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GREGORY T. IRELAND

Dawna Martin

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

CHRISTOPHER J. DOLLENS, et al.,

Plaintiffs,

No. D-202-CV-2011-05295

WELLS FARGO BANK, et al.

Defendant.

THE DUHIGG LAW FIRM AND
STEWART BUTLER, ESQ.,

Plaintiffs

No. D-202-CV-2011-10129

WELLS FARGO BANK, d/b/a
WELLS FARGO HOME MORTGAGE
d/b/a WELLS FARGO HOME
MORTGAGE CPI #708

Defendant.

THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court finds in favor of the Plaintiffs and adopts the following FINDINGS OF FACT AND CONCLUSIONS OF LAW. The Court bases its findings and decision on its assessment of witnesses who testified at trial, and the evidence offered by the parties.

I. FINDINGS OF FACT

A. Procedural Background

1. Suit was initially brought in May, 2011 by Christopher Dollens ("Dollens") as

Personal Representative of the James Dollens Estate, against Minnesota Life Insurance Company (Minnesota Life) for failure to pay benefits pursuant to a mortgage accidental death policy and against Wells Fargo for wrongful foreclosure. Plaintiffs filed their Second Amended Complaint on August 30, 2012, alleging multiple claims against Minnesota Life and Wells Fargo. By the time of trial only Defendant Wells Fargo remained.

2. Plaintiffs met their burden of proof as to liability, with respect to Wrongful Foreclosure and Breach of the Covenant of Good Faith and Fair Dealing; Unfair Trade Practices; Breach of Contract; and Attorneys' Fees Under NMSA 48-7-24. Plaintiffs also met their burden as to damages and attorneys' fees—as more particularly explained in the findings and conclusions contained herein.

B. Factual Background

3. Christopher Dollens is the Personal Representative of the Estate of James E. Dollens (the "Estate").

4. Christopher Dollens, individually and as Personal Representative of the Estate, and Sandra Evans are proper Plaintiffs.

5. Wells Fargo Bank, N.A., ("Wells Fargo") successor by merger to Wells Fargo Home Mortgage, Inc., is the proper Defendant.

6. On or about April 4, 2003, James Dollens purchased a home at 1004 Abrazos Road, Rio Rancho, New Mexico.

7. To finance the home purchase, James Dollens obtained a loan from Wells

Fargo Home Mortgage, Inc. in the amount of $133,700.00 at 6.875% interest amortized over thirty years, with monthly principal and interest payments of $878.32, evidenced by a promissory note and mortgage on the home.

8. The Federal Home Loan Mortgage Corporation, more commonly known as "Freddie Mac" is the owner and investor of the loan.

9. Wells Fargo serviced the loan for Freddie Mac.

10. James Dollens passed away on August 18, 2010.

11. Decedent's loan was in good standing until his accidental death on August 18, 2010 at his workplace.

12. As a result of the death of Decedent, no payments were made for several months on the mortgage.

13. At all times, the mortgage and note were in James Dollens' name only.

14. The Mortgage and accompanying Note specified that payments would be applied first to interest and principal due under the note, before being applied to other costs and fees.

15. Wells Fargo sold Decedent's loan to Freddie Mac at origination. Under its agreement with Freddie Mac, Wells Fargo remained as the servicer of the loan at all times during the existence of this loan, until Wells Fargo received a "charge off."

16. Wells Fargo's obligations as the servicer for the Dollens loan are set forth in the Freddie Mac servicing guidelines, under which Wells Fargo was required to comply with any instruction, request, and requirement issued by Freddie Mac in servicing the Dollens loan.

17. Wells Fargo as a servicer for mortgages held by Freddie Mac was *required* to consider the needs of the borrower in addition to the needs of Freddie Mac.

18. Wells Fargo as a servicer for mortgages held by Freddie Mac was bound by and *required* to comply with all provisions of the Freddie Mac Single Family/Single-Family Seller/Servicer Guide.

19. In January 2010 Decedent purchased a mortgage accidental death insurance policy that was marketed and sold through Wells Fargo, and underwritten by Minnesota Life. The policy premium, $15.12 monthly, was added to Decedent's monthly mortgage payment and collected by Wells Fargo.

20. Wells Fargo was both the beneficiary and the policyholder.

21. James E. Dollens, Decedent, was the "Insured Debtor" on the Minnesota Life policy.

22. Wells Fargo was the loss payee under the terms of the Minnesota Life policy.

23. Under the terms of the Minnesota Life policy, Wells Fargo was, for all purposes of the policy, Decedent's agent, and had the capacity, right, and power to make a claim for benefits under the policy.

24. The Minnesota Life policy was a contract of accidental death insurance coverage specifically designed to pay the Wells Fargo mortgage balance in the event of Decedent's accidental death.

25. Mortgage borrowers benefit from payment of proceeds under an accidental death policy to their lender as the proceeds are used to either reduce or pay off their loan.

26. Prior to his death, Decedent had no seriously late payments, there was no arrearage, and his mortgage was current.

27. On January 26, 2010 the balance due on James Dollens' loan with Wells Fargo was $125,016.00.

28. Within days of Decedent's death, Dollens notified Wells Fargo on August 24, 2010, via telephone call, of his father's death.

29. During that call, Dollens informed Wells Fargo that the Estate would not be able to make payments for the foreseeable future. In that same period, Decedent's widow, Dina Dollens, contacted Wells Fargo and notified them of her husband's death and the accidental death policy.

30. Christopher Dollens also told Wells Fargo that he would not be able to make payments on the mortgage and that he intended to sell his father's house to cover debts of the Estate.

31. He further advised Wells Fargo that he would be appointed Personal Representative of his father's Estate.

32. Thus, by late August, 2010, Wells Fargo knew that the principal mortgagor was deceased, that the loan was covered by the accidental death policy, and that the Dollens estate could not make the monthly payments after Decedent's death.

33. As a result of the death of Decedent, no payments were made for several months on the mortgage.

34. Instead of making a claim for death benefits, Wells Fargo sent form letters and notices regarding the loan being in default and called phone numbers that Wells Fargo could not identify, never speaking to an actual person about the delinquency.

35. Freddie Mac guidelines *require* a servicer to begin loss mitigation activities when it becomes evident to the Servicer that its collections efforts have not resulted in the borrower curing the delinquency.

36. In October and November 2010, Dollens contacted and submitted a claim for benefits under the accidental death policy to Minnesota Life.

37. Wells Fargo referred the Dollens loan for foreclosure on December 10, 2010.

38. On December 17, 2010, foreclosure counsel for Wells Fargo, Castle Stawiarksi, sent a demand and cure letter regarding the missed mortgage payments.

39. The letter stated that if the default was not cured by January 19, 2011, a foreclosure proceeding may be filed.

40. On behalf of the Estate of James Dollens, the law firm of Butler & Butler sent a letter dated January 10, 2011 to Wells Fargo's foreclosure counsel, Minnesota Life, and Wells Fargo (the "Butler Letter"), which included a copy of James Dollens' death certificate.

41. The Butler Letter was received by Wells Fargo on January 14, 2011.

42. This was the first time that James Dollens' death certificate was provided to Wells Fargo.

43. The Dollens family had retained counsel to provide the necessary documentation to Wells Fargo showing that Dollens was the personal representative of his father's estate, and to notify Wells Fargo that a claim was being made under the accidental death policy.

44. The letter requested a forbearance, asking that Wells Fargo not pursue collections and foreclosure while the claim was pending.

45. The Butler Letter also asked "counsel for Wells Fargo, the Insurance Company and counsel for the mortgage debt claim office to contact this office with regard to a response to this demand letter . . . ."

46. Wells Fargo never responded to the Butler letter.

47. James Dollens' death certificate enclosed with the Butler Letter indicated the manner of his death as "undetermined" and that the cause of death was "multiple blunt force injuries."

48. The Butler Letter asked Wells Fargo: "that Wells Fargo Insurance pay the unpaid

balance and a suspension and s[sic] dismissal of the claim mortgage debt".

49. Wells Fargo did not have the authority to affirm or deny coverage of the Dollens' insurance claim and did not have the authority to pay the claim.

50. Minnesota Life alone had the authority to affirm or deny coverage of the Dollens' insurance claim and also held the power to pay the claim.

51. On February 3, 2011 Minnesota Life also requested that Wells Fargo delay any adverse action on the account while the claim was pending.

52. Wells Fargo failed to open the February 3, 2011 Minnesota Life email or Notice of Death Form until February 16, 2011, seven days after the foreclosure complaint had already been filed on February 9, 2011.

53. On February 9, 2011 Wells Fargo filed its foreclosure complaint in spite of the request by the Personal Representative's counsel and Minnesota Life to delay adverse action on the mortgage.

54. Wells Fargo hired foreclosure counsel, and costs and fees that Wells Fargo attributed to the mortgage account accrued as a result of the foreclosure action being filed.

55. The foreclosure accelerated the entire principal due on the Dollens account.

56. On February 16, 2011 Wells Fargo finally returned the Notice of Death form to Minnesota Life to get paid under the policy. It stated that the amount due on the account at the time of Decedent's death was $121,082.31.

57. Christopher Dollens was served with the foreclosure complaint on February 22,

2011.

58. Minnesota Life initially denied the claim under the accidental death policy in May of 2011, but subsequently reversed its decision and approved the claim.

59. As a result of the Minnesota Life reversing its decision to pay the claim under the policy, Wells Fargo received a check in the amount of $133,559.15 on October 5, 2011.

60. On October 11, 2011, Wells Fargo used $10,675.26 of the Minnesota Life funds to pay nine monthly payments, representing the delinquent payments due for September, 2010 through May, 2011.

61. Next, Wells Fargo took $2,372.28 to pay delinquent payments due for June and July 2011.

62. At this point, the loan had not been brought current because the outstanding delinquent payments for August, September and October 2011 had not been paid.

63. Wells Fargo then used $570.96 to pay late fees.

64. At this point, all interest, principal, and escrow due under the Note had not been paid.

65. Next, Wells Fargo took $40.00 and used it to pay inspection fees.

66. At this point, all interest, principal, and escrow due under the Note had not been paid.

67. Wells Fargo then took three payments of $1,168.00 and applied them to three monthly payments representing the delinquent payments due for August, September and October 2011.

68. Foreclosure attorney fees were invoiced on October 13, 2011.

69. On October 26, 2011 Wells Fargo's employees exchanged a series of emails regarding whether the remaining $116,396.08 in Minnesota Life funds could be used to pay foreclosure attorney fees, and concluded that they could not be used for that purpose.

70. Two days later Wells Fargo used the Minnesota Life funds to pay $1,890.93 in

foreclosure attorney fees.

71. On November 21, 2011, Wells Fargo took $1,168.19 out of suspense and applied it to the November payment.

72. Wells Fargo applied the rest of the Minnesota Life funds to the remaining principal in two parts, first applying $99,999.99 to principal, and then applied the remaining $13,336.97 to principal.

73. Because of Wells Fargo's misapplication of the insurance proceeds to the Dollens' account, there remained $4,416.45 due in principal.

74. From October 7, 2011 to November 21, 2011, the majority of the Minnesota Life funds were held in suspense, except for the amounts that were applied over time.

75. This application of the insurance proceeds, where fees were paid before all interest, principal and escrow due was paid, violated the terms of the Mortgage and was a misapplication of the Minnesota Life insurance proceeds.

76. On February 13, 2012 Christopher Dollens paid Wells Fargo $3,673.89 in response to a January 17, 2012 letter from Wells Fargo which threatened a second foreclosure. He tried to pay off all amounts Wells Fargo claimed were owed.

77. With the February 13, 2012 payment Wells Fargo paid costs and fees to itself before paying all interest and the outstanding principal as required by the Note and Mortgage.

78. This application of Dollens' payment, where fees were paid before all interest, principal and escrow due was paid, violated the terms of the Mortgage and was a misapplication of Dollens' payment.

79. On August 13, 2012 Wells Fargo was given a charge-off by Freddie Mac, which was supposed to cease all collection efforts.

80. Despite the charge-off, Wells Fargo continued collection efforts against the Estate.

81. As part of its collection efforts, Wells Fargo demanded amounts due from the Estate which were not owed or valid.

82. Beverly DeCaro, a Wells Fargo employee, testified that Wells Fargo's continued collection efforts after the charge-off and demanding amounts which were not owed, were "mistakes".

83. Although the remaining unpaid principal loan balance was reduced to an amount less than the total of unpaid monthly loan payments as of May 2012, monthly billing statements reflecting amounts not due owed by the Estate were sent to Dollens in May, June, July, August and October 2012.

84. Although each statement reflected the correct unpaid principal balance of $1,842.71, each statement showed the amount of accumulated missed monthly payments as of that point in time as the amount then due.

85. De Caro also testified that the manner in which this account was handled was in keeping with the "customary" practices and procedures of Wells Fargo.

86. With regards to the manner in which the insurance proceeds were applied, Wells Fargo contended that because of the fees and costs which accrued due to the default and foreclosure action, it did not consider the insurance proceeds to be sufficient to pay off the account in full, and thus it applied the funds as if the account were reinstated rather than being paid off.

87. However, even though Wells Fargo claimed the account was reinstated, they never notified the Estate that the account was reinstated, and, more significantly, failed to dismiss the foreclosure action.

88. Despite the October 2011 payment of $133,559.15, and testimony that Wells

Fargo considered the loan reinstated, the Order of Dismissal in the foreclosure action was not entered until March 20, 2012, months after the insurance proceeds were applied to the account.

89. Wells Fargo offered no valid justification for its continuation of the foreclosure action for five months after being paid.

C. Claim For Wrongful Foreclosure And Breach Of The Covenant Of Good Faith And Fair Dealing

90. As for this claim, the Court finds:

a. Wells Fargo marketed and sold Decedent the mortgage accidental death policy.

b. After Decedent purchased the policy, Defendant sent Decedent an acknowledgement letter stating that his application was approved and enclosing the policy. In addition, Wells Fargo represented in the letter to James Dollens that the policy "helps protect your family's financial security."

c. Wells Fargo marketed the insurance policy to homeowners and created an expectation that the balance of their mortgage would be paid in the event of their death and, specifically here, that the policy would provide peace of mind to Decedent and prevent financial hardship to Decedent's heirs, and such an expectation was reasonable and foreseeable.

d. Wells Fargo admitted that payment of the mortgage balance was the purpose of the insurance.

e. In light of the fact that Wells Fargo represented and sold the insurance policy on behalf of Minnesota Life, collected the monthly premiums for the policy,

and had proof of Decedent's death, its failure to take into consideration the policy before proceeding to foreclose on the property is a breach of the covenant of good faith and fair dealing.

f. In spite of the fact that Wells Fargo sold Decedent the insurance policy, and was the policyholder and beneficiary, upon receiving news of Decedent's death, it did nothing to assist the Estate insofar as making a claim or appealing the denial of the claim. Upon learning of the death of Decedent, Wells Fargo failed to make a claim with Minnesota Life for the death benefit.

g. Ignoring its ability to make a death benefit claim is typical of how Wells Fargo deals with such situations. Wells Fargo marketed and sold thousands of Minnesota Life accidental death policies to homeowners in the four year period of 2007 through 2010, and received a commission of 35 percent of all premiums paid for selling Minnesota Life mortgage accidental death policies with Wells Fargo as the policyholder; but it never filed any claims under those policies.

h. Wells Fargo failed to offer any evidence of a policy or procedure whereby they notify heirs of an estate of the fact that a homeowner purchased a mortgage accidental death policy.

i. While many mortgagors die prior to the expiration of the term of the mortgage, Wells Fargo has no policies or procedures in place to make claims or otherwise assist estates. The absence of such policies or procedures is a systemic failure on the part of Wells Fargo and shows a general, widespread course of business.

j. Beyond the fact that it has no policies or procedures with regards to accounts with mortgage accidental death polices, Wells Fargo failed in this case to even take that fact into account. Both Minnesota Life and counsel for the Personal Representative requested that Wells Fargo delay adverse action on the account while the accidental death claim was pending.

k. Instead, Wells Fargo proceeded to foreclosure on February 9, 2011.

l. Wells Fargo's unwillingness and failure to take action when requested by Minnesota Life is shocking, particularly in light of Wells Fargo's ongoing commercial relationship with the insurance company.

m. Wells Fargo also failed to follow the *mandatory* Freddie Mac servicer guidelines, to the detriment of the Estate.

n. The servicer guidelines are for the benefit of the borrower.

o. Specifically, Wells Fargo was obliged to give the Estate a forbearance on the mortgage based on the Freddie Mac guidelines, and had it done so, late fees, attorneys' fees, and costs would not have been incurred, and the foreclosure would not have occurred.

p. Furthermore, the Estate would not have had to hire counsel to represent it in the foreclosure and incur attorneys' fees. Thus, this misconduct by Wells Fargo caused damages to the Estate.

q. Wells Fargo's application of the insurance proceeds was improper and again to the detriment of the Estate. Rather than apply the proceeds to interest and principal, as required by the Mortgage, Wells Fargo improperly paid its own fees and expenses, which led to the result of the insurance proceeds being insufficient to pay off the outstanding balance under the Note. This practice was wrong and should not have occurred.

r. The correct and required procedure, and customary practice, when the Minnesota Life check was received was to use the funds to pay off the loan, and waive fees.

s. Wells Fargo employees admitted that "Wells Fargo actually markets these Life Insurance products with our mortgage portfolio and we service them attached to the loan itself . . . we are honoring those benefits and doing as much as we can to have the loan paid in full per that policy".

t. However, Wells Fargo put its interests before the Estate and paid numerous other fees, many of which were not proper, with the result that the insurance proceeds were insufficient to pay off the loan balance.

u. Wells Fargo commended Decedent on his decision to purchase the mortgage accidental death policy because it insured his "family's financial security."

v. Yet, Wells Fargo's actions in foreclosing on Decedent's home was for its own benefit rather than Decedent's family's financial security.

w. The evidence demonstrated that Wells Fargo breached the implied promise to protect its buyer's reasonable expectations under the contract, thereby withholding the contract's benefits from the Dollens and considering its own interests above those of the homeowner.

x. The evidence also demonstrated that Wells Fargo engaged in wrongful foreclosure by the misapplication of fees and costs, and its failure to properly obtain and apply the proceeds of the insurance policy to protect the interests of the Decedent and his family.

D. Claim For Violation Of The Unfair Practices Act

91. Wells Fargo marketed and sold the mortgage accidental death insurance policy to Decedent for the expressed purposes of protecting his "family's financial security".

92. After Wells Fargo received notice of Decedent's death when the benefits of the policy should have been available to the Dollens estate, Wells Fargo attempted to collect the mortgage payments, and then instituted foreclosure when it knew there was a mortgage

accidental death policy, for which it had collected premiums.

93. Because Wells Fargo was the "licensed agent representing...the insurer", it had knowledge and made representations to the Dollens that the purpose of the policy was to pay the mortgage balance in the event of the mortgagor's accidental death.

94. Nonetheless, Wells Fargo marketed the life insurance policy knowing at the time it sold the policy that it had no policies or procedures in place to make claims or otherwise assist estates, and no intent to provide the protection promised in the sale of the policy.

95. Wells Fargo took advantage of a lack of knowledge, ability, experience or capacity of Decedent and his family members, and its actions tended to or did deceive Decedent and his family and was intended to take advantage of a lack of knowledge, ability, experience or capacity of Decedent's family members, and tended to or did deceive them.

96. The evidence established that Wells Fargo failed to deliver the goods and services promised through its representations and also failed to deliver the services which it was required to deliver as the servicer on the mortgage.

97. The evidence further established that Wells Fargo failed to properly credit the Dollens' account for several days after it received the Minnesota Life check.

E. Claim For Breach Of Contract

98. Wells Fargo breached the terms of the Note by improperly assessing fees and costs, which resulted in assessment of additional interest, fees and costs against the account.

99. Pursuant to Section 7 of the mortgage Wells Fargo or its agent were allowed to make reasonable inspections of the property.

100. Wells Fargo conceded that approximately $400.00 of inspections fees

paid by the Estate needed to be reimbursed due to improperly assessed fees.

101. Wells Fargo violated the terms of the Note and Mortgage by using the insurance proceeds to pay its fees and costs before paying all interest and principal due.

102. This misapplication of the insurance proceeds caused the Note to keep a balance after the proceeds were applied, which resulted in the account going into default again, and Wells Fargo claiming a debt when none would have existed, but for its misapplication of the insurance proceeds.

103. Wells Fargo charged improper fees, including post-acceleration late fees, and costs against the Dollens' loan account and impermissibly continued to try to collect on the account after the charge-off of the loan, and improperly claimed that the Estate owed more money than was due.

104. The servicer guidelines allowed Wells Fargo to retain late fees as "additional servicing compensation."

105. The evidence established that Wells Fargo breached its contract with the Decedent.

F. Damages

106. Plaintiffs established general damages of $15,633.42 in improper late fees, improper property preservation fees, corporate advance fees, monthly payments that would not have been due had Wells Fargo properly applied the insurance proceeds, and otherwise failed to act in compliance with its duties to its customer.

107. Those damages apply to each cause of action giving rise to liability.

108. But for the misconduct by Wells Fargo giving rise to liability on each cause of action enumerated above, Plaintiffs would have incurred a negligible amount of attorney's fees and costs.

109. Thus, the considerable attorney's fees and costs incurred by Plaintiffs are recoverable attorney's fees under the UPA in the amount of $439,051.44.

110. The amount of attorney's fees reflect a reasonable number of hours for the work performed at a reasonable hourly rate; but in any event, Wells Fargo raised no timely objection to their hourly rate or the time expended.

111. The evidence of Wells Fargo's misconduct was staggering, and justifies imposition of punitive damages or treble damages under the UPA against Wells Fargo, in the following particulars:

a. Wells Fargo's indifference to its customer is evidenced by it having charged the estate for services it did not perform.

b. Wells Fargo acted intentionally by improperly assessing fees and costs against the estate.

c. Wells Fargo acted intentionally by misapplying the Minnesota Life insurance proceeds check.

d. Wells Fargo acted intentionally by misapplying Christopher Dollens' February 2012 payment.

e. Wells Fargo acted intentionally by failing to follow the mandatory Freddie Mac servicer guidelines.

f. Wells Fargo acted intentionally by failing to credit the Dollens' account with the Minnesota Life check when it was received and assessing interest against the account from the time it received the check to the time it was credited.

g. Wells Fargo acted intentionally by improperly initiating a foreclosure action.

h. Wells Fargo acted intentionally by misrepresenting the status of the foreclosure to the Court in pleadings.

i. Wells Fargo acted intentionally by sending collection letters/monthly statements to the Estate claiming amounts not owed.

j. Wells Fargo acted intentionally by and improperly assessing fees against the Estate for inspections which were not necessary nor reasonable.

k. All of the foregoing Wells Fargo actions were designed to increase its profits without regard for the Decedent or his family, and were intentional and in conscious disregard or indifference to its legal obligations to Decedent.

l. Wells Fargo, the largest home loan servicer in the United States, services between 8 and 9 million home loans. Wells Fargo's home loan servicing business is completely automated by a software system formerly known as Fidelity, now known as LPS system.

m. During the pendency of the litigation, and at trial, Wells Fargo used its computer-driven systems as an excuse for its wrongful misconduct. However, its misconduct was systematic and not the result of isolated errors.

n. Wells Fargo has previously been assessed with significant punitive damages or fines for improper behavior similar to the conduct that occurred in this matter.

o. No evidence was offered that Wells Fargo has changed its behavior as a result of any prior sanction or punitive damage award. Instead, Wells Fargo engaged in ongoing systematic misconduct.

p. The type of conduct exhibited by Wells Fargo in this case has happened repeatedly across the country. *See e.g., In re Jones*, 2012 WL 1155715 (Bkrtcy.E.D.La.,2012) (Wells Fargo assessed improper fees and charges, including for property inspections and misapplied payments. Attorney fees and punitive damages awarded.); *In Re Stewart*, 647 F.3 553 (5th Cir. 2011) (Assessed fees and costs against

account prior to applying mortgage payment, contrary to terms of the note.); *Filson v. Wells Fargo Home Morg*, Inc., 2008 WL 3914899 (Tenn.Ct.App., 2008) (Wells Fargo wrongfully held funds in suspense account instead of applying to mortgage balance which resulted in default and their subsequent attempt to foreclose.); *In Re Nibbelink*, 403 B.R. 113 (M.D.Fla. 2009) (Wells Fargo charged improper fees. Punitive damages and attorney fees awarded in contempt proceeding.); and *De La Fuente v. Wells Fargo*, 430 B.R. 764 (Bankr.S.D.Tex.2010) (Wells Fargo used bad accounting practices and failed to correct its loan records. Punitive damages and attorney fees awarded in contempt proceeding).

q. Plaintiffs' expert, Andrew Pizor, testified that an Office of the Comptroller of the Currency's Consent Order found that Wells Fargo systematically mishandled foreclosures and applied payments improperly. Thus, what happened in this case is not an isolated incident.

r. Wells Fargo engaged in a systematic pattern of highly reprehensible conduct.

s. Due to the egregious nature of the conduct of Wells Fargo, the attorneys' fees which were incurred by Plaintiffs should be considered in calculating the proper ratio of the punitive damage award to actual damages.

t. Mindful of the ratios to be considered with regards to punitive damages, the Court believes that Wells Fargo's reprehensible conduct justifies a reasonably high ratio.

u. In light of the repeated, systematic nature of Wells Fargo's misconduct, the Court calculates the punitive damages at approximately six times the compensatory damages and appropriate fees and costs, which total $454,684.86. Awarding a ratio of 6 results in a punitive damages award of $2,728,109.16, which together with the actual

damages, appropriate fees and cost, totals $3,182,794.02.

v. If Plaintiffs elect to recover treble damages under the UPA rather than punitive damages, the total award is $1,364,054.58. *See Atherton v. Gopin*, 272 P. 3d 700 (Ct. App. 2012).

G. Damages in *Duhigg Law Firm v. Wells Fargo,* Consolidated Herein

112. On October 6, 2011, the Duhigg Law Firm and Stewart Butler, Esq., filed a lawsuit against Wells Fargo claiming a right to attorney fees from the $133,559.15 check paid by Minnesota Life to reduce the outstanding balance of the Wells Fargo loan and the secured lien against the property.

113. The denial of Wells Fargo's motion for reconsideration in the consolidated companion case, (Cause No. D-202-CV-2011-10129) leaves standing the Court's prior ruling denying Defendant's Motion to Dismiss the Unjust Enrichment claim.

114. That claim results from Wells Fargo's failure to pursue the unlawful denial of benefits due to Wells Fargo under the Minnesota Life policy marketed and sold to Decedent by Wells Fargo to protect the homeowner, and which named Wells Fargo as both the beneficiary and the policyholder.

115. Counsel for the Personal Representative pursued and reversed Minnesota Life's initial wrongful rejection of the valid claim for benefits under the policy.

116. Wells Fargo made no attempt to appeal Minnesota Life's denial of benefits, nor did it contribute in any way to the appeal Plaintiffs pursued. Plaintiffs' successful appeal resulted in a sum of $133,559.15 being paid to Wells Fargo by Minnesota Life, and which was recovered solely as a result of the efforts of Plaintiffs.

117. The Duhigg Law Firm billed Wells Fargo in the amount of $55,841.08 as an appropriate *pro rata* share of fees and costs necessary to obtain the payment of the insurance proceeds to Wells Fargo and the creation of a common fund. Wells Fargo refused to pay the

Attorney's fees which led to Cause No. D-202-CV-2011-10129, consolidated herein.

118. The Court finds that $51,189.08 is a reasonable amount allowable for the Duhigg Law Firm's creation of a common fund by the recovery of the insurance proceeds.

II. CONCLUSIONS OF LAW

1. This Court has both subject matter and personal jurisdiction over the parties.

2. Plaintiffs met their burden of proof as to liability, with respect to Wrongful Foreclosure and Breach of the Covenant of Good Faith and Fair Dealing; Unfair Trade Practices; and Breach of Contract; and Attorneys' Fees under NMSA 48-7-24. Plaintiffs also met their burden as to damages and attorneys' fees.

3. At all times relevant to this action, employees of Wells Fargo acted with managerial authority within the scope of that authority.

4. Wells Fargo ratified, adopted, or participated in the conduct of its employees.

5. James E. Dollens and subsequently his Estate was the insured debtor with a direct interest in the payment of accidental death proceeds pursuant to the Minnesota Life Mortgage accidental death policy and for whose benefit Wells Fargo marketed the policy.

6. James E. Dollens, and subsequently his Estate, were the third-party beneficiaries of regulations governing Wells Fargo in its servicing of the Mortgage.

7. Even if James E. Dollens and his Estate were not third-party beneficiaries of regulations governing Wells Fargo in its servicing of the Mortgage, Wells Fargo's violation of those regulations is further evidence of the Wells Fargo's lack of good faith and fair dealing.

8. Wells Fargo breached the covenant of good faith and fair dealing and engaged in a wrongful foreclosure, all of which caused damages to Plaintiffs for which they are entitled to compensation.

9. Wells Fargo violated the Unfair Practices Act and engaged in a pattern of willful conduct that caused damages to Plaintiffs for which they are entitled to compensation.

10. Wells Fargo breached the contract between it and James Dollens, the breach of which caused damages to Plaintiffs for which they are entitled to compensation.

11. The foregoing findings are well-supported by the evidence and demonstrate that Wells Fargo breached the implied promise to protect its buyer's reasonable expectations under its contract, thereby withholding the contract's benefits from the Dollens and considering its own interests above those of the buyer.

12. The foregoing findings well-supported by the evidence also demonstrates that Wells Fargo engaged in wrongful foreclosure by the misapplication of fees and costs, and its failure to properly obtain and apply the proceeds of the insurance policy to protect the interests of the Dollens.

13. All damages awarded herein are awarded to Christopher Dollens, as Personal Representative of the Estate of James Dollens.

14. Plaintiff is entitled to a substantial award of punitive damages because Wells Fargo engaged in a pattern of willful, wanton, reckless conduct that was highly reprehensible.

15. The weighing of the *Gore* factors, as applied in established New Mexico law, fully support a substantial award of punitive damages.

16. The award of attorney's fees and costs is properly considered as a factor in calculating the punitive damage ratio.

17. Even if attorney's fees and/or costs are not are considered as a factor in calculating the punitive damage ratio, the egregious conduct of Wells Fargo justifies a substantial punitive damage award as a function of reasonable deterrence for reprehensible conduct in New Mexico.

18. The judgment shall be awarded, including the following:

a. General damages in the amount of $15,633.42;

b. Attorneys' fees in the amount of $390,654.34;

c. Costs in the amount of $48,397.10;

d. Attorneys' fees in the *Duhigg Law Firm* case in the amount of $51,189.08; and

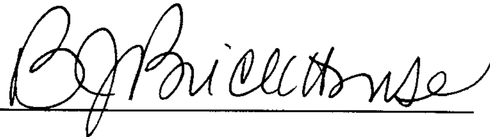
e. Punitive Damages in the amount of $2,728,109.16.

19. The matter of Prejudgment Interest and any request for doubling of costs under Rule 1-068 shall be determined upon motion and hearing.

20. The entire judgment shall be subject to post judgment interest at the statutory rate of 15%.

21. The Court reserves ruling on any claim for fees for any further proceedings associated with this matter.

IT IS SO ORDERED.



BEATRICE J. BRICKHOUSE
DISTRICT COURT JUDGE

A copy of this order was
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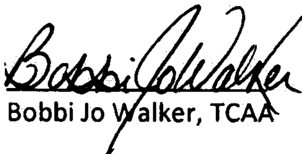

Bobbi Jo Walker, TCAA