No. 2026-1953

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

JOSHUA J. ANGEL,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

On Appeal from the United States Court of Federal Claims in case no. 25-2040, Judge Robin M. Meriweather.

DEFENDANT-APPELLEE'S BRIEF

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STATEMENT OF RELATED CASES

No other appeal in or from the present civil action has previously been before this or any other appellate court. The government is not aware of any related cases within the meaning of Federal Circuit Rule 47.5(b). However, the complaint appealed here was filed a week after he conceded to filing a late appeal of a prior dismissal of the same claims at issue here.

On June 26, 2026, the United States Court of Federal Claims (the trial court) entered a judgment dismissing Mr. Angel's complaint in Case No. 23-cv-800. On June 26, 2025, the trial court denied Mr. Angel's motion for reconsideration. Yet, Mr. Angel did not file his appeal until September 2, 2025. On October 23, 2025, this Court issued an order to show cause as to whether the appeal should be dismissed as untimely. No. 25-cv-2140, ECF No. 3. On November 24, 2025, Mr. Angel filed a response to the Court's order to show cause acknowledging that he filed late and did "not object to the dismissal of his appeal as untimely." No. 25-cv-2140, ECF No. 5. One week after this concession, on December 1, 2025, Mr. Angel filed the complaint being appealed in this action. On January 22, 2026, the Court dismissed Mr. Angel's untimely appeal of the dismissal in Case No. 23-cv-800. No. 25-cv-2140, ECF No. 9.

INTRODUCTION

This is Mr. Angel's fifth attempt to advance claims relating to the placement of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) into conservatorship in 2008. The Court of Federal Claims (trial court) correctly held that all of the claims in Mr. Angel's latest complaint are time-barred because they arose from the adoption of a variable rate dividend (sometimes referred to as the "net worth sweep") that went into effect on August 17, 2012. Although the trial court did not reach the issue of claim preclusion, the Court may affirm on the alternative ground that the complaint fails to state a claim because his claims have all been previously dismissed.

STATEMENT OF JURISDICTION

This Court possesses jurisdiction to entertain this appeal under 28 U.S.C. § 1295(a)(3). The trial court entered a final judgment on April 24, 2026. Appx7 (judgment). Mr. Angel timely filed a notice of appeal on June 15, 2026.

STATEMENT OF THE ISSUES

1. Whether the trial court erred in dismissing the complaint on the grounds that it lacked jurisdiction to entertain Mr. Angel's untimely claims, all of which had previously been dismissed on at least two occasions.
2. Whether the Court may alternatively affirm on the grounds that Mr. Angel failed to state a claim upon which relief can be granted because his claims

are issue and claim precluded.

STATEMENT OF THE CASE

I. Factual Background

In 2008, during the financial and housing crisis, Congress enacted the Housing and Economic Recovery Act of 2008 (HERA) to stabilize the Enterprises, which stood on the brink of insolvency. *See* Appx3. HERA created the Federal Housing and Finance Agency (FHFA) and authorized its Director to appoint FHFA as conservator for the Enterprises. *See id.*

FHFA was placed into conservatorship on September 6, 2008, and entered into agreements with the United States Department of the Treasury (Treasury) to secure the financial lifeline that the Enterprises needed to ensure their ongoing viability. On August 17, 2012, Treasury and FHFA amended the dividend structure in their agreement for the third time (The Third Amendment) to ensure the Enterprises' future financial stability. The Third Amendment's "net worth sweep" replaced the Enterprises' prior, "fixed-rate dividend formula with a variable one that required the Enterprises to make quarterly payments equal to their entire net worth, minus a small capital amount," ultimately "leaving no residual value that could be distributed to the shareholders." *Fairholme Funds, Inc. v. United States*, 26 F.4th 1274, 1282-1283 (Fed. Cir. 2022). Significantly, Mr. Angel purchased more than $1 million in Junior Preferred Shares of the Enterprises "at various times after January 1, 2013." Pet. Br. at 2; *see Angel v. United States*, No. 23-cv-800, 172 Fed. Cl. 102, 112 (2024). Mr. Angel

is one of many shareholders who speculated "that litigation might restore value to those shares and produce a return on their investment." *Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 112. He is also one of several shareholders who subsequently filed lawsuits challenging the nonpayment of dividends on this stock in the wake of the Third Amendment. *See id.* at 109 (citing *Fairholme Funds, Inc.*).

Mr. Angel has previously filed four complaints with claims similar to those he raises in the action on appeal. *See* Appx2 (collecting cases). Mr. Angel filed his first complaint in the United States District Court for the District of Columbia, which dismissed his claims in March 2019. *Angel v. Fed. Home Loan Mortg. Corp.*, No. 1:18-cv -1142, 2019 WL 1060805 (D.D.C. Mar. 6, 2019) ("*Angel I*"), *aff'd*, 815 F. App'x 566, 569 (D.C. Cir. 2020). Thereafter, in 2020, Mr. Angel filed the first of four additional complaints in the Court of Federal Claims (the trial court). *See Angel v. United States*, No. 20-cv-0737 (Fed. Cl. 2020) ("*Angel II*"); *Angel v. United States*, No. 22-cv-867, 165 Fed. Cl. 453, 456-462 (2023) ("*Angel III*"); *Angel v. United States*, No. 23-cv-800, 172 Fed. Cl. 102 (2024) ("*Angel IV*"). The case on appeal, *Angel v. United States*, No. 25-cv-2040, is his fifth complaint ("*Angel V*"). Appx1049-1085.

Mr. Angel has been a presence in the trial court since 2022. Mr. Angel voluntarily dismissed *Angel I* on August 4, 2022, after unsuccessfully moving to lift a stay of his case pending the Supreme Court's decision in the then undecided case of *Collins v. Yellen*, 141 S. Ct. 1761 (2021). *See Angel IV*, No. 23-cv-800, 2025 WL 1769635, at *3 (Fed. Cl. Jun. 26, 2025). Four days after that voluntary dismissal, Mr.

Angel filed a second complaint in the trial court (No. 22-cv-867) "rehashing the same facts as his prior suits and modifying, slightly, his theories of recovery." *See Angel IV*, 23-cv-800, 172 Fed. Cl. at 111. On May 12, 2023, the trial court dismissed Mr. Angel's second complaint in its entirety. *Angel III*, No. 22-cv-867, 165 Fed. Cl. 453 (2023); *see Angel IV*, 2025 WL 1769635, at *3. In *Angel III*, the trial court determined that all of Mr. Angel's claims were barred by the six-year statute of limitations established by 28 U.S.C. § 2501, and, thus, that the court did not possess jurisdiction to entertain Mr. Angel's claims. *Angel III*, No. 22-cv-867, 165 Fed. Cl. at 463-66. The trial court held that Mr. Angel's claims accrued in early 2013 at the latest, when his rights to any dividends were changed by the Third Amendment.[1] At that point, the trial court held, "Mr. Angel knew or should have known of the damage to his dividend rights," and, thus, his claims needed to be filed by early 2019 to be timely. *Id.* at 464. The *Angel III* trial court further concluded that, even if his claims were timely, all of his claims were foreclosed by this Court's decision in *Fairholme Funds,* 26 F.4th 1274, in addition to other binding authorities. *Id.* at 467. The trial court determined that the holding in *Fairholme Funds* that "the government 'owed no fiduciary duties to the shareholders under HERA,' . . . compels the dismissal of shareholder breach-of[-] fiduciary duty claims based on HERA brought in [the trial]

[1] The Third Amendment resulted in no dividend payments to holders of Junior Preferred shares in Fannie Mae and Freddie Mac from January 1, 2013. *See Angel III*, 22-cv-867, 165 Fed. Cl. at 457.

court as beyond the court's subject matter jurisdiction." *See id.* at 469 (citing *Fairholme Funds*, 26 F.4th at 1291-1292). Mr. Angel did not appeal that decision to this Court.

One month later, in October 2023, Mr. Angel filed his third complaint in the trial court, which, again, closely mirrored the complaint that the court dismissed in May, "realleging the same claims and same operative facts" as those in *Angel III*. *See Angel IV*, 2025 WL 1769635, at *63. The trial court also dismissed the *Angel IV* complaint in its entirety in June 2024 for lack of jurisdiction and failure to state a claim. *See Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 111. The *Angel IV* trial court, like its *Angel III* predecessor, held that Mr. Angel's claims were untimely. It further determined that the claims were precluded, implausible or foreclosed. Two weeks later, Mr. Angel moved for reconsideration of the trial court's dismissal. In the court's decision denying that motion, it observed:

> Mr. Angel has now had more opportunities to present his case than most litigants. . . .The Court will not afford Mr. Angel yet another opportunity to "relitigate old matters." While the Court appreciates that Mr. Angel is "dissatisfied" with an outcome that does not restore his shareholder rights to their pre-Third Amendment status, the Court declines to entertain Mr. Angel's attempt "to try his case a [fifth] time."

See Angel IV, 2025 WL 1769635, at *6 (citations omitted). Three months later, on September 22, 2025, Mr. Angel filed an untimely appeal of the trial court's *Angel IV* dismissal. No. 23-cv-800, ECF No. 42. On October 23, 2025, this Court issued an order to show cause as to whether the appeal should be dismissed as untimely. No.

25-cv-2140, ECF No. 3. On November 24, 2025, Mr. Angel filed a response to the Court's order to show cause acknowledging that he filed late and did "not object to the dismissal of his appeal as untimely." No. 25-2140, ECF No. 5. One week after this concession, on December 1, 2025, Mr. Angel filed his fourth complaint in the trial court and fifth overall (*Angel V*), which mirrors his prior complaints, all of which were dismissed. On January 22, 2026, this Court dismissed the appeal of *Angel IV*. No. 25-cv-2140, ECF No. 9.

II. Prior Proceedings

Like his prior four complaints, Mr. Angel's December 1, 2025 complaint asserts three Counts challenging the nonpayment of dividends on his stock in the Enterprises. Count I alleges that the United States beached either an express or an implied in fact contract guaranteeing dividend payments to shareholders. Appx1080; *See Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 114, Pet. Br. at 15. Mr. Angel alleges that his shares came with an implicit guarantee to dividend rights. It is nearly identical to Count I in both *Angel III* and *Angel IV*. Compare No. 22-cv-867, Appx1012, Compl. ¶¶ 42-47, with No. 23-cv-800, Appx1041-1042, Compl. ¶¶ 69-74. The only difference is the increase in the amount that Mr. Angel is seeking in damages here. In *Angel III*, the trial court dismissed Count I pursuant to RCFC 12(b)(1) as untimely but noted in doing so that if the claim was timely, it would also have been dismissed pursuant to RCFC 12(b)(6) for failure to state a plausible claim. 165 Fed. Cl. at 467-468. Similarly, the *Angel IV* trial court dismissed "Count I pursuant to RCFC 12(b)(1), or,

in the alternative, under RCFC 12(b)(6) for failure to state a claim upon which relief can be granted," finding (again) this claim was untimely, precluded, and implausible. *Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 114-19.

Count II alleges that Treasury's failure to pay dividends was an "illegal exaction and extraction" and a breach of an alleged fiduciary duty to shareholders. Appx1080 (Compl. ¶¶ 83-88). Count II is nearly identical to Count II in *Angel IV*, which in turn was a "very slightly revised" version of Count II in *Angel III*. *See Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 120; Compare No. 22-cv-867, Appx1012-1013, Compl. ¶¶ 42-47, with No. 23-cv-800, Appx1041-1042, Compl. ¶¶ 69-74. Again, here, Mr. Angel seeks more damages than he previously claimed, and added two additional "sub" paragraphs to the Count, ¶¶ 87 (a) and (b), attempting to define the alleged "illegal exaction" and "illegal extraction." Appx1081-1082. In *Angel III*, the trial court dismissed this claim for lack of jurisdiction because this Court held in *Fairholme Funds* that the Government did not owe any fiduciary duties to shareholders under HERA. No. 22-cv-867, 165 Fed. Cl. 469 (citing *Fairholme Funds*, 26 F.4th at 1297). Alternatively, the trial court held that, even if it possessed jurisdiction, the complaint would have been dismissed for failure to state a claim because *Fairholme Funds* established "that the Enterprises' shareholders could not assert illegal exaction claims because such claims belong to the Enterprises." *Id.* at 470 (citing *Fairholme Funds*, 26 F.4th at 1291-1292). Similarly, in *Angel IV*, the trial court dismissed "Count II pursuant to RCFC 12(b)(1), or, in the alternative, under RCFC 12(b)(6) for failure to state a claim upon which

relief can be granted," because it was untimely, precluded, and implausible. *Angel IV*, 23-cv-800, 172 Fed. Cl. at 120-23.

Count III of the complaint, for declaratory relief, is literally identical to Count II in *Angel IV*. Compare No. 25-cv-2040, Appx 1083-1084, Compl. ¶¶ 89-96 with No. 23-cv-800, Appx 1043-1044, Compl. ¶¶ 81-89. The *Angel IV* trial court "dismissed Count III pursuant to RCFC 12(b)(1) for lack of subject-matter jurisdiction," because COFC cannot opine on bankruptcy law or award the declaratory relief sought here. *Angel IV*, 23-cv-800, 172 Fed. Cl. at 124.

On April 23, 2026, the trial court held that it lacked subject matter jurisdiction over Mr. Angel's fifth complaint on appeal (*Angel V*) because his claims are untimely. Appx2, Appx4. It found dismissal of Mr. Angel's complaint with prejudice was warranted because his claims accrued no later than early 2013, and Mr. Angel failed to cure jurisdictional timeliness defects that the court addressed at length in prior dismissals. Appx4-5. The trial court further found that an anti-filing injunction was warranted pursuant to RCFC 11(c) because Mr. Angel's complaint repeated frivolous claims previously rejected by the court. Appx6. The following day, on April 24, 2026, the trial court issued a judgment dismissing the case, with prejudice, for lack of subject matter jurisdiction. Appx7. Mr. Angel filed a notice of appeal to this Court on June 15, 2026. Appx23. This appeal followed.

SUMMARY OF ARGUMENT

The trial court correctly dismissed Mr. Angel's complaint for lack of jurisdiction because his claims all arise from the Third Amendment's net worth sweep effective on August 17, 2012, and are, thus, untimely. Alternatively, the Court may affirm the dismissal on the grounds that Mr. Angel's claims are precluded.

ARGUMENT

I. Standards of Review

A. Dismissal Pursuant to Rule 12(b)(1)

"Determination of jurisdiction starts with the complaint, which must be well-pleaded in that it must state the necessary elements of the plaintiff's claim, independent of any defense that may be interposed." *Holley v. United States*, 124 F.3d 1462, 1465 (Fed. Cir. 1997) (citing *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 9-10 (1983)).

The United States is immune from suit unless it has specifically waived sovereign immunity. *United States v. Testan*, 424 U.S. 392, 399 (1976). "Waivers of the Government's sovereign immunity, to be effective, must be unequivocally expressed," *id.*, and its "consent to be sued must be construed strictly in favor of the sovereign and not enlarge[d] . . . beyond what the language requires," *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 33-34 (1992) (cleaned up).

The Court reviews de novo the Court of Federal Claims' dismissal for lack of subject-matter jurisdiction. *Walby v. United States*, 957 F.3d 1295, 1298 (Fed. Cir.

2020). And the Court may "affirm the Court of Federal Claims' dismissal on any ground supported by the record." *Wyandot Nation v. United States*, 858 F.3d 1392, 1397 (Fed. Cir. 2017).

B. Standard For Issue Preclusion

"Courts apply preclusion principles to curb vexatious and repetitive litigation of the same issue in multiple lawsuits." *Angel II*, No. 23-cv-800, 172 Fed. Cl. at 116 (citing *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008)). Issue preclusion bars a subsequent cause of action where four conditions are met:

> (1) The issue is identical to the one decided in the first action; (2) the issue was actually litigated in the first action; (3) resolution of the issue was essential to a final judgment in the action; and (4) the plaintiff had a full and fair opportunity to litigate the issue in the first action.

Laguna Hermosa Corp. v. United States, 671 F.3d 1284, 1288 (Fed. Cir. 2012) (citing *In re Freeman*, 30 F.3d 1459, 1465 (Fed. Cir. 1994)). "Issue preclusion prohibits a losing party from relitigating issues that have actually been litigated." *See Sharp Kabushiki Kaisha v. ThinkSharp, Inc.*, 448 F.3d 1368, 1370 (Fed. Cl. 2006). "Jurisdictional rulings are given preclusive effect if these conditions are met." *Angel II*, No. 24-cv-800, 172 Fed. Cl. at 116 (citing *Amgen, Inc. v. U.S. Int'l Trade Comm'n*, 902 F.2d 1532, 1536 n.5 (Fed. Cri. 1990)).

C. Standard For Claim Preclusion

The related doctrine of *res judicata,* or "claim preclusion," "prevents a party from relitigating the same claims that were or could have been raised" in an earlier

suit. *Goad v. United States,* 46 Fed. Cl. 395, 397 (2000) (citing *Case, Inc. v. United States*, 88 F.3d 1004, 1011 (Fed. Cir. 1996)). While issue preclusion "operates only as to issues actually litigated," "claim preclusion may operate between the parties simply by virtue of the final judgment." *First Mortg. Corp. v. United States*, 961 F.3d 1331, 1338 (Fed. Cir. 2020). Claim preclusion "foreclose[es] any litigation of matters that . . . should have been advanced in an earlier suit." *Id.*; *see Bowers Inv. Co., LLC v. United States*, 695 F.3d 1380, 1384 (Fed. Cir. 2012) (citation omitted).

Another key difference between the doctrine of issue preclusion and the doctrine of claim preclusion is that the former doctrine does not require a ruling on the merits, but the latter doctrine does. *Angel II*, No. 23-cv-800, 172 Fed. Cl. at 116. Claim preclusion requires (1) an identity of parties or their privies, (2) a final judgment on the merits in the first suit, and (3) that the second claim must be based on the same transactional facts as the first. *See First Mortg. Corp.*, 961 F.3d at 1338; *Bowers Inv. Co.*, 695 F.3d at 1384 (citation omitted). "Dismissals for failure to state a claim upon which relief can be granted are 'on the merits,' and are entitled to res judicata effect." *Goad v. United States,* 46 Fed. Cl. 395, 397 (2000) (citing *Spruill v. Merit Sys. Prot. Bd.*, 978 F.2d 679, 686 (Fed. Cir. 1992)).

II. The Court of Federal Claims Correctly Dismissed The Complaint For Lack of Subject Matter Jurisdiction Because It Was Untimely Filed

The trial court correctly dismissed Mr. Angel's complaint because his "claims concerning the net worth sweep accrued in early 2013 at the latest." Appx4 (citing

Angel IV, 23-cv-800, 172 Fed. Cl. at 116, 121). Claims brought under the Tucker Act are subject to the six-year statute of limitations in 28 U.S.C. § 1491. *See Kelly v. United States*, 181 F.4th 1377, 1381 (Fed. Cir. 2026). The limitations period is an "absolute" limit on the ability of the trial court to reach the merits of a claim. *See John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133-135 (2008). "A claim first accrues within the meaning of the stature of limitations 'when all the events have occurred which fix the liability of the Government and entitle the claimant to institute an action.'" *Brown Park Ests.-Fairfield Dev. Co. v. United States*, 127 F.3d 1449, 1455 (Fed. Cir. 1997) (citing *Brighton Vill. Assocs. v. United States*, 52 F.3d 1056, 1060 (Fed. Cir. 1995)). The plaintiff's knowledge of the claim triggers the statute. A claim accrues once the plaintiff "knew or should have known of the existence of the events fixing the government's liability." *John R. Sand & Gravel Co.*, 457 F.3d 1345, 1356 (Fed. Cir. 2006), *aff'd* 552 U.S. 130 (2008).

Here, all three Counts of the complaint, "including his claims about 'implicit guarantees,' relate back to the net worth sweep. Appx4. Therefore, in order to be timely, Mr. Angel had to assert them prior to 2019.

Mr. Angel argues that the trial court erred in finding his complaint untimely because the complaint "is founded on two unique pillars;" first, an isolated statement made by President Donald J. Trump in 2025 relating to "implicit guarantees;" and, second, "that Angel is not suing the United States because of any alleged invalidity of the Third Amendment," but instead, for actions "taken anew each and every quarter"

within "the six years prior to filing the Complaint." Pet Br. at 14-15; Appx1062. Neither "pillar" supports jurisdiction here.

First, Mr. Angel does not identify either the source of President Trump's alleged statement or sufficient context to evaluate the reference, but it would not benefit Mr. Angel here because he purchased the shares in 2013, after the Third Amendment's net worth sweep took effect. Pet. Br. at 2. As the *Angel IV* trial court found, Mr. Angel's "purchase of shares after the Third Amendment dooms any claim founded on an implied guaranty of dividends, or a property interest in dividends" because it is "belied by the market conditions that existed at the time the shares were purchased." No. 23-cv-800, 172 Fed. Cl. at 112.

Second, Mr. Angel's reliance upon the continuing claims doctrine for the proposition that "[e]ach quarterly action" restarted his clock fails for the same reason. Pet. Br. at 15-17. The trial court has previously rejected this argument in both *Angel III* and *Angel IV,* stating:

> This is not a new question; in [*Angel III*, 165 Fed. Cl. at 463-466], the court held that Mr. Angel's breach claim, indistinguishable from that presented in Count I of the complaint here, accrued no later than early 2013, and that holding was reaffirmed in [*Angel IV*], 169 Fed. Cl. 233. Rather than recapitulate in its entirety the accrual analysis that was presented [*Angel III*], the court reproduces here two key holdings: (1) "Once Mr. Angel knew or should have known of the damage to his dividend rights caused by the net worth sweep in early 2013, his claims accrued because he could have maintained a suit at that time"; and, (2) "Mr. Angel's claims do not benefit from the continuing

> claim doctrine because by early 2013 all of the elements of his claims had occurred and he could have filed suit."[6]

Angel IV, No. 23-cv-800, 172 Fed. Cl. at 115 (citing *Angel III*, No. 22-cv-867, 165 Fed. Cl. 463. The Third Amendment's net worth sweep was a single, distinct event effective on August 17, 2012, after which no residual value would be distributed to shareholders. 26 F.4th at 1283; *see Angel III*, No. 22-cv-867, 165 Fed. Cl. at 457. Mr. Angel knew his claims were not viable when he bought his shares "at various times after January 1, 2013." Pet. Br. at 2. He purchased his shares *because* the Third Amendment stripped away dividend rights. He made a "speculative stock purchase," gambling that "litigation might restore value to those shares and produce a return." *See id.* He lost his bet.

Mr. Angel's reliance upon *Hatter v. United States*, 203 F.3d 795, 799-800 (Fed. Cir. 2000) as supporting application of the continuing claims doctrine is misplaced. Pet. Br. at 18-19. In *Hatter*, suit was brought on behalf of individual judges challenging payroll deductions for social security taxes. In finding the continuing claim doctrine applied, this Court held "the question is whether there is a seminal event that constitutes one cause of action, or whether each wrongful deduction or refusal to pay constitutes a separate cause of action." 203 F.3d at 800. The continuing claims doctrine does not apply in cases where a single governmental action causes a series of deleterious effects, even though those effects may extend long after the initial governmental breach. *Boling v. United States*, 220 F.3d 1365, 1373 (Fed. Cir.

2000). Here because the net worth sweep was one event pursuant to which a series of payments was eliminated, *Hatter*, which involved a series of distinct actions of nonpayment, is inapposite.

III. Issue And Claim Preclusion Bar Mr. Angel's Claims

Alternatively, the Court may affirm the dismissal on the grounds that the complaint failed to state a claim upon which relief may be granted because Mr. Angel's complaint contains claims nearly identical or identical to ones he has asserted multiple times, and which the *Angel III* and *Angel IV* courts have dismissed. This Court has long held that it "sit[s] to review judgments, not opinions." *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1540 (Fed. Cir. 1983); *Constant v. United States*, 929 F.2d 654, 657 (Fed. Cir. 1991) ("But it is the validity of the judgment, not the quality of any opinion supporting it, that has legal significance …") (emphasis in original). And there can be little doubt that a dismissal for lack of jurisdiction can be—and repeatedly has been—affirmed by this Court on failure to state a claim grounds instead. *See, e.g., Brown v. United States*, 22 F.4th 1008 (Fed. Cir. 2022); *Harmonia Holdings Grp., LLC v. United States*, 999 F.3d 1397, 1403 (Fed. Cir. 2021); *Adair v. United States*, 497 F.3d 1244, 1251 (Fed. Cir. 2007); *Brodowy v. United States*, 482 F.3d 1370, 1376 (Fed. Cir. 2007); *Doe v. United States*, 463 F.3d 1314, 1325-26 (Fed. Cir. 2006). The United States moved to dismiss on these grounds below but the trial court found it unnecessary to reach the issue because it resolved the case on jurisdictional grounds. Appx2. Here the Court may rely upon preclusion in affirming the judgment of

dismissal.

A. Count I Of The Complaint Is Barred by Issue And Claim Preclusion

1. Count I Of The Complaint Is Barred By Issue Preclusion

Count I of the complaint, Mr. Angel's claim that the Third Amendment effected a breach of either an express or implied contract pursuant to which shareholders were guaranteed dividends, is virtually identical to Count I of the *Angel IV* complaint, which the trial court dismissed on the grounds that it was barred by issue preclusion. Count I of the complaint must again be dismissed here as barred under the doctrine of issue preclusion because all four elements of the doctrine are still met. *See Laguna Hermosa Corp.*, 671 F.3d at 1288.

Regarding the first element of issue preclusion, the "issue [in this case] is identical to one decided in the first action." *Id.* This count was previously considered and dismissed by the trial court in *Angel IV* because it was essentially the same as Count I in *Angel III*, which held it was untimely and, even if timely, was implausible. The *Angel IV* Court observed that this Count was "not a new question" and was "indistinguishable" from Count I in *Angel III* (No. 22-cv-867). *Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 116 (citing *Angel III*, No. 22-cv-867, 165 Fed. Cl. at 463-66).

Regarding the second element of issue preclusion, "the issue was actually litigated in the first action." *Laguna Hermosa Corp.*, 671 F.3d at 1288. Indeed, Count I was litigated in both *Angel III* and *Angel IV*. *See Angel III*, No. 22-cv-867, 165 Fed. Cl.

at 466-468; *Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 114-120. *Angel III* dismissed it for lack of jurisdiction as untimely, given that it was filed in 2022 and Mr. Angel's window to file closed in 2019, and held that, even had it been timely, it was implausible because no contract guaranteed dividends. *See Angel III*, No. 22-cv-867, 165 Fed. Cl. at 464-68. The *Angel IV* trial court determined, therefore, that "[p]ursuant to the doctrine of issue preclusion, Mr. Angel's breach claim in Count I must be dismissed as untimely because the accrual analysis in [*Angel III*] already decided that this claim was untimely when it was filed in 2022" and it "was even more remote in time when it was filed, again, in 2023." *Angel IV*, 23-cv-800, 172 Fed. Cl. at 118 (emphasis in original). The *Angel IV* trial court also found, as did the trial court in *Angel III*, that Count I was implausible. There was no express or implicit guaranty of shareholder dividends, especially for purchasers like Mr. Angel who acquired their shares "after the Third Amendment." *Id.* at 118-119.

Regarding the third element, "resolution of the issue was essential to a final judgment in the action," the trial court concluded that it had no jurisdiction to entertain this claim. The court held that "[w]ithout jurisdiction" it "cannot proceed at all in any cause" because "[j]urisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *See Laguna Hermosa Corp.*, 671 F.3d at 1288; *Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 117. Importantly, the trial court noted that, although dismissals on statute of limitations grounds are "without prejudice," "there is no

invitation in such a dismissal to re-file a stale claim in this court" because "it defies common sense to expect a stale claim, already rejected on timeliness grounds, to survive a motion to dismiss in a second suit filed at a later date." *Id.* (citing *Van Allen v. United States*, No. 11-706C, 2012 WL 1437480, at *1-3 (Fed. Cl. Apr. 24, 2012)). The Court cannot entertain untimely claims, period.

Fourth, Mr. Angel has already had a full and fair opportunity to litigate this same Count in *Angel III* & *IV*, and then to appeal those dismissals to this Court. He voluntarily dismissed *Angel II*. He did not appeal *Angel III* and failed to file a timely appeal to *Angel IV*. He cannot now file a *fourth* complaint alleging the same claims to rectify that error.

Accordingly, because the trial court has already determined that Count I is untimely and implausible, the Court is precluded from relitigating its timeliness and plausibility, and the count must be dismissed as barred by issue preclusion.

2. Count I Of The Complaint Is Barred By Claim Preclusion

Count I is also barred under the doctrine of claim preclusion. First, the parties are identical; Mr. Angel and the United States were both parties to *Angel III and Angel IV*. Second, there was a final judgment on the merits of Count I in *Angel IV*, which dismissed it alternatively for failure to state a claim, a dismissal "on the merits" that is "entitled to res judicata effect." *See Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 119; *Goad*, 46 Fed. Cl. at 397 (citing *Spruill*, 978 F.2d at 686). Third, Count I is based on

the same set of transactional facts that were litigated in both *Angel III* & *IV*, namely, whether the Third Amendment breached any alleged entitlement to dividend payments from the Enterprises. *See Bowers Inv. Co.*, 695 F.3d at 1384. *Angel IV* found this claim implausible because there is no guarantee of dividends to shareholders. The trial court held that, "[a]bsent an unambiguous offer from the United States to enter into a contract, the breach claim in Count I that relies upon an implied-in-fact contract between the United States and Mr. Angel is implausible." *Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 119.

Accordingly, the merits of Count I have been litigated between Mr. Angel and the United States and the Court already determined Count I is implausible and meritless. It must be dismissed here.

B. Count II Of The Complaint Is Barred by Issue And Claim Preclusion

1. Count II Of The Complaint Is Barred By Issue Preclusion

Count II of the complaint, which alleges that the Third Amendment resulted in an "illegal exaction and extraction," was previously determined to be issue precluded by the trial court, and it still is. Appx1081-1082. Regarding the first issue preclusion element, the issue is identical to one decided by the trial court previously because Count II is essentially identical to Count II in *Angel IV* and Count III of *Angel III*. *See Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 120; *compare* No. 22-cv-867, Appx1014, Compl. ¶¶ 52-56, with No. 23-cv-800, Appx1041-1042, Compl. ¶¶ 75-80, with No.

25-cv-2040, Appx1081-1082, Compl. ¶¶ 83-88. Even though Mr. Angel seeks more damages here, and Mr. Angel has added two additional "sub" paragraphs to this Count, ¶¶ 87 (a) and (b), attempting to define the alleged "illegal exaction" and "illegal extraction," these paragraphs simply allege that the purported exactions and extractions began on or about January 1, 2013, after the Third Amendment was adopted in August 2012. Appx1081-1082. They do not contain new information not previously considered by the trial court.

Regarding the second issue preclusion element, the issue was actually litigated in the prior actions, here *Angel III* & *IV*. *See Angel III*, No. 22-cv-867, 165 Fed. Cl. at 469-470; *Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 120-123. The *Angel IV* Court identified this Count as the "same claim, very light revised" from its *Angel III* version, and deemed it untimely because, like Count I, it accrued no later than early 2013 and *Angel IV* was filed in June 2023. *Angel IV*, No. 23-cv-800, 172 Fed. Cl. 120 (citing *Angel III*, 22-cv-867, 165 Fed. Cl. at 465-466). The *Angel IV* court also held that, "[p]ursuant to the doctrine of issue preclusion, Mr. Angel's wrongful acts claim in Count II must be dismissed as untimely because the accrual analysis in [*Angel III*] already decided this claim was untimely when it was filed in 2022." *Id.* at 121 (emphasis in original). Finally, the *Angel IV* court determined, as did the trial court in *Angel III*, that any illegal exaction claim was implausible because it was foreclosed by this Court's decision in *Fairholme Funds*, which held that the shareholders' illegal exaction claims were derivative and belonged to the Enterprises. *See id.* at 469-470

(citing *Fairholme Funds*, 26 F.4th at 1291-1292, 1297). *Id.* (citing *Angel III*, No. 22-cv-867, 165 Fed. Cl. at 469-70). Finally, the trial court also concluded that Mr. Angel's "claim for wrongful extraction of litigation proceeds appear[ed] to be nothing more than a tort claim that this court cannot entertain." *Id.* at 124 (citing *Angel III*, No. 22-cv-867, 165 Fed. Cl. at 461).

Regarding the third issue preclusion element, dismissal of Mr. Angel's claim was essential to the final judgment in the action because the trial court concluded it had no jurisdiction to entertain a claim filed outside the statute of limitations and it was precluded by this Court's precedent.

Finally, regarding the fourth issue preclusion element, Mr. Angel has had a full and fair opportunity to litigate this same Count in *Angel III & IV*, and then to timely appeal those dismissals to this Court—which he, again, did not do. Although he filed a notice of appeal in *Angel IV*, it was 28 days too late and this Court dismissed it.

Accordingly, because the trial court has already determined that Count II is untimely and foreclosed and it is precluded from relitigating its jurisdiction to entertain Count II, it must be dismissed.

2. Count II Of The Complaint Is Barred By Claim Preclusion

Count II is also barred by claim preclusion. First, the parties are identical, given that Mr. Angel and the United States were both parties to *Angel II*. Second, there was a final judgment on the merits of Count I in *Angel IV*, which dismissed it

"for failure to state a claim." *See Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 123; *Goad*, 46 Fed. Cl. at 397 (citing *Spruill*, 978 F.2d at 686). Third, Count II is based on the same set of transactional facts that were litigated in both *Angel III* & *IV*, namely, whether the Third Amendment affected either an illegal exaction or extraction. *See Bowers Inv. Co.*, 695 F.3d at 1384. The *Angel IV* court determined that the claim was implausible because it was foreclosed by this Court's decision in *Fairholme Funds* or, alternatively, was a tort claim that the trial court could not entertain. 172 Fed. Cl. at 121-123.

Accordingly, because the merits of Count II have been litigated between Mr. Angel and the United States, and the trial court has issued a determination that it is implausible and meritless, the claim is barred under the doctrine of claim preclusion and must be dismissed.

C. Count III Of The Complaint Is Barred by Issue Preclusion

Count III of the complaint, for declaratory relief, is barred by issue preclusion. First, it is literally identical to Count III in *Angel IV*, which the trial court dismissed for lack of jurisdiction. *See Angel IV*, No. 23-cv-800, 172 Fed. Cl. at 124; *compare* No. 23-cv-800, Appx1043, Compl. ¶¶ 81-89, with No. 25-cv-2040 Appx1082-1083, Compl. ¶¶ 89-96.

Second, Count III was actually litigated in *Angel IV*. *See* 172 Fed. Cl. at 123-124. The *Angel IV* court agreed with the Unted States "that in Count III Mr. Angel attempts to assert his rights under bankruptcy law," over which the district courts

have original and exclusive jurisdiction. 172 Fed. Cl. at 124. It also dismissed this count because it "does not have the power to grant declaratory relief except in limited circumstances" that are inapplicable here. *Id.*

Third, the dismissal of Mr. Angel's claim due to the trial court's lack of jurisdiction over bankruptcy law and its inability to grant declaratory relief here was essential to the trial court's final judgment. *Angel II*, No. 23-cv-800, 172 Fed. Cl. at 117.

Fourth, Mr. Angel has already had a full and fair opportunity to litigate this identical Count in *Angel IV*, and then to timely appeal its dismissals to this Court—which he did not do. Again, although he did appeal, he did so 28 days after the 60-day period to do so expired and his appeal was, therefore, dismissed.

Accordingly, because the trial court has already decided that it lacks jurisdiction to entertain Court III and it is precluded from relitigating its jurisdiction here, Count III must be dismissed.

CONCLUSION

For these reasons, the judgment of the trial court should be affirmed.

Respectfully submitted,

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October 30, 2026

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system.

/s/ Mariana Teresa Acevedo
Mariana Teresa Acevedo

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 7218 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Garamond 14-point font, a proportionally spaced typeface.

/s/ Mariana Teresa Acevedo
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