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**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

**No. A-1-CA-42066**

**ALBERT SMITH,**

Plaintiff-Appellee,

v.

**RELIABLE CHEVROLET (NM), LLC,**

Defendant-Appellant

and

**NUSENDA CREDIT UNION,**

Defendant.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY  
Elaine P. Lujan, District Court Judge**

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## MEMORANDUM OPINION

**HANISEE, Judge.**

{1} Plaintiff Albert Smith sued Defendants Reliable Chevrolet (NM), LLC, and Nusenda Credit Union for compensatory and punitive damages, claiming that Defendants' unfair business practices harmed Plaintiff. A jury found Defendants guilty of violating the Unfair Practices Act (UPA), NMSA 1978, §§ 57-12-1 to -27 (1967, as amended through 2025), and of committing fraud and conversion, awarding Plaintiff both compensatory and punitive damages. Defendants appeal the district court's order denying their posttrial motion for judgment as a matter of law, order denying their motion to set aside or remit the jury's punitive damages award, and order partially granting Plaintiff's motion for a fee multiplier. We affirm.

### BACKGROUND

{2} Plaintiff purchased a used vehicle from Defendant Reliable Chevrolet and in the process traded in two vehicles, one of which had an outstanding loan balance. Defendant Reliable Chevrolet paid Plaintiff the balance of the trade-in and agreed to pay the outstanding loan balance. Before securing financing for the outstanding loan balance, Defendant Reliable Chevrolet sold both trade-in vehicles. Defendant Reliable Chevrolet did not pay the payments due monthly on the outstanding loan balance for two months. The two missed payments decreased Plaintiff's credit score by over 100 points and consequently prevented him from obtaining a consolidation loan to pay down his credit card balances. Defendant Reliable Chevrolet submitted Plaintiff's loan applications to several financial institutions, which were controlled by Defendant Reliable Chevrolet, but all were denied because the terms of the loan exceeded the institutions' loan-to-value lending guidelines. Finally, Defendant Nusenda Credit Union agreed to make an exception to its guidelines and purchased the loan.

{3} Plaintiff filed a complaint against Defendants on January 4, 2021, alleging fraud, conversion, and violations of the UPA. Defendants moved to compel arbitration, but were denied. In its denial, the district court found the arbitration agreement substantively unconscionable due to the following limitation on damages:

Dealer is not liable for incidental, consequential or punitive damages arising out of this sale or the use of this vehicle, including but not limited to loss of use, loss of time, inconvenience, transportation, rental, loss of earnings or profits, or any commercial loss.

The district court explained that this damages limitation limited statutorily authorized treble damages under the UPA, which are akin to punitive damages, thus rendering the arbitration agreement unconscionable. Defendants did not appeal that decision at the time and do not now contend the district court then erred.

{4} The case went to jury trial in September 2023. Plaintiff presented evidence of Defendants’ intentional and repeated misconduct in relation to Plaintiff’s trade-ins and purchase. Defendants did not object to the proposed jury instructions. The jury returned a verdict for Plaintiff and awarded him \$87,000 in compensatory damages and \$2.5 million in punitive damages. Three months after trial, Defendants filed a motion for judgment as a matter of law or in the alternative for reconsideration on punitive damages, which the court denied. Defendants also moved the court to set aside or remit the jury’s punitive damages award, which the district court denied. Plaintiff later moved for an enhancement of attorney fees, which the district court granted. Defendants appeal all three orders.

## DISCUSSION

### I. Defendants’ Rule 1-050 NMRA Motion Was Untimely and the Issues Therein Were Waived

{5} Defendants first argue that the district court erred in holding that Defendants’ motion for judgment as a matter of law was untimely and in failing to recognize a futility exception to Rule 1-050(A)(2).<sup>1</sup> A district court’s denial of a Rule 1-050 motion is reviewed de novo. See *Goodman v. OS Rest. Servs., LLC*, 2020-NMCA-019, ¶ 25, 461 P.3d 906.

{6} Defendants acknowledge that a Rule 1-050 motion must be brought in the first instance “before the case is submitted to the jury” and that by filing their motion after trial they did not abide by this rule. See Rule 1-050(A)(2). Defendants nonetheless ask this Court to recognize a futility exception to Rule 1-050’s timeliness requirement, pointing only to nonprecedential law for support. Defendants argue that the district court’s conclusion in the early stages of the case that the “damages limitation provision renders the arbitration agreement substantively unconscionable” (found in its denial of Defendants’ motion to compel arbitration) became the law of the case. Such law of the case, in Defendants’ view, mooted any effort on Defendants’ part to reraise the damages limitation’s enforceability.

{7} Defendants contend that *Rojas v. Reliable Chevrolet (NM), LLC*, 2024-NMCA-003, ¶ 2, 539 P.3d 1253, which was decided after trial in this case, changed the legal landscape of punitive damages and provided a good faith basis for Defendants to reraise the damages limitation’s—set forth in the otherwise unenforceable arbitration agreement—enforceability. *Rojas* held that punitive damages and treble damages under the UPA are distinct, so barring the former does not disallow the latter. See *id.* To

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<sup>1</sup>Defendants attempt to weave in an alternative argument that the district court erred in denying their motion to reconsider punitive damages. See Rule 1-059 NMRA. While denials of motions to reconsider are reviewed for an abuse of discretion, *Unified Contractor, Inc. v. Albuquerque Hous. Auth.*, 2017-NMCA-060, ¶ 77, 400 P.3d 290, Defendants did nothing to develop this argument, instead only mentioning it in relation to their Rule 1-050 argument. We therefore decline to address it further and resolve this issue only under Rule 1-050. See *Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (declining to entertain a cursory argument that included no explanation of the party’s argument and no facts that would allow this Court to evaluate the claim).

Defendants, this holding means the damages limitation did not render the contract unconscionable and therefore the district court's determination that it did is now erroneous, given what Defendants contend to be *Rojas*'s retroactive application under New Mexico precedent. See *Potras v. ADT Solar LLC*, A-1-CA-40912, mem. op. ¶ 6 n.1 (N.M. Ct. App. July 29, 2024) (nonprecedential); *Marckstadt v. Lockheed Martin Corp.*, 2010-NMSC-001, ¶ 31, 147 N.M. 678, 228 P.3d 462 (explaining the "presumption that the holding of a civil case will apply retroactively.").

{8} Anticipating Plaintiff's responsive argument, Defendants next assert they did not waive their ability to argue the damages limitation's enforceability. Defendants concede, however, they did not appeal the denial of their motion to compel arbitration; rather, they explain their uncertainty at the efficacy of doing so since the law is ambiguous as to whether an appeal would have stayed the judicial proceeding and since there was no guarantee that an appeal would address the damages limitation's enforceability when there was a wholly separate ground (time-to-sue provision) on which the district court could have been affirmed. Defendants also pin their decision to forgo appeal on the absence of controlling authority about the damages limitation's enforceability and the additional expense of an uncertain appeal. Finally,<sup>2</sup> Defendants assert they did not waive the ability to raise the damages limitation's enforceability when they stipulated to the jury instructions and special verdict form on punitive damages. Defendants again point to the district court's decision on the motion to compel arbitration that, in their view, struck the punitive damages limitation and assert that objecting to the jury instructions or the special verdict form would have only caused unnecessary expense and delay.

{9} Plaintiff responds primarily by emphasizing the timeliness requirement for Rule 1-050 motions and by pointing out that no futility exception exists in New Mexico law. Plaintiff goes on to argue that *Rojas* is inapplicable, so even if a futility exception to Rule 1-050 motions existed in our jurisprudence, such would not excuse the untimeliness. Finally, addressing Defendants' assertion that before *Rojas* they did not have a good faith basis to reraise an already-decided issue, Plaintiff contends that regardless of *Rojas*'s effect on the case, the already-decided issue was not actually decided at all. The district court's order on the motion to compel arbitration found that the damages limitation provision precluded Plaintiff from treble damages under the UPA to which he was statutorily entitled. The order did not, as Defendants assert, rule whether Plaintiff was entitled to or prohibited from receiving punitive damages altogether. Without such a ruling, Defendants had the obligation to raise the issue of the damages limitation's enforceability at trial. What is more, Defendants abandoned the issue, Plaintiff argues, by neglecting to appeal the order on the motion to compel arbitration, stipulating to both the jury instructions and the special verdict form, failing to object to evidence in support

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<sup>2</sup>To further support their argument that they did not waive their ability to argue that the damages limitation was enforceable, Defendants point out that they pleaded the issue as an affirmative defense in their answer to Plaintiff's second amended complaint—thereby not waiving it. But in the very next paragraph, Defendants assert that a contractual limitation on punitive damages is not an affirmative defense at all. Determining the argument regarding affirmative defenses in this context to be conflicting and underdeveloped, we do not address this issue further. See *Corona v. Corona*, 2014-NMCA-071, ¶ 28, 329 P.3d 701 ("This Court has no duty to review an argument that is not adequately developed.").

of punitive damages, and forgetting to provide their own evidence of the existence of a contractual limitation on punitive damages.

{10} We agree with Plaintiff. Defendants' Rule 1-050 motion was untimely. See Rule 1-050(A)(2); see also *First Nat'l Bank in Albuquerque v. Sanchez*, 1991-NMSC-065, ¶ 6, 112 N.M. 317, 815 P.2d 613 (motion for directed verdict must be made at the close of evidence). Defendants offered no precedential support for a futility exception to correct the untimeliness. See *Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 ("Where a party cites no authority to support an argument, we may assume no such authority exists."). And, however the parties may disagree as to the meaning of the district court's order on the motion to compel arbitration or the effect of *Rojas* on this case, Defendants never appealed the order and thereby abandoned the issue altogether. See *Seipert v. Johnson*, 2003-NMCA-119, ¶ 26, 134 N.M. 394, 77 P.3d 298 ("An unchallenged finding of the trial court is binding on appeal."). Nor did Defendants raise or object to the issue at trial. See Rule 12-321 NMRA ("To preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked."); Rule 1-051(I) NMRA ("For the preservation of any error in the charge, objection must be made to any instruction given."). We therefore affirm both the district court's denial of the Rule 1-050 motion and its alternative motion for reconsideration under Rule 1-059 NMRA.

## **II. Defendants Failed to Preserve a Challenge to the Punitive Damages Award, and the Award Is Within Constitutional Limits**

{11} Defendants next argue that the district court erred in denying Defendants' motion to set aside or remit the punitive damages award. Whether a punitive damages award is constitutional is a question of law reviewed de novo. See *Aken v. Plains Elec. Generation & Transmission Coop., Inc.*, 2002-NMSC-021, ¶ 19, 132 N.M. 401, 49 P.3d 662 ("Under de novo review, [this Court is] to make an independent assessment of the record.").

{12} Defendants maintain that because UPA claims have their own remedial scheme, they cannot be the basis for a punitive damages award; therefore, the district court erred when it based its decision regarding the constitutionality of the award partially on UPA claims. Defendants argue that the district court erred when it compared the punitive damages award (\$2,500,000) to Plaintiff's compensatory damages under the UPA (\$87,000) rather than to nonexistent compensatory damages under the non-UPA claims.<sup>3</sup>

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<sup>3</sup>Defendants weave in an argument that the non-UPA claims (fraud and conversion) were unsupported by evidence and therefore legally invalid bases for punitive damages; thus, the jury's award itself was erroneous. However, such is a separate issue from the one at hand—whether the district court erred in denying the request to set aside or remit the punitive damages award—and more akin to a sufficiency of the evidence challenge to the jury verdict. See Rule 1-050(A)(2). Because it is too late for Defendants to raise a sufficiency challenge, we do not address this issue of sufficient evidence for the fraud and conversion claims. See *id.*; *Sanchez*, 1991-NMSC-065, ¶ 6 ("[T]he sufficiency of the evidence to support

**{13}** Defendants' view rests on the incorrect assertion that the jury awarded compensatory damages only under the UPA and not for fraud or conversion—suggesting that the jury awarded punitive damages without any actual damages. That is not what happened. Rather, the special verdict form asked the jury to first determine whether Defendants were liable under each of the three theories (UPA, fraud, and conversion), and then award compensatory damages if liability was found. The jury ultimately found liability for both fraud and conversion and subsequently awarded punitive damages therefrom, contrary to Defendants' assertions. We see no error in the district court's punitive damages analysis of the jury's award and emphasize that such was based on the jury's finding of liability for both fraud and conversion and award of compensatory damages to those claims.

**{14}** Defendants also assert that the punitive damages award of \$2,500,000 is unconstitutionally excessive when analyzed against the following three guideposts in *Dollens v. Wells Fargo Bank, N.A.* and that the district court erred in concluding otherwise: "1) the degree of reprehensibility of the defendant's misconduct; 2) the disparity between the harm (or potential harm) suffered by the plaintiff and the punitive damages award; and 3) the difference between the punitive damages awarded by the jury and the civil . . . penalties authorized or imposed in comparable cases." 2021-NMCA-039, ¶ 25, 495 P.3d 580 (internal quotation marks and citation omitted). According to Defendants, their misconduct was hardly reprehensible and the disparity between the harm and the award was great.

**{15}** Defendants contend that the district court erroneously applied a "strong presumption of validity of the jury's punitive damages," a presumption only applicable when "fair procedures [are] followed." See *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 457 (1993) (stating that "[a]ssuming that fair procedures were followed, a judgment that is a product of that process is entitled to a strong presumption of validity."). But, in Defendants' view, fair procedures were not followed here because the jury instructions were incorrect: they applied to an individual and not to entities. See UJI 13-1827 NMRA use note (applying one of two paragraph alternative options "[w]here the case includes a claim for punitive damages against *an individual* who directly injured the plaintiff." (emphasis added)).

**{16}** Plaintiff responds that Defendants waived any argument against the special verdict form's treatment of damages, and which damages were awarded to which claims, when it stipulated to giving a special verdict form that did not distinguish between the UPA claims and the non-UPA claims. See *Est. of Saenz ex rel. Saenz v. Ranack Constructors, Inc.*, 2018-NMSC-032, ¶ 23, 420 P.3d 576. Plaintiff also points to New Mexico law establishing that the same conduct may form the basis for a UPA claim and a non-UPA claim—which, we point out, does not mean that damages may be awarded for both, based on the same conduct. See *McLelland v. United Wis. Life Ins. Co.*, 1999-NMCA-055, ¶ 11, 127 N.M. 303, 980 P.2d 86 ("[T]he same conduct that violates the UPA may also form the basis of another cause of action that permits an

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a jury verdict is not reviewable on appeal in the absence of a motion for directed verdict at the close of all the evidence.").

award of punitive damages.”). Here, the jury did not award (and the district court did not allow) both UPA damages *and* fraud and conversion damages for the same conduct. Finally, Plaintiff explains that the punitive damages award was constitutional when held up against the *Dollens* guideposts. First, Defendants’ conduct was reprehensible because Plaintiff was financially vulnerable, Defendants’ conduct was repeated, and Defendants acted with intention, malice, and deceit, and disregarded health and safety. Second, the punitive damages are proportionate to the harm. Third, the punitive damages award is comparable to civil and criminal penalties for similar conduct.

{17} We again agree with Plaintiff. Defendants waived any argument that there was insufficient evidence supporting the punitive damages award or that the jury instructions were erroneous when they stipulated to the jury instructions or otherwise raise the issue during trial. See Rules 1-050, -051.

{18} Additionally, when viewed through the lens of the *Dollens* guideposts, the punitive damages award is appropriate for the reasons provided by Plaintiff, above. The United States Supreme Court agrees that a high ratio can be justified where “the scheme employed . . . was part of a larger pattern of fraud, trickery and deceit,” and when the defendant has substantial wealth. *TXO Prod. Corp.*, 509 U.S. 443, 462 (1993). Here, Defendants’ scheme was a pattern that affected at least twelve individuals, and although this Court cannot consider potential harm to others but rather must focus on the harm Defendants caused Plaintiff alone, the risk of harm to others can be considered when determining the reprehensibility of the conduct. See *Dollens*, 2021-NMCA-039, ¶ 22. And we can authorize damages that deter similar conduct from occurring again in this state. See *id.* Thus, the punitive damages award here punishes Defendants only for the harm they caused Plaintiff and not the twelve pattern witnesses; as well, the punitive damages award takes into account the reprehensibility of the conduct, in light of its repeated nature, and aims to deter such conduct in the future. See *id.*

{19} Furthermore, Defendants’ profit, assets, and net worth are such that the punitive damages award of \$2,500,000 will “accomplish but not exceed New Mexico’s goals of punishment and deterrence.” *Id.* ¶ 23 (emphasis omitted). We also note that there is no bright line ratio between constitutional and unconstitutional awards. See *id.* ¶ 35. As this Court has done before, we “recogniz[e] that too small an award of punitive damages would create an incentive to engage in an economically efficient breach of duty in circumstances . . . where the individual compensatory damages are small, and there is little incentive for a potential plaintiff to take on the costs of litigation.” *Id.* ¶ 37 (internal quotation marks omitted). Therefore, the punitive damages award, in our view, falls within constitutional limits because it serves as a wake-up call for Defendants, but not a devastating one. We therefore affirm the district court’s denial of Defendants’ request to set aside or remit the punitive damages award.

### III. The District Court Did Not Err by Enhancing Attorney Fees

**{20}** Defendants aver that the district court erred when it enhanced Plaintiff's attorney fees by a 1.5 multiplier. "We review an award of attorney[] fees for abuse of discretion." *Cobb v. Gammon*, 2017-NMCA-022, ¶ 60, 389 P.3d 1058.

The test is "whether the trial court's decision was clearly against the logic and effect of the facts and circumstances before the court." *In re N.M. Indirect Purchasers Microsoft Corp.*, 2007-NMCA-007, ¶ 6, 140 N.M. 879, 149 P.3d 976 (internal quotation marks and citation omitted).

**{21}** Defendants argue that the district court based its award of a multiplier on factors that are present in every UPA case in which a plaintiff prevails, thus making this case undeserving of anything more than the traditional lodestar method of compensation. Defendants insist that while an attorney's fee award "may be increased by a multiplier if the lower court finds that a greater fee is more reasonable after the court considers the risk factor and the results obtained," *see id.* ¶ 34, the record here supports neither risk nor any other grounds for a multiplier, such as a novel issue or difficulty in securing local counsel.

**{22}** In response, Plaintiff points out that his counsel financed the case for five years against wealthy Defendants' counsel, who individually took no similar risk when litigating this case. Furthermore, in Plaintiff's view, Defendants ignore the important public interest promoted by Plaintiff's lawsuit, arguing that such an effort also supports a multiplier. To support his contention that he had excellent results, Plaintiff comprehensively compares this case to other New Mexico cases wherein our appellate Courts have upheld multipliers when plaintiffs' recoveries were far smaller than the one here. *See Puma v. Wal-Mart Stores E., LP*, 2023-NMCA-005, 523 P.3d 58, *vacated in part on other grounds*, S-1-SC-39540, disp. order (N.M. Dec. 19, 2024) (nonprecedential); *Atherton v. Gopin*, 2012-NMCA-023, 272 P.3d 700.

**{23}** We again agree with Plaintiff. The district court considered the complexity of the case, the number of depositions taken, and the number of out-of-state subpoenas issued. It also weighed the benefit to the public good of a case like this, wherein a company has exploited numerous customers for its financial gain and to the customers' disadvantage. The district court recognized that Plaintiff's counsel leveraged its vast experience in consumer protection law—no doubt saving Plaintiff a great deal of time, worry, and expense were he to have hired counsel with less experience—and requested fair and reasonable fees representing their work. For these reasons, we see no abuse of discretion in the district court's award of a multiplier.

## **CONCLUSION**

**{24}** We affirm.

**{25}** **IT IS SO ORDERED.**

**J. MILES HANISEE, Judge**

**WE CONCUR:**

**MEGAN P. DUFFY, Judge**

**SHAMMARA H. HENDERSON, Judge**