three days later, Dean reported the result: "The error only happens in the app... It doesn't happen when I do it via the debugger." 2-SER-238.

That comparison points to the cause. The Sharing Debugger is Meta's own first-party tool, and it processes the same content a third-party application submits. Yet the same content produced no error through Meta's debugger while producing the fabricated abuse overlay through the Veamcast application. That contrast supports the inference that the trigger was the application's identity (veamcast/112332832127588), not the content itself. 2-SER-225. A content-neutral

classifier would not produce that differential result; selective, application-specific access control would. At the pleading stage, Dean is entitled to that inference.

That record defeats the defense Meta advances at page 23 of its brief, that the overlays were "the automatic implementation of ex ante controls." Automatic, content-based controls would have produced the same result regardless of which tool submitted the content. They did not: the same content cleared Meta's debugger but tripped the overlay through the Veamcast application. Controls applied selectively by application are not content moderation; they are the access denial the pleading alleges. Dean said as much contemporaneously: the problem was "within the realm of the app review since the message I get only happens in the app." 2-SER-239.

C. The FTC's allegations, quoted in the pleading, describe selective disabling of platform access to competitive threats as Meta's practice.

The categorization was not invented for this litigation; it tracks conduct the FTC has alleged to be Meta's practice. The pleading alleges, and the pleading stage assumes them true, that Meta's conduct against Veamcast "mirrors the pattern of anticompetitive behavior identified by the FTC" and quotes the FTC's allegation that "Facebook has maintained and enforced anticompetitive conditions on access to its valuable platform interconnections, such as the application programming interfaces ('APIs') that it makes available to third-party software applications." SAC ¶¶ 11(b), 12 (2-SER-200–201) (quoting *FTC v. Meta Platforms, Inc.*, No. 1:20-cv-

03590 (D.D.C.)). The same surveil-then-foreclose sequence is alleged here and developed in Part VI: access conditioned on App Review, surveillance through that review and employee test accounts, then selective disabling of the approved APIs through fabricated overlays while the endpoints kept functioning. SAC ¶¶ 7–9. The FTC's complaint documents the method; the circumstances and the control experiment support the inference that Meta used it here.

D. Earlier conduct in one category cannot bar a timely claim premised on later, qualitatively distinct conduct.

Once the two categories are distinguished, Meta's limitations argument collapses on its own terms. Even if the platform-wide deprecations accrued in 2019, that says nothing about the selective-denial conduct, a different wrong with different elements. In antitrust, "each time a plaintiff is injured by an act of the defendants, a cause of action accrues to him to recover the damages caused by that act," and the period runs anew from each act. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971). Each fabricated overlay that denied Veamcast a functioning endpoint was a new and independent act that restarted the limitations period; that those acts were a sequence rather than a single decision is developed in Part III.

Meta's rule would also invert the statute: it would let a monopolist deprecate some APIs ecosystem-wide and then selectively restrict the ones it left running, denying them to a single competitor—turning a partial, ecosystem-wide deprecation

into a permanent shield for picking off rivals one by one. The district court embraced that framing when it treated the pleading as alleging a single 2019 event and read the "no longer did" phrase as a categorical admission. That was error, and the dismissal rests on it.

II. FRAUDULENT CONCEALMENT TOLLED THE LIMITATIONS PERIOD, AND THAT QUESTION CANNOT BE RESOLVED ON THE PLEADINGS.

Meta's fraudulent-concealment argument rests on *Rutledge v. Boston Woven Hose & Rubber Co.*, 576 F.2d 248 (9th Cir. 1978), and on Dean's October 9, 2019 statement that the conduct seemed "anticompetitive." 2-SER-238. Neither suffices. The Ninth Circuit asks two fact questions: whether the plaintiff knew the facts constituting the claim, and whether his reliance was reasonable. This case falls on the concealment side of the line *Rutledge* drew. Meta did not merely deny wrongdoing; it represented the failures as technical problems under investigation, manufactured a false explanation, and then deleted the record of it.

A. The framework turns on knowledge of the facts constituting the claim and the reasonableness of the plaintiff's reliance, not on mere suspicion.

To toll the limitations period, a plaintiff must plead that the defendant affirmatively misled him and that he had "neither actual nor constructive knowledge of the facts giving rise to [the] claim" despite diligence. *Conmar Corp. v. Mitsui &*

Co. (U.S.A.), Inc., 858 F.2d 499, 502 (9th Cir. 1988); *accord Hexcel Corp. v. Ineos Polymers, Inc.*, 681 F.3d 1055, 1060 (9th Cir. 2012). The statute is tolled where the defendant "fraudulently concealed the existence of the cause of action so that the plaintiff, acting as a reasonable person, did not know of its existence." *Hennegan v. Pacifico Creative Serv., Inc.*, 787 F.2d 1299, 1302 (9th Cir. 1986). The distinction between suspecting a problem and knowing the facts that constitute a legal claim is decisive, and the district court conflated the two.

The very case Meta relies on confirms that the standard turns on reliance. *Rutledge* holds that "the affirmative act of denying wrongdoing may constitute fraudulent concealment where the circumstances make the plaintiff's reliance upon the denial reasonable." 576 F.2d at 250. *Rutledge* lost because his reliance was unreasonable: he was a serial antitrust litigant who, "as early as 1965," had told Justice Department attorneys he suspected the very secret-discount scheme he later sued on, having already litigated the same conspiracy against the same manufacturers once before. *Id.* Those facts "forbid any inference that he would be thrown off the trail by a simple denial of wrongdoing." *Id.* Dean is a software developer who received fabricated error messages from the platform he depended on and was repeatedly told the failures were technical issues under repair.

B. Meta did not merely deny wrongdoing; it represented the failures as technical issues under repair, manufactured a false explanation, and deleted the record.

Meta's concealment was not a single denial but a sustained course that led a reasonable developer to believe the problems were being investigated and fixed. Across the support threads Meta's personnel repeatedly engaged: they responded to Dean's reports, characterized the failures as "debugging tooling issues," directed him to first-party troubleshooting tools, 2-SER-236, and, in the OAuth thread, had a Meta engineer acknowledge the malfunction, 2-SER-245. The tickets remained open and the channel active. A developer whose platform partner keeps telling him his access problems are technical bugs under review has every reason to keep working the support process, not to conclude he has been deliberately and permanently foreclosed. That is the diligent pursuit *Conmar* contemplates, met with a false trail. Had the failures in fact been the technical issues Meta represented and undertook to address, there would have been no antitrust claim to bring; it was the deliberate foreclosure beneath the fabricated explanations, never disclosed, that Dean could not have known.

The decisive legal distinction comes from *Rutledge* itself. The court explained that its case was "unlike *Mt. Hood Stages, Inc. v. Greyhound Corp.*, 555 F.2d 687 (9th Cir. 1977)," because in *Mt. Hood* "the jury had found as a fact that [the plaintiff] neither knew nor should have known of [the] antitrust violation, and [the defendant]

conceded that it had attempted to conceal its antitrust violation." 576 F.2d at 250 n.3. This case falls on the *Mt. Hood* side. Meta did not issue a "simple denial of wrongdoing"; it generated a fabricated technical artifact—a "reported as abusive" overlay attached to brand-new content no user had seen, 2-SER-232—that was simultaneously the instrument of exclusion and its disguise.

Meta then took the further step *Rutledge* found absent: it destroyed the record. On September 25, 2020, Meta closed the support thread, even as Dean was still told the content had been "reported as abusive." 2-SER-234–35. The separate thread in which a Meta engineer had acknowledged the selective OAuth failure was likewise removed; Dean preserved a screenshot showing it replaced with a "Bug Report Closed" entry on September 30, 2020. 2-SER-251. Deleting the evidence of the very conduct at issue is not passive silence; it is the affirmative concealment *Conmar* requires. See 858 F.2d at 505 (plaintiff must show its lack of notice "was the result of affirmative conduct by the defendant").

C. The October 2019 statement cannot supply knowledge of conduct that had not yet occurred and was later concealed.

Meta repeats the October 9, 2019 "anticompetitive" and "need to hire a lawyer" statements as proof of complete knowledge. 2-SER-238. They prove suspicion, not knowledge of the facts constituting the cause of action, and *Conmar* holds suspicion is the wrong question. 858 F.2d at 502. Dean's own conduct refutes

the inference Meta draws: a developer who already knew the platform had deliberately and permanently excluded him would not have spent the next year working Meta's support channels, submitting and resubmitting through September 2020. That he continued is itself evidence that he treated the failures as the technical problems Meta represented, not as deliberate foreclosure. Meta's position proves too much. It would mean that the moment Dean suspected a problem in 2019, he was required to abandon the support process Meta itself directed him to and sue on that suspicion, rather than reasonably credit Meta's assurances that the failures were technical bugs under repair. The statements are also temporally mismatched. The conduct Dean reacted to in 2019 was the App Review abuse-overlay conduct; the concealment came in 2020. In August and September 2020, Meta's own engineer acknowledged the OAuth defect and tried to address it across successive ticket statuses. 2-SER-246–251. Meta then closed the ticket without resolution on September 25, 2020 and replaced the engineer's thread with a "Bug Report Closed" entry, which Dean preserved on September 30, 2020. 2-SER-251. A plaintiff cannot have constructive knowledge in 2019 of facts a defendant would not conceal until 2020.

D. Whether concealment applies is a fact question that cannot be resolved on a motion to dismiss.

The Ninth Circuit treats reasonable reliance and constructive knowledge as fact questions even on a developed record: in *Conmar* it reversed summary judgment for the defendant because a genuine issue existed as to whether concealment tolled the period, and held that even then the evidence must "irrefutably demonstrate[]" that the plaintiff discovered or should have discovered the claim. 858 F.2d at 502, 504–05. This case was dismissed earlier still, on the pleadings, where the well-pleaded allegations—affirmative deception (the fabricated overlays), an affirmative concealment act (the September 25, 2020 deletion), and reasonable reliance—are accepted as true. Those are precisely the fact questions that cannot be resolved on the pleadings and must await discovery; resolving them against Dean as a matter of law was error.

III. THE CONTINUING-VIOLATION DOCTRINE INDEPENDENTLY DEFEATS THE LIMITATIONS BAR.

A. A continuing violation appears on the face of the pleading and responds to Meta's limitations argument.

A continuing violation appears on the face of the pleading. The Second Amended Complaint alleges conduct extending well beyond 2019, in four support threads spanning July 2019 through September 2020, 2-SER-225–251, and an appendix exhibit dated November 7, 2020, 2-SER-220. Because limitations is an

affirmative defense, a Rule 12(b)(6) dismissal on that ground can stand only where untimeliness is apparent from the complaint itself, and here it is not. Dean opposed Meta's limitations argument below, 2-SER-41, and the continuing-violation doctrine supplies the legal label for facts the pleading already alleges; it is a response to Meta's limitations theory, which this Court reviews de novo, not a new claim.

B. Each selective disabling separately invaded Dean's interest and was a new overt act under controlling Ninth Circuit law.

The rule is settled: "[a] continuing violation is one in which the plaintiff's interests are repeatedly invaded and a cause of action arises each time the plaintiff is injured," *Pace Indus., Inc. v. Three Phoenix Co.*, 813 F.2d 234, 237 (9th Cir. 1987), and an "overt act" that inflicts "new and accumulating injury on the plaintiff" within the limitations period is recoverable regardless of when the course of conduct began, *In re Multidistrict Vehicle Air Pollution (AMF, Inc. v. General Motors Corp.)*, 591 F.2d 68, 71 (9th Cir. 1979).

The Second Amended Complaint alleges precisely such a series. Each fabricated "reported as abusive" and "Community Standards" overlay was a discrete denial of a still-functioning endpoint, generated anew each time Dean attempted to use the platform: the URL-sharing thread in July–August 2019, 2-SER-225; the App Review thread in September–October 2019, 2-SER-232–39; the OAuth thread in August–September 2020, in which a Meta engineer acknowledged the issue, 2-SER-

245; the September 25, 2020 closure of the support thread, 2-SER-234–35; and the removal of the engineer's OAuth thread, preserved September 30, 2020 as a "Bug Report Closed" entry, 2-SER-251. The pleading further alleges continued selective denial in the November 7, 2020 exhibit. 2-SER-220.

Each act "separately invaded" Dean's interest, *Pace*, 813 F.2d at 237, and perfectly parallels the conduct held sufficient in *Hennegan v. Pacifico Creative Service, Inc.*, 787 F.2d 1299 (9th Cir. 1986). In *Hennegan*, the Ninth Circuit reversed summary judgment because each discrete, subsequent act of steering customers away from the plaintiff's shop constituted a fresh overt act. The earlier conduct did not "immediately and permanently destroy" the plaintiff's business, nor was the resulting injury "irrevocable, immutable, permanent and final." *Id.* at 1301. The selective denials at issue here share an identical structure: a repeated, application-specific foreclosure renewed to inflict a new and accumulating injury each time Veamcast attempted to operate.

C. Meta's authorities involved single, final decisions the defendant merely persisted in, and they confirm the distinction.

The decisions Meta marshals each concerned a single decision the defendant did no more than maintain. See *In re Multidistrict Vehicle Air Pollution*, 591 F.2d at 72; *Pace*, 813 F.2d at 238; *David Orgell, Inc. v. Geary's Stores, Inc.*, 640 F.2d 936, 938 (9th Cir. 1981). The distinction is agency, not duration. Meta did not announce

one foreclosure and stand pat. Every fabricated "reported as abusive" overlay was a discrete block, re-imposed whenever Dean used a still-functioning endpoint and—as the control experiment shows (Part I)—aimed selectively at the Veamcast application, not the automatic byproduct of any 2019 deprecation. Meta then went further: in September 2020 it closed the support thread and destroyed the record of its own conduct, replacing the engineer's acknowledgment with a "Bug Report Closed" entry. 2-SER-234–35, 251. Those are fresh affirmative acts within four years of filing—new overt acts under *Hennegan* and *Zenith*.

IV. PRIOR DISTRICT-COURT ORDERS REFUTE META'S "REPACKAGING" NARRATIVE.

Meta's narrative depends on the premise that this case improperly "repackages" the dismissed 2020 corporate suit. Two district judges have already declined to end these claims at the threshold: in 2020 Judge Honeywell authorized Dean to refile his claims individually rather than on the corporation's behalf, and in 2025 Judge Scriven reviewed the resulting pleading de novo and ordered it served. Neither judge held that the claims would succeed or that standing was established; each rejected only the proposition that these claims should be terminated at the pleading threshold, which is precisely what Meta's "repackaging" narrative requires. Yet Meta's brief engages neither ruling.

A. In 2020, a district judge expressly authorized Dean to file individual claims, distinguishing them from the corporation's.

The 2020 action was brought by Veamcast Corp. and dismissed for a reason unrelated to the merits: a corporation cannot proceed in forma pauperis or appear except through counsel. *Veamcast Corp. v. Facebook, Inc.*, No. 8:20-cv-2667 (M.D. Fla.), Doc. 6 (R. & R. of Porcelli, M.J., Nov. 19, 2020), adopted, Doc. 7 (Honeywell, J., Dec. 9, 2020). But the court did not stop there. Adopting the magistrate's recommendation "in all respects," Judge Honeywell granted Dean leave to refile individually: "If Dean seeks to proceed on his own behalf, 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." Doc. 7, at 3. That was an operative grant of leave, authorizing the very individual suit Meta now calls a "repackaging."

A second judge confirmed the same path weeks later. On January 13, 2021, United States District Judge Kathryn Kimball Mizelle reiterated that Dean had "additional time to submit an amended complaint alleging claims that he maintains on behalf of himself rather than on behalf of Veamcast," citing 28 U.S.C. § 1654, and specified that absent a timely refiling the action "will be dismissed without prejudice." *Veamcast Corp. v. Facebook, Inc.*, No. 8:20-cv-2667 (M.D. Fla. Jan. 13,

2021), Doc. 10. The 2020 dismissal Meta invokes was thus, by the court's own terms, without prejudice, adjudicating nothing on the merits.

B. In 2025, a second district judge reviewed the operative complaint de novo, held it adequately pleaded, and ordered it served.

When Dean filed individually, the case followed the path Judge Honeywell authorized. After a Florida magistrate recommended dismissal, District Judge Scriven conducted de novo review, sustained Dean's objection, and "respectfully decline[d] to adopt the Report and Recommendation." 2-SER-185–86. She held the Second Amended Complaint "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." 2-SER-186. She granted leave to proceed in forma pauperis and directed the Marshal to serve the complaint. 2-SER-187. She reserved the ultimate merits, "it remains to be seen whether Plaintiff's claims have merit," but a district judge found this complaint adequately pleaded under Rule 8 and sent it forward to be answered, not dismissed.

Meta included that order in its Supplemental Excerpts of Record, 2-SER-184–88, yet its recitation moves from the Florida magistrate's report directly to the transfer order, without noting that the report was rejected, that in forma pauperis status was granted, or that service was ordered. The omission matters because Judge Scriven reached a different conclusion on the adequacy of the very pleading the

magistrate judge below later dismissed with prejudice. That history forecloses Meta's "repackaging" framing and bears directly on the denial of leave to amend: the order under review was not the latest of "multiple attempts," but the first to find this complaint wanting. See Part VII.

V. PLAINTIFF HAS ARTICLE III STANDING; THE SHAREHOLDER-STANDING RULE DOES NOT APPLY WHERE THERE IS NO CORPORATE INJURY TO MIRROR.

A. The pleading alleges a concrete, particularized injury to Dean as an individual.

Article III requires an injury that is concrete, particularized, and actual, fairly traceable to the defendant's conduct, and redressable. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). The pleading alleges that "[s]ince 2010, Plaintiff has been developing Veamcast, a platform of apps and an API for video/voice/photo publishing and sharing services," SAC ¶ 5, that Dean personally created the intellectual property at issue years before any corporate entity existed, and that Meta destroyed its value through the selective denial detailed in Parts I and III. A developer's loss of the platform he built is a concrete, particularized injury, traceable and redressable, all that the pleading stage requires. That the platform later bore a corporate name does not change who created and owned it: the pleading alleges Dean did, personally, and Meta identifies nothing transferring that ownership to any entity.

B. The rule presupposes a corporate injury the shareholder reflects; there is none here, and the prior corporate filings do not supply one.

The rule Meta invokes is narrow and conditional. "Generally, a shareholder does not have standing to redress an injury to the corporation," and "[t]o have standing to maintain an action, a shareholder must assert more than personal economic injury resulting from a wrong to the corporation." *Shell Petroleum, N.V. v. Graves*, 709 F.2d 593, 595 (9th Cir. 1983). The operative requirement is that "[a] shareholder must be injured directly and independently of the corporation." *Id.* By its terms the rule applies only when there is "an injury to the corporation" the shareholder's claim seeks to redress; it does not convert an individual's personal injury into a corporate one.

That rule does not reach this case, because the predicate corporate injury does not exist. That Veamcast was incorporated, first as Veamcast Corporation and later as Veamcast Corp., does not establish that any corporation held the asset Meta destroyed; corporate existence is not corporate ownership. Meta's reliance on the prior pleading in fact refutes corporate ownership on its own terms: that pleading alleged development "since 2010," but neither entity existed then, and Veamcast Corp. was not incorporated until 2016, as Meta's own records confirm. 2-SER-19. A corporation cannot have developed an asset before it existed, so the development the filing describes can only have been Dean's; Meta's invocation of the filing thus

confirms, rather than rebuts, that the property originated with him. Meta also identifies no assignment, sale, capitalization, or investment, operating, or employment agreement moving the intellectual property from Dean to any entity. The pleading alleges that Dean developed and owned that property personally, SAC ¶ 5, not that any corporation held it, operated the platform, or suffered the loss.

Nor does Meta's reliance on Dean's having once sued in the corporation's name supply a corporate injury. That suit was dismissed not on the merits but because a corporation cannot appear without counsel, and Dean was authorized to refile his claims individually, as he did. See Part IV. None of this asks the Court to treat Dean and the corporations as interchangeable. Dean claims no corporate injury as his own, only his own injury to property he developed and owned personally. Where the destroyed asset was the individual's, the shareholder-standing rule has nothing to operate on, and the duplicative-recovery concern that animates it is absent.

C. Dean's characterization of the entities as shells is a legal conclusion drawn from pleaded facts, not a new allegation; the injury is concrete.

Meta's argument misreads the record. It contends that Dean's characterization of the entities as shells that never held the Veamcast intellectual property, and his assertion of individual ownership, are new allegations improperly raised in his opposition rather than the complaint. But the factual predicate is already pleaded:

the Second Amended Complaint alleges that Dean developed Veamcast personally beginning in 2010, SAC ¶ 5, and the conclusion that the entities never held the intellectual property is a legal characterization of that pleaded fact, not a new factual allegation. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424 (2021), confirms the concreteness requirement: a plaintiff alleging only an intangible statutory injury lacking a "close relationship" to harms traditionally actionable lacks a concrete injury. Dean alleges the opposite: the destruction of intellectual property and a platform he built over many years predating the corporations, an economic injury of the most traditionally cognizable kind. The standing dismissal should be reversed.

VI. THE COMPLAINT PLAUSIBLY ALLEGES INJURY TO COMPETITION; SELECTIVE REVOCATION OF PREVIOUSLY GRANTED ACCESS IS CONDUCT THE ASPEN SKIING LINE REACHES.

A. The cases the district court applied presuppose a corporate owner that suffered the injury; there is none here.

The district court held that Dean lacks antitrust standing under *Vinci v. Waste Management, Inc.*, 80 F.3d 1372, 1375 (9th Cir. 1996), reasoning that "the antitrust laws were not created to allow individuals to recover for injuries to businesses." 1-SER-7. But *Vinci* and the cases it rests on bar a shareholder's claim only because, in each, a corporation owned the business and was the party directly injured, leaving the shareholder to assert a derivative loss. In *Vinci*, the directly injured party was

Vinci Enterprises, Inc., the corporation that owned the business and the settlement agreement; a shareholder has no standing to sue in his own name. The rule channels the claim to the corporation because the corporation holds it.

That predicate is absent here. For the reasons stated in Part V, no corporation held the Veamcast intellectual property, operated the platform, took investment, or entered agreements concerning it, and Meta identifies no transfer of that property from Dean to any entity. There is thus no corporation that directly suffered the injury, and *Vinci* does not channel away a claim the individual holds; the double-recovery concern that animates the bar is absent where no corporation can assert the claim. Any imprecision is a matter for amendment, not dismissal with prejudice. See Part VII.

B. The conduct alleged is selective revocation of previously granted access, which falls within *Aspen Skiing* rather than *Trinko*'s no-duty-to-deal rule.

A monopolist generally has no duty to deal with rivals. *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 408 (2004). But a limited exception applies. Drawn from *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985), it attaches where a monopolist's "unilateral termination of a voluntary (and thus presumably profitable) course of dealing," *Trinko*, 540 U.S. at 409, suggests it is "willing to sacrifice short-run benefits and consumer goodwill in exchange for a perceived long-run impact on its smaller rival," *Aspen*, 472 U.S. at

610–11. The decisive feature is the prior relationship: it was "the absence of [a] preexisting relationship that doomed the plaintiffs in *Trinko*," a claim dismissed "at the pleading stage on that basis." *FTC v. Facebook, Inc.*, 560 F. Supp. 3d 1, 24 (D.D.C. 2021) (later recaptioned *FTC v. Meta Platforms, Inc.*).

That places this case on the *Aspen* side of the line. The pleading alleges that Meta first made its Graph API available to Veamcast and approved it through App Review, SAC ¶¶ 6–7, then revoked and disabled that previously granted access through fabricated overlays, SAC ¶ 9, not declining to enter a relationship but terminating one it had voluntarily established. Addressing materially identical conduct, the court in *FTC v. Facebook* held that while Facebook's general policy of refusing API access does not itself violate Section 2, "specific instances in which Facebook revoked a competitor's API permissions (after previously providing it access) might have violated Section 2." 560 F. Supp. 3d at 21. Those instances could not support the FTC's requested injunction only because they lay in the past, and Section 13(b) authorizes such relief only where a defendant "is violating, or is about to violate" the law, a timing limitation that does not reach Dean's claim for damages. *Id.*

C. The pleading alleges harm to the competitive process, not merely to Veamcast, and supports it with particulars.

Meta's "single competitor" framing ignores the pleading, which alleges that "[t]he conduct experienced by Plaintiff mirrors the pattern of anticompetitive behavior identified by the FTC," SAC ¶ 12, and quotes the FTC's allegations that "Facebook's course of conduct has eliminated nascent competitors and extinguished the possibility that such competitors might challenge Facebook's dominance in the future," and that its conduct "has harmed competition and harmed the competitive process in the personal social networking market in the United States." SAC ¶ 11(a), (d). It pleads Meta's motive in Zuckerberg's words: that such firms "could be dangerous to Facebook if they were free to grow to scale." SAC ¶ 11(c).

The pleading also alleges the surveillance mechanism by which Meta identified Veamcast as a threat, with unusual specificity: that Meta employees downloaded and tested the Veamcast app using audit accounts at the tfbnw.net domain, which the pleading alleges Meta registered for auditing apps, identifying particular accounts and dates, including testing "multiple times between 9/25/2019 and 9/23/2020." SAC ¶ 8. That is the same surveil-then-foreclose sequence the FTC alleged, in which Facebook "terminated the API access of promising apps" and "targeted promising apps with some social functionality" that were "not yet full-fledged competitors," the category that included the video-sharing app Vine. *FTC v. Facebook*, 560 F. Supp. 3d at 10. Veamcast, a "video/voice/photo publishing and sharing" platform, SAC ¶ 5, is an instance of that category, and the application-

specific selectivity established in Part I is the mechanism of foreclosure. The harm therefore runs to competition, not to Veamcast alone: its functionality fell within the personal social networking market the FTC's allegations define, SAC ¶ 11(a), (d), so its exclusion removed a nascent rival.

D. Market definition and competitive effect are fact-intensive questions not suited to resolution on the pleadings.

The court also held that Dean failed to define a relevant market, faulting the reference to a "social media market" and citing *Reilly v. Apple Inc.*, 578 F. Supp. 3d 1098 (N.D. Cal. 2022). 1-SER-7–8. But "[t]he validity of the 'relevant market' is typically a factual element rather than a legal element," so an antitrust complaint "survives a Rule 12(b)(6) motion unless it is apparent from the face of the complaint that the alleged market suffers a fatal legal defect." *Newcal Indus., Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1045 (9th Cir. 2008). By incorporating the FTC's allegations, the pleading adopts the market those allegations define, personal social networking services in the United States. SAC ¶ 11(a), (d). That is a market a federal agency has formally litigated, not one facially deficient under *Newcal*. Whether Veamcast competed in or adjacent to it is a factual question for discovery, and any imprecision is curable by amendment, not ground for dismissal with prejudice. See Part VII.

VII. THE DENIAL OF LEAVE TO AMEND WAS AN ABUSE OF DISCRETION; ITS SOLE GROUND, "MULTIPLE ATTEMPTS," MISDESCRIBES THE RECORD.

The district court denied leave to amend on a single ground contradicted by the record. It wrote: "[W]ere this Plaintiff's first attempt to bring such allegations forward, the Court might be inclined to provide an opportunity for him to expand. But Plaintiff has made multiple attempts to bring claims against Defendant and failed to do so. The Court concludes that leave to amend would be futile." 1-SER-9. The futility holding rests entirely on the "multiple attempts" premise. But the order under review is the first merits ruling on any complaint against Meta, so the premise is mistaken; leave is to be granted freely and pro se pleadings liberally construed, especially where the court declined to consider the very allegations an amendment would formalize; and the court identified no incurable defect, which a futility finding requires.

A. The order under review is the first merits ruling on any complaint against Meta; the "multiple attempts" premise is wrong.

The standard is settled: "leave to amend should be granted unless the pleading could not possibly be cured by the allegation of other facts," *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc), and the policy favoring amendment is "to be applied with extreme liberality," *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d

1048, 1051 (9th Cir. 2003) (per curiam). The court conceded that absent the "multiple attempts" it "might be inclined" to allow amendment. 1-SER-9. The premise is decisive—and wrong.

The 2020 action was dismissed on a procedural ground unrelated to the merits, and without prejudice. See Part IV. Here, the first magistrate's recommendation was rejected by Judge Scriven, who ordered the Second Amended Complaint served, 2-SER-185–86, and the Florida motion to dismiss was deferred on transfer, never adjudicated. ECF 55. The February 12, 2026 dismissal under review is thus the first and only ruling on the merits of any Meta complaint; treating it as the culmination of "multiple attempts" inverts the procedural history.

Nor does Dean's separate suit against a different defendant supply the missing "attempts." That action, *Dean v. Roku, Inc.*, No. 25-12890 (11th Cir.), concerns different conduct by a different company—the disabling of Roku device features, not Meta's denial of Graph API access—and its dismissal is pending on appeal. It is not a prior attempt to plead this claim and cannot show futility.

B. Leave was especially warranted because the court declined to consider the very allegations an amendment would formalize.

Pro se complaints are held "to less stringent standards than formal pleadings drafted by lawyers" and must be "liberally construed." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). That principle has particular force here because the

district court expressly declined to consider Dean's allegations distinguishing his individual injury from any injury to Veamcast, reasoning that they appeared in his opposition rather than the complaint. 1-SER-5 & n.1. The consequence is decisive: on the view that those individual-injury allegations were not yet in the pleading—though paragraph 5 already alleges that Plaintiff has been developing Veamcast personally since 2010—the court declined to consider them, then denied Dean the chance to make them explicit. The proper response is to permit their inclusion by amendment, not to deny leave on the ground that the complaint did not already spell them out. Facts raised for the first time in an opposition are considered in deciding whether to grant leave. *Schneider v. Cal. Dep't of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998).

C. The court identified no defect that amendment could not cure, which a futility finding requires.

Futility means the pleading "could not possibly be cured by the allegation of other facts." *Lopez*, 203 F.3d at 1127. The defects the court identified—if they are defects at all—are in any event curable, and Dean has identified the facts. As to Article III standing, the court found the Second Amended Complaint "silent as to any injury Plaintiff himself suffered," 1-SER-5; the proposed amendment would allege expressly what paragraph 5 implies and the opposition stated, that Dean developed and owned the Veamcast intellectual property personally, that no

corporate entity ever held it, took investment, or entered agreements concerning it, and that its destruction was his personal, direct injury. Any limitations or continuing-violation defect is likewise curable: the categorical distinction (Part I) and overt-act sequence (Part III) appear on the face of the pleading and can be pleaded with more specificity.

The court did not explain why any asserted defect was incurable—a particularly demanding showing here, where another district judge had reviewed the same complaint de novo, found it adequately pleaded, and ordered it served. See Part IV. Even the magistrate who recommended dismissal did so without prejudice and contemplated further amendment. 2-SER-195–196. The deficiencies the court identified—pleading specificity, individual injury, ownership—are precisely the kind of deficiencies Rule 15's liberal amendment policy exists to let a litigant cure. See *Eminence Capital*, 316 F.3d at 1051. The court did not address the categorical distinction between platform-wide deprecation and selective disabling, the control experiment, or the personal-ownership allegations it had declined to consider. A futility determination requires articulating why amendment could not cure the identified defect; a conclusory invocation of "multiple attempts" does not. Because the sole stated ground misdescribes the record and any such defect is in any event curable, the denial of leave to amend was an abuse of discretion. At minimum, Dean

should be afforded the single opportunity to amend that *Lopez* and *Eminence Capital* require.

CONCLUSION

The first merits ruling in this litigation ended it with prejudice: the magistrate judge dismissed a complaint a district judge had found adequate and ordered served, declined to consider the allegations that answered its concerns, claiming they were not yet pleaded, then denied the amendment that would have made them explicit. The judgment should be reversed and the matter remanded; at minimum, Plaintiff-Appellant should be granted leave to amend.

Respectfully submitted,

Dated: June 18, 2026

/s/ Joseph J. Dean
Joseph J. Dean
Plaintiff-Appellant, Pro Se

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Plaintiff-Appellant is aware of no case pending in this Court that is related to this appeal within the meaning of Rule 28-2.6. For the Court's awareness, Appellant notes a proceeding in another court, *Dean v. Roku, Inc.*, No. 25-12890 (11th Cir.), which raises antitrust-standing issues concerning different conduct by a different defendant, and a prior action, *Veamcast Corp. v. Facebook, Inc.*, No. 8:20-cv-2667 (M.D. Fla.), which was dismissed without prejudice.

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Ninth Circuit Rule 32-1(b), which permits an appellant's reply brief of up to 7,000 words. This brief contains 6,918 words, excluding the items exempted by Fed. R. App. P. 32(f) and the statement of related cases, as counted by the word-processing system used to prepare it. This brief complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5)–(6) because it is set in a proportionally spaced 14-point serif typeface (Times New Roman).

Dated: June 18, 2026

/s/ Joseph J. Dean
Joseph J. Dean

CERTIFICATE OF SERVICE

I certify that on June 18, 2026, I electronically filed the foregoing Appellant's Reply Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: June 18, 2026

/s/ Joseph J. Dean
Joseph J. Dean