IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

STEVEN E. GREER

Plaintiff-Appellant,

vs.

TUCKER CARLSON

Defendant-Respondent

Court of Appeal No.: **B343596**

Super. Ct. No. 23SMCV02036

Appeal From a Judgment of
The Superior Court,
County of Los Angeles
Hon. *Lisa Sepe-Wiesenfeld*, Judge

APPELLANT'S OPENING BRIEF

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL SECOND **APPELLATE DISTRICT, DIVISION** FIVE	COURT OF APPEAL CASE NUMBER: B343596
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: Steven Greer FIRM NAME: STREET ADDRESS: 270 SW Natura Ave CITY: Deerfield Beach STATE: FL ZIP CODE: 33441 TELEPHONE NO.: (212) 945-7252 FAX NO.: E-MAIL ADDRESS: Steve@GreerJournal.com ATTORNEY FOR (*name*): pro se	SUPERIOR COURT CASE NUMBER: 23SMCV02036
APPELLANT/ PETITIONER: Steven Greer RESPONDENT/ REAL PARTY IN INTEREST: Tucker Carlson	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

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1. This form is being submitted on behalf of the following party *(name*): Steven Greer

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	**Nature of interest *(Explain):***
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: October 1, 2025

Steven Greer
(TYPE OR PRINT NAME)

Steven Greer
(SIGNATURE OF APPELLANT OR ATTORNEY)

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[1] Respondent was not an employee of Fox News when the Complaint was filed and Fox made no effort to represent him in this court matter. No other Complaint had been filed by Appellant against Defendant previously. Appellant's federal complaint in New York against Fox News did not list Respondent as a defendant.

STATEMENT of APPEALABILITY (Jurisdiction)

This appeal is taken from the final judgment of dismissal entered by the Superior Court of California, County of Los Angeles, Santa Monica Courthouse, (Clerk's Transcript ("CT") 995) following the court's order sustaining defendant-respondent's demurrer. Pursuant to California Code of Civil Procedure section 904.1(a)(1), an appeal may be taken from "a judgment, except an interlocutory judgment." The order of dismissal constitutes a final and appealable judgment under section 904.1(a)(1) because it fully resolved all claims in the action and terminated the case in that trial court. (See Code Civ. Proc., § 581d, "All dismissals ordered by the court shall be in the form of a written order signed by the court and filed in the action and those orders when so filed shall constitute judgments") Accordingly, this Court has jurisdiction to hear this appeal.

ISSUES for REVIEW

1. Did the trial court misapprehend statute of limitations law?

2. Did the trial court err by granting judicial notice to a moot federal complaint?

3. Did the trial court misapprehend *res judicata* and *collateral estoppel*?

4. Did the trial court misapprehend the *Grosso* implied contract claim?

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NATURE of the CASE

This Complaint is a civil Breach of Implied Contract cause of action with a related Violation of California Bus. & Prof. Code § 17200 as a second cause of action. Damages sought are $1 Billion.

Steven E. Greer ("Appellant") alleges that Tucker Carlson ("Respondent") is liable for his actions while he was employed at Fox News as a broadcast personality, and then afterward when he as an independent media personality. Appellant claims that his ideas were used without compensation when Respondent produced his cable TV show. Hence, a special implied contract between a content creator and a studio was violated, per *Grosso v. Miramax Film Corp*., 383 F.3d 965, 967 (9th Cir. 2003). **However, the trial court repeatedly ignored *Grosso*** in its rulings and the order being appealed here.

STATEMENT of FACTS

The facts of this case related to the merits of the causes of action have never been denied or litigated by Respondent in any court, federal or state. Over many years of extensive briefing, Respondent has never filed an affidavit of denial or stated a denial in other brief format. Instead, this appeal revolves around esoteric legal theory (i.e., nuances of *res judicata*, such as "privity", and *collateral estoppel*) as well as factual matters of statute of limitations for implied contract law.

In May of 2023, when Appellant first sued Respondent, Respondent was by then an independently employed media personality fending for himself on the Internet after the legacy media company Fox News had fired him in April of 2023. Appellant has worked

with Fox News as a contributor going back to 2008. Respondent knows Appellant from his work with Fox News (as well as the Wall Street Journal, Reuters, CNBC, and MSNBC).

In 2017, when Respondent was given the 8:00 PM slot on Fox News to run the *Tucker Carlson Tonight* show, Appellant began watching. He added Respondent and his producers to his list of emails recipients for TV show idea pitches.

Appellant runs his own Internet-based media companies and collaborates with legacy media in this manner. Other legacy media outlets give Appellant credit when they use his ideas.

Then, Appellant began to routinely notice commentary during Respondent's opening monologue segments that were very similar to Appellant's works on his *BatteryPark.TV* news site (the website is now renamed as *GreerJournal.com*). Based on the timing and similarity, Appellant alleges that Respondent was stealing his show ideas (i.e., a breach of implied-in-fact contract), which is based on the seminal federal case of *Grosso v. Miramax Film Corp*., 383 F.3d 965, 967 (9th Cir. 2003), *amended by* 400 F.3d 658 (9th Cir. 2005), ""**If . . . a studio or producer is notified that a script is forthcoming and opens and reviews it when it arrives, the studio or producer has by custom implicitly promised to pay for the ideas if used**." (CT 925)

Respondent and his producers were in possession of Appellant's works via email pitches, and his ideas contained within them, because they received his blast emails with links to his essays. There is proof that the emails were opened by Microsoft Office software. Respondent has never denied these facts, as previously mentioned. (CT 911)

The emails sent by Appellant were standard industry pitches with the expectation of payment if they were used. Of note, Respondent's employer at the time, Fox News, had made contract offers to employ Appellant in the past indicating that Appellant's ideas and other skills had value. (CT 911)

It is also industry standard to pay for ideas. Payment by Respondent to Appellant was implied. Respondent routinely used Appellant's ideas to create segments on his Fox TV show, *Tucker Carlson Tonight*, and then on his Internet channel called *TCN*. It is all part of the normal standard of TV production.

Appellant expected credit given to him (as the original source of the ideas) by Respondent because Respondent was not paying Appellant in cash. The "consideration" in the implied contract was payment by giving public credit for Appellant's work.

A large platform like Respondent's would have benefited Appellant's media companies. In fact, Respondent has a long record of turning formerly obscure people into media stars, which has translated into revenue for them. For examples, Project Veritas, Glenn Greenwald, Joe Rogan with Spotify, Dave Portnoy and Barstool Sports, Alex Berenson, Benny Johnson, Candace Owens, Matt Walsh, Mark Steyn, Dan Bongino, and Jason Whitlock are people who have earned significant revenue and position in federal government after being promoted by Respondent. (CT 930)

In 2019, Appellant began to warn Respondent that he expected recognition for the use of his TV show ideas. Respondent continued to use those ideas on the air without proper credit to the source.

On May 9, 2023, Appellant sued Respondent in California Superior Court for a series of idea thefts. (CT 6) This lawsuit filing occurred after Respondent had been fired by Fox News. Appellant had not sued respondent previously. The incidents of idea misappropriation are:

> Idea Theft #1: The 'Pharmacies Refusing Ivermectin' Story (This occurred on September 10, 2021, or within two-years of filing of this Complaint.) (CT 912)
>
> Idea Theft #2: The 'Jeffrey Epstein' Story (CT 913)
>
> Idea Theft #3: The 'New-York-centric Pandemic' Story (CT 916)
>
> Idea Theft #4: The 'Elmhurst Hospital Death Rates' Story (CT 918)
>
> Idea Theft #5: The 'Term 'Demplosion'' Story (CT 919)
>
> Idea Theft #6: The 'Bogus Federal Jobs Report Story' (This occurred on December 19, 2022, or within two-years of filing of this Complaint.)[2] (CT 921)
>
> Idea Theft #7: The 'Gender Reassignment Story' (This occurred on September 20, 2022, or within two-years of filing of this Complaint.) (CT 922)
>
> Idea Theft #8: The 'Dr. Ladapo Interview' (This occurred on January 18, 2024, or within two-years of filing of this Complaint.) (CT 923)

Four of the eight breaches of contract incidents irrefutably occurred within the two-year statute of limitations. However, the trial court ruled that the Complaint

[2] Of note, it has since been confirmed that the jobs reports numbers were wildly inflated and have been adjusted downward by 1,000,000 jobs. Appellant was, once again, first and correct on a major story of national importance. However, millions of TV viewers might believe that the *Tucker Carlson Tonight* show deserves credit.

was outside of the statute of limitations for breach of contract (detailed below in arguments).

Of note, the Theft #8 occurred after the Fox News federal case concluded. Thus, it cannot be construed as being relitigated, or evidence for a *res judicata* demurrer argument.

ARGUMENT

Standard of Review

The trial court order sustaining the demurrer is subject to *de novo* review to determine whether the complaint alleges facts sufficient to state a cause of action. *Blank v. Kirwan*, 39 Cal. 3d 311, 703 P.2d 58, 216 Cal. Rptr. 718 (1985).

This court of appeals can also determine whether or not the **trial court improperly granted judicial notice** to the federal case used by Respondent in this instant case. "In determining whether plaintiffs properly stated a claim for relief, our standard of review is clear: "`We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed.' Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action." (*Zelig v. County of Los Angeles,* 27 Cal. 4th 1112, 45 P.3d 1171, 119 Cal. Rptr. 2d 709 (2002))

1. The Trial Court Erred by Misapprehending Statute of Limitations Law.

The trial court Minute Order ("MO") (CT 987) ruled that the first cause of action (or claim), the Breach of Implied-in-Fact Contract, was filed time barred.

> "Plaintiff's claim for implied-in-fact contract is time barred …much of Plaintiff's claim appears to be barred by the two-year statute of limitations set forth in Code of Civil Procedure section 339, as this action was not filed until May 9, 2023; many of Plaintiff's tips were sent, and Defendant broadcasted the same ideas, before May 9, 2021; and there are no facts indicating a tolling of the statute of limitations…Plaintiff has alleged independently actionable wrongs, i.e., each of the purported uses of Plaintiff's ideas stands alone, and there is no basis to determine that the relation back doctrine applies here."

The trial court misapprehended the concept of statute of limitations. Either a claim is dismissed or it is not. It is a binary determination. Here, the MO admits that many of the alleged acts of idea theft did occur within the two-year window (four out of eight). Therefore, the entire claim should survive the demurrer.

In *Aryeh v. Canon Bus. Sols., Inc*., 55 Cal. 4th 1185, 292 P.3d 871, 151 Cal. Rptr. 3d 827 (2013),

> "**To address these concerns, we have long settled that separate, recurring invasions of the same right can each trigger their own statute of limitations**…Generally speaking, continuous accrual applies whenever there is a continuing or recurring obligation: "When an obligation or liability arises on a recurring basis, a cause of action accrues each time a wrongful act occurs, triggering a new limitations period." (*Hogar Dulce Hogar v. Community Development Commission* (2003) 110 Cal.App.4th 1288, 1295 [2 Cal.Rptr.3d 497].) Because each new breach of such an obligation provides all the elements of a claim — wrongdoing, harm, and causation (*Pooshs v. Philip Morris USA, Inc., supra,* 51 Cal.4th at p. 797) — each may be treated as an independently actionable wrong with its own time limit for recovery…In sum: At the demurrer stage…we must accept his allegations at face value…at least some such acts within the

> four years preceding suit, the suit is not entirely time-barred….We hold only that, at the demurrer stage, Aryeh's complaint is not barred in its entirety by the statute of limitations.

In this instant case, the theft of ideas were "separate, recurring invasions of the same right and trigger their own statute of limitations", per *Aryeh*. The trial court actually stated in the MO, "Plaintiff has alleged independently actionable wrongs, i.e., each of the purported uses of Plaintiff's ideas stands alone" (CT 888) As such, the complaint was not barred by the statutory limitations period.

2. The Trial Court Erred by Granting Judicial Notice.

The trial court committed a grave error by granting judicial notice to more than 1,000-pages of moot federal court documents. If judicial notice to federal court documents had not been granted, then *res judicata* could not have been used as the rationale for granting the Demurrer.

On January 16, 2024, the trial court issued the interlocutory order granting the motion for judicial notice of a New York federal case as well as the demurrer. (CT 884) It was not a reasoned decision regarding the judicial notice.[3]

CCP § 906 allows for that order to now be appealed, "may review... any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or which substantially affects the rights of a party."

[3] Appellant had opposed the motion for judicial notice on July 28, 2023 (brief is not in the CT). Appellant argued the documents were moot due to subsequent amended complaints, *inter alia*.

The trial court granted judicial notice to a federal complaint (which now comprises 860 pages of this CT, see CT 22-881) that was rendered moot by a subsequent amended complaint. That was an error.

In *Foreman & Clark Corp. v. Fallon*, 3 Cal. 3d 875, 479 P.2d 362, 92 Cal. Rptr. 162 (1971), "It is well established that **an amendatory pleading supersedes the original one**, which ceases to perform any function as a pleading. [Citations.]" (*Meyer* v. *State Board of Equalization* (1954) 42 Cal.2d 376, 384 [267 P.2d 257].) "Such amended pleading supplants all prior complaints. It alone will be considered by the reviewing court. [Citations.]" (*O'Melia* v. *Adkins* (1946) 73 Cal. App.2d 143, 147 [166 P.2d 298].)"

That moot federal complaint listed Tucker Carlson as a defendant. However, the federal district court removed Tucker Carlson (i.e., the Respondent here) because he was domiciled in Florida and the diversity subject matter jurisdiction did not hold. The federal court specifically ruled that Tucker Carlson was not a defendant there, and could not have been a defendant. (CT 481) The amended complaint in federal court (CT 492) did not list Tucker Carlson as a defendant. Therefore, *res judicata* cannot apply in this instant California case (argued in depth below).

In addition to the federal case with Tucker Carlson as a defendant being moot, no federal district court case should be given notice by a California state court. CA Ev Code § 451 (2021) states, "Judicial notice shall be taken of the following: (a) The decisional, constitutional, and public statutory law of this state and of the United States". The "United States" refers only to the U.S. Constitution and rulings from the Supreme Court of the United States. **The decisions rendered by the Federal S.D.N.Y. and 2d Cir. courts are**

not binding to this California State Court.[4] *See* Article III, § 2 of the United States Constitution. Therefore, the trial court should not have given notice.[5]

The filing of such a voluminous amount of papers was a litigation stunt, Appellant argued in trial court. The Santa Monica Superior Court is extremely overburdened. That court lacked the capacity to read thousands of pages of judicial notice.

3. The Trial Court Misapprehended Res Judicata and Collateral Estoppel.

The trial court erred by misapprehending the legal doctrines of *res judicata* and *collateral estoppel*. Despite the following facts and arguments being:

> - Appellant never fully litigated the merits of any cause of action or claim against Tucker Carlson before (CT 38);
>
> - The trial court improperly granted judicial notice to a moot federal complaint that was superseded by an amended complaint;
>
> - Assuming *arguendo* that judicial notice was proper, a cause of action for breach of contract (implied or otherwise) was never used anywhere before.

Nevertheless, the trial court ruled that the breach of implied-contract, which is used in this instant case, was somehow previously fully litigated in federal court. Also, Tucker Carlson was a *de facto* defendant by the theory of "privity".

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[4] "with the exception of the U.S. Supreme Court, federal courts bind only other federal courts, not state courts. Thus, a decision by the U.S. Court of Appeals for the Ninth Circuit, a federal court, is binding on federal district courts within the boundaries of the Ninth Circuit. It is not binding on California state courts, even though California is geographically within the Ninth Circuit." Georgetown Law School treatise https://www.law.georgetown.edu/wp-content/uploads/2018/07/Which-Court-is-Binding-HandoutFinal.pdf

[5] This argument was made in Appellant's July 28, 2023 brief in the trial court, which is not in the CT.

Improper Judicial Notice-

The trial court MO section on *res judicata* begins by summarizing the procedure of a federal court action, *Greer v. Fox News*, 1:20-cv-05484 (LTS)(SDA) (S.D.N.Y., 2020), "The district court dismissed Plaintiff's complaint against Defendant [Tucker Carlson] on jurisdictional grounds because Plaintiff and Defendant are both domiciled in Florida. **Plaintiff subsequently filed another amended complaint, not naming Defendant** but keeping Fox News as a party…" (CT 885)

That should have been the end of any defense argument about *res judicata* because an amended complaint supersedes the original complaint, rendering it void and without legal effect. The prior complaint is considered moot, and no judicial notice should be given to its contents, as the amended complaint now controls the case.

Federal law states, "It is well settled that an amended pleading ordinarily supersedes the original and renders it of no legal effect. *See, e.g., Harris v. City of New York,* 186 F.3d 243, 249 (2d Cir.1999)." (In re Crysen/Montenay Energy Co., 226 F. 3d 160 - Court of Appeals, 2nd Circuit 2000)

California law also states, "It is well established that an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading." (*Meyer* v. *State Board of Equalization* (1954) 42 Cal.2d 376, 384 [267 P.2d 257].) "Such amended pleading supplants all prior complaints. It alone will be considered by the reviewing court." (*O'Melia* v. *Adkins* (1946) 73 Cal. App.2d 143, 147 [166 P.2d 298].)" (*Foreman & Clark Corp. v. Fallon*, 3 Cal. 3d 875, 479 P.2d 362, 92 Cal. Rptr. 162 (1971)).

The Elements for Res Judicata Were Not Met-

The trial court MO chose to define *res judicata* as the following:

> "[F]ive threshold requirements must be satisfied" for the doctrine to apply: First, the issue sought to be precluded from relitigation **must be identical** to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally**, the party against whom preclusion is sought must be the same as, or in privity with**, the party to the former proceeding. (*Y.K.A. Industries, Inc. v. Redevelopment Agency of City of San Jose* (2009) 174 Cal.App.4th 339, 356-357.) (CT 885)

First, the trial court chose an odd case for which to define *res judicata*. Rather than use a California Supreme Court or Second District case, it chose a Sixth District case. In fact, a subsequent 2010 California Supreme Court decision supersedes their 2009 case. In *Boeken v. Philip Morris USA, Inc*., 48 Cal. 4th 788, 230 P.3d 342, 108 Cal. Rptr. 3d 806 (2010):

> "As generally understood, `[t]he doctrine of *res judicata* gives certain *conclusive effect* to a *former judgment* in subsequent litigation involving the same controversy.' The doctrine `has a double aspect.' `In its primary aspect,' commonly known as claim preclusion, it `operates as a bar to the maintenance of a second suit between the same parties on the same cause of action. `In its secondary aspect,' commonly known as collateral estoppel, `[t]he prior judgment ... "operates"' in `a second suit ... based on a different cause of action ... "as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action. 'The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same: (1) **A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding**; (2) **the prior proceeding resulted in a final judgment on the merits;** and (3) **the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding**.'" (*People v. Barragan* (2004) 32 Cal.4th 236, 252-253 [9 Cal.Rptr.3d 76, 83 P.3d 480].)"

Regardless, both cases are similar in that the claim or issues must be identical, and the defendant was named in both lawsuits. Here, neither element was met:

Element (1): No claim or issue in this instant case was previously litigated

No lawsuit brought by Appellant in federal court used the breach of contract (i.e., implied or express contract) cause of action, or claim, as is used in this instant case. That is a simple fact verified by reviewing the federal briefs. The trial court misapprehended the S.D.N.Y. final order and ruled, essentially, that implied-contract was a claim argued in some sort of *de facto* way. The trial court MO states:

> "As to contract claims, the district court took note of Plaintiff's assertion that "an implied-in-fact contract existed between him and Fox," even if such a claim had not been brought as a cause of action in the pleading, and both the district court and the United States Court of Appeals for the Second Circuit concluded that Plaintiff had no claim for an implied-in-fact contract." (CT 991)

However, the federal decision made no such ruling whatsoever. In fact, it stated the opposite. In Chief Judge of the SDNY Swain's ruling on the amended complaint, she specifically stated that breach of implied-in-fact contract was neither a proper claim nor relevant issue. (see *Greer v Fox News* 20-cv-05484 SDNY (2020) (ECF 182, page 9)):

> "To the extent that this argument represents Plaintiff's attempt to raise a new claim (i.e., a claim for breach of an implied-in-fact contract) at this late stage in the litigation, this attempt must fail. As an initial matter, Plaintiff has waived this issue by failing to raise it in his SAC. **While Plaintiff mentioned this implied-in-fact contract idea in passing in his opposition to Defendant's motion to dismiss, his SAC did not include breach of an implied-in-fact contract as one of his eight causes of action.** It is well-established that, despite the "procedural latitude" afforded to pro se plaintiffs, "courts

> are not required to consider claims that are raised for the first time in a pro se plaintiff's papers in opposition to a motion." *Wiltshire v. Wanderman*, No. 13-CV-9169 CS, 2015 WL 4164808, at *1 n.3 (S.D.N.Y. July 10, 2015)." (CT 29)

Perfectly, that decision used the proper jargon of "issue", which is crucial for *res judicata* and *collateral estoppel* arguments.

The trial court misapprehended that the concept of breach of implied-in-fact contract was only discussed *sua sponte* and hypothetically by the federal district court judge to emphasize how Plaintiff erred in his complaint and did not deserve a chance to amend. In other words, this federal decision proves Appellant's argument that no claim or issue of breach of contract was used previously. However, the trial court interpreted this decision in the opposite manner.

Element (2): There was No Prior Judgment on the Merits

The Demurrer should have also failed because the second element was missing. The federal case was never litigated on the merits at all. The entire case was dismissed on esoteric theory that copyright law supposedly preempted the tort claims. (CT 27)

By failing to rule on the actual merits of the causes of action (i.e., Was Fox News blacklisting Greer and did Tucker Carlson steal Greer's ideas?), Appellant has leave to sue even in federal court again should he had chosen to do so. In addition, no merits of a contract breach were litigated because there was never a contract claim in the federal case.

Of note, the federal court specifically stated that a contract claim would not have been preempted had one been used. That is what allows Respondent to sue in this instant case.

The S.D.N.Y. ruled:

> "**To the extent that this argument represents Plaintiff's attempt to raise a new claim (i.e., a claim for breach of an implied-in-fact contract) at this late stage in the litigation, this attempt must fail.** As an initial matter, Plaintiff has waived this issue by failing to raise it in his SAC. While Plaintiff mentioned this implied-in-fact contract idea in passing in his opposition to Defendant's motion to dismiss, his SAC did not include breach of an implied-in-fact contract as one of his eight causes of action." (CT 29)

Element (3): Respondent was Neither a Defendant nor "In Privity" Previously

Respondent, Tucker Carlson, was not a defendant in the federal case (i.e., a case that was not litigated on the merits of the causes of action, assuming *arguendo* that judicial notice should have been granted at all). That fact is irrefutable and easily verified by looking at the cover page of the federal briefs (CT 492). The amended federal complaint was forced to drop Respondent. Indeed, that is one reason why Appellant filed this instant lawsuit. The federal courts created the opportunity to do so without violating *res judicata*.

Lastly, the concept of "privity" is moot here. If no claim or issue was previously litigated and determined on the merits, then there is no surviving *res judicata* argument. Here, elements 1) and 2) are missing.

Therefore, the trial court erred by ruling that Respondent shared privity with Fox News. The elements are missing.

The Trial Court Misapprehended the Doctrine of Collateral Estoppel-

The trial court ruled on the doctrine of *collateral estoppel* by briefly mentioning the term as it was conflated with a lengthier section on *res judicata*. The MO stated:

> "Similarly, the doctrine of collateral estoppel, "an aspect of res judicata," provides that "an issue necessarily decided in prior litigation may be conclusively determined as against the parties or their privies in a subsequent lawsuit on a different cause of action." (*Patel v. Crown Diamonds, Inc*. (2016) 247 Cal.App.4th 29, 39,)…
>
> Thus, it is clear that Plaintiff's claims are barred by both the doctrine of res judicata, as Plaintiff is attempting to relitigate the same causes of action previously decided against him in favor of a party in privity with Defendant, and by the doctrine of collateral estoppel, as the same issues were litigated and decided against Plaintiff in the prior action, the decision was final and on the merits, and Defendant is in privity with Fox News from the prior action." (CT 885)

The same elements apply to both *collateral estoppel* and *res judicata*. "Collateral estoppel applies when (1) the party against whom the plea is raised was a party or was in privity with a party to the prior adjudication, (2) there was a final judgment on the merits in the prior action and (3) the issue necessarily decided in the prior adjudication is identical to the one that is sought to be relitigated. (*Coscia v. McKenna Cuneo* (2001) 25 Cal.4th 1194, 1201, 108 Cal.Rptr.2d 471, 25 P.3d 670.)" (*Roos v. Red*, 130 Cal. App. 4th 1123, 30 Cal. Rptr. 3d 446 (2005)).

Therefore, collateral estoppel defense arguments fail here for the same reasons as *res judicata* fails. Respondent was never a party previously and the merits of the causes of action were never determined after litigation.

4. The Trial Court Misapprehended the Grosso Implied Contract Claim.

The trial court erred by misapprehending the first cause of action, Breach of Implied-in-Fact Contract, which was based on the 9th Federal Circuit's seminal case of *Grosso v. Miramax Film Corp*., 383 F.3d 965, 967 (9th Cir. 2003), *amended by* 400 F.3d 658 (9th Cir. 2005), which ruled, ""If . . . a studio or producer is notified that a script is forthcoming and opens and reviews it when it arrives, the studio or producer has by custom implicitly promised to pay for the ideas if used." (CT 902, 925, 925, 928, 933, 961, 976, 978)

Instead of referencing *Grosso*, the trial court ignored it entirely and treated the claim as some sort of ordinary contract dispute, referencing the broad California Code, Civil Code § 1580 on mutual consent:

> "Second, Plaintiff has not alleged any facts showing an agreement by Defendant to compensate Plaintiff for his ideas, nor are there facts showing mutual assent by Defendant; rather, Plaintiff simply disseminated his ideas to Defendant and has brought this action based on similarities between the purported tips he sent to Defendant and the content on Defendant's television show. This does not show the existence of an implied-in-fact contract, and Defendant's purported use of Plaintiff's ideas where Plaintiff unilaterally expected compensation does not show mutual assent because the assent must be mutual, not the subjective belief of a single party to the purported contract. (Civ. Code, § 1580 ["Consent is not mutual, unless the parties all agree upon the same thing in the same sense"].) Accordingly, Defendant's demurrer to the first cause of action is also SUSTAINED without leave to amend on these grounds." (CT 1003)

By ignoring the *Grosso* law, the trial court committed the error of entirely misapprehending the claim. This instant case uses a special type of implied contract created for content creators by *Grosso*.

The trial court also ignored the *Grosso* precedent case of *Desny v. Wilder,* 299 P.2d at 257 (Cal.1956). *Desny* allows content creators to sue for stolen ideas "embodied in the script and shared with Miramax", whereas federal copyright law does not protect mere ideas. Appellant chose the trial court venue because, *inter alia*, it is the epicenter of the content creation industry, which is protected by *Desny* and *Grosso*. (CT 904)

5. The Trial Court Misapprehended the Bus. & Prof. Code, § 17200 Claim.

The trial court misapprehended the second cause of action using California's unfair competition law (UCL) (§ 17200 et seq.) (see CT 913) by ruling that it was preempted by federal copyright law. (CT 993). That was in error.

UCL § 17200 prohibits "unfair competition," defined as any unlawful, unfair, or fraudulent business act or practice. The same actions by respondent that triggered the breach of implied contract also constitute unlawful, unfair, and fraudulent business practices. In other words, by Respondent breaching a contract, he also violated UCL § 17200. (CT 930-932)

It is common for a lawsuit to use multiple laws and torts related to the same facts. That is what Appellant did here. The trial court called this second cause of action "duplicative" in error.

The primary reason used by the trial court to dismiss this second claim was that the theft of ideas allegations were preempted by copyright law. However, that is not what

Appellant argued. The AC argues a breach of contract claim, which is also a UCL § 17200 violation, and breach of contract claims are not preempted by copyright law.

In the *Greer v. Fox News* case (i.e., the case that was given judicial notice), the federal court discussed this, "Because *Forest Park* has alleged an enforceable implied-in-fact contract including a promise of payment for the disclosure of its idea, its claim is not preempted by the Copyright Act and therefore the district court erred in dismissing the Complaint." (*Forest Park Pictures v. Universal Television Network, Inc*., 683 F.3d 424 (2d Cir. 2012)). (CT 29)

In summary, the trial court failed to recognize that the claim for UCL § 17200 violation was based on a breach of contract matter and not the underlying theft of ideas matter that comprised the actions of the actual breach of contract. The federal order that was given judicial notice specifically ruled, citing *Forest*, that breach of contract claims are not preempted by copyright law. Therefore, the decision to dismiss the second claim was in error.

CONCLUSION

This case was brought in California court by Appellant, Dr. Steven Greer, because Respondent, a former cable TV star named Tucker Carlson, resides and works there. California courts have developed specialized contract laws to protect content creators from the abuse of power by larger studios.

Ideas for TV and films, generated by content creators such as Appellant, are pitched as a standard business practice to studios without cumbersome express contracts signed in advance. The case law of *Desny* and subsequently *Grosso* allows these ideas to be protected

(unlike copyright law) and supports the establishment of an implied-in-fact contract when a content creator delivers an idea that the studio later uses.

The trial court sustained a demurrer primarily based on the argument of *res judicata*. However, no claim of any sort of contract breach was litigated in federal court, and certainly not on the merits. Additionally, Respondent was never a party to any case brought by Appellant that was adjudicated on the merits of a breach of contract claim.

Improperly, the trial court granted judicial notice to a federal case that never involved contract disputes as a claim (and Federal courts, except for the Supreme Court of the United States, have no binding authority over state cases.). The record on appeal exceeds 1,000 pages as a result. Appellant contends that this constituted a "data dump" defense strategy, exploiting the overburdened Santa Monica Superior Court venue, where simple motions take six months to hear.

Consequently, the trial court misapprehended fundamental facts of the federal case. The final order contains several factually incorrect conclusions, as indicated by the cover page of the federal complaint (i.e., no contract claims were used and Tucker Carlson was not a defendant). Hence, the Demurrer should not have been sustained.

Wherefore, Appellant respectfully requests that this California Court of Appeals reverse the trial court's order sustaining the demurrer and remand this case for a jury trial.

DATED: October 1, 2025

By: */s/ Steven E. Greer*
Steven Greer
Appellant *pro se*

CERTIFICATE of COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 5,669 words, including footnotes (i.e., fewer than the 14,000 allowed). In making this certification, I have relied on the word count of the computer program used to prepare the brief.

DATED: October 1, 2025

By: */s/ Steven E. Greer*
Steven Greer
Appellant *pro se*

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