STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT

BEATRICE J. BRICKHOUSE
DISTRICT JUDGE

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RE: Christopher Dollens et al., v. Wells Fargo Bank, N.A. et al.; No. CV 2011-05295

LETTER DECISION

Dear Counsel:

Thank you for your presentation of this case. Both sides were very professional in their presentation of the evidence. You each appropriately focused on the evidence and issues.

SUMMARY

Plaintiffs filed their Second Amended Complaint on August 30, 2012, alleging nine claims against Minnesota Life Insurance Company and Wells Fargo. By the time of trial only Defendant Wells Fargo remained. Accordingly, the five claims at issue for trial were: Wrongful Foreclosure and Breach of the Covenant of Good Faith and Fair Dealing; Unconscionable and Unfair Trade Practices; Breach of Contract; Violation of the Home Loan Protection Act; and Attorney Fees Under NMSA §48-7-24.

After review and consideration of the pleadings, arguments, evidence, and cited authority, the Court finds that Plaintiffs met their burden of proof as to liability, with the exception of their claim for Violation of the Home Loan Protection Act. Plaintiffs also met their burden as to damages, and judgment will be entered for Plaintiffs on Counts V, VI, VII and IX. Defendant's Motion to Dismiss Count VIII, Violation of the Home Loan Protection Act, is granted.

The Court directs the parties to submit requested findings of fact and conclusions of law by September 10, 2013. Until those findings are entered, this letter decision summarizes the Court's reasons for its decision.

FACTUAL BACKGROUND

Decedent James Dollens (Decedent) purchased a home in 2003, with a loan from Wells Fargo Home Mortgage (Wells Fargo) for $133,700. Decedent's loan was in good standing until his accidental death on August 18, 2010 at his workplace.

Prior to Decedent's death, he purchased a mortgage accidental death insurance policy in January 2010. The policy was marketed and sold through Wells Fargo, and underwritten by Minnesota Life Insurance Company (Minnesota Life). The policy premium was $15.12 monthly, and was added to Decedent's monthly mortgage payment and collected by Wells Fargo. Wells Fargo was both the insured and the policyholder.

After Decedent's death his son, Christopher Dollens (Dollens), notified Wells Fargo and Minnesota Life via telephone call of his death. He also made a claim under the accidental death policy to Minnesota Life, and told Wells Fargo that he would be appointed personal representative of his father's estate. Additionally, Decedent's widow, Dina Dollens, contacted Wells Fargo and notified them of his death and the accidental death policy.

As a result of the death of Decedent, no payments were made for several months on the mortgage. Wells Fargo sent monthly statements regarding the loan being in default. In December 2010 counsel for Wells Fargo sent a demand and cure letter regarding the missed mortgage payments. Dollens retained counsel to provide the necessary documentation to Wells Fargo showing that he was the personal representative of his father's estate, and to notify them that a claim was being made under the accidental death policy. In a letter dated January 10, 2011 Dollens' counsel requested that Wells Fargo not pursue collections and foreclosure while the claim was pending. Wells Fargo did not respond to the letter.

In February 2011 Minnesota Life also requested that Wells Fargo delay any adverse action on the account while the claim was pending. Again, there was no response from Wells Fargo. Minnesota Life initially denied the claim under the accidental death policy, but subsequently reversed its decision and approved the claim. It sent a Notice of Death form to Wells Fargo requesting the balance due on the account. Wells Fargo completed the form on February 16, 2011 and stated that the amount due on the account at the time of Decedent's death was $121,082.31.

Also, in February 2011, Wells Fargo initiated a foreclosure against Decedent's home, in spite of the request by the Personal Representative's counsel and Minnesota Life to delay adverse action on the mortgage. Wells Fargo hired foreclosure counsel, and costs and fees accrued as a result of the foreclosure action being filed.

On October 5, 2011 Wells Fargo received a check for $133,559.15 from Minnesota Life for the proceeds due under the accidental death policy. Rather than post and apply the funds immediately, Wells Fargo posted the funds five days later, on October 10, 2011, placed them into a suspense account and paid costs and fees, before applying the payment to interest and the outstanding principal. Applying the Minnesota Life payment in this manner led to a balance of $4,416.45 still being owed on the account.

Although the investor, Freddie Mac, in August 2012 authorized a charge-off due to the low balance on the account, Wells Fargo continued collection efforts for some time. As part of the collection efforts, Wells Fargo demanded amounts due which were not owed or valid. Beverly DeCaro (DeCaro), a Wells Fargo employee, testified that continuing collection efforts after the charge-off and demanding amounts which were not owed, were "mistakes". She also testified that the manner in which this account was handled was in keeping with the customary practices and procedures of Wells Fargo.

With regards to the manner in which the insurance proceeds were applied, Wells Fargo posited 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, thus it applied the funds as if the account were reinstated rather than being paid off. However, Wells Fargo did not notify the Estate that the account was reinstated, and, more significantly, did not dismiss the foreclosure action.

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

CLAIM FOR WRONGFUL FORECLOSURE AND BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

The Court was persuaded by Plaintiffs' evidence as to this claim. The Court finds numerous willful breaches of the covenant of good faith and fair dealing and the Court also finds that Wells Fargo committed a wrongful foreclosure.

Plaintiffs presented significant and credible evidence that Wells Fargo marketed and sold decedent the mortgage accidental death policy. After decedent purchased the policy, Defendant sent decedent an acknowledgement letter stating that his application was approved and enclosing the policy. In addition, the letter informed decedent that the policy "helps protect your family family's financial security". (Stipulated Exhibit 3) There can be no doubt that the insurance policy was marketed to homeowners and created an expectation that the balance of their mortgage would be paid in the event of their death and was done to provide peace of mind to decedent and to prevent financial hardship to decedent's heirs. There can also be no doubt that such an expectation is reasonable. Wells Fargo admitted that payment of the mortgage balance was the purpose of the insurance. (Wells Fargo's Answer to Request for Admission No. 3)

In light of the fact that Wells Fargo represented and sold the insurance policy on behalf of MLIC, collected the monthly premiums for the policy, and had proof of decedent's death, it should have taken into consideration the policy before proceeding to foreclose on the property. Wells Fargo sold the insurance to prevent this very scenario.

In spite of the fact that Wells Fargo sold decedent the mortgage accidental death policy, and was the policyholder and insured, 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. The Court finds that upon learning of the death of decedent, Wells Fargo should have made a claim with MLIC for the death benefit. Apparently, ignoring its ability to make a death benefit claim is typical of how Wells Fargo deals with such situations. DeCaro testified that 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. This is a systemic failure on the part of Wells Fargo.

Beyond the fact that it has no policies or procedures with regards to accounts with mortgage accidental death polices, it failed in this case to even take that fact into account. The evidence showed that both MLIC and counsel for the personal representative requested that Wells Fargo delay adverse action on the account while the accidental death claim was pending. Instead, Wells Fargo proceeded to foreclosure on February 9, 2011. Wells Fargo's inability, unwillingness, and failure to take action when requested by MLIC is shocking, particularly in light of Wells Fargo's ongoing commercial relationship with MLIC.

The Court also finds that Wells Fargo failed to follow the Freddie Mac servicer guidelines, to the detriment of the Estate. As testified to by Plaintiff's expert, Andrew Pizor, and Wells Fargo witness DeCaro, the servicer guidelines are for the benefit of the borrower. Specifically, Wells Fargo should have granted the Estate a forbearance on the mortgage, and it failed to do so. Plaintiffs' expert, Pizor, testified credibly that Wells Fargo should have granted forbearance 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. 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 the damages to the Estate.

The Court further finds that 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 Note, Wells Fargo paid its 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, according to Wells Fargo employees, should not have occurred.

The typical procedure when such a check is received is to only use the funds to pay off the loan. Wells Fargo employee , Luann Tupa, testified to the practice and procedure. In addition, Stipulated Exhibit 27 is a series of emails among Wells Fargo employees that discusses the practice. Apparently, the normal Wells Fargo practice is that when optional product funds (i.e., mortgage accidental death proceeds) are received, attorneys' fees are waived so that the funds can be used to pay off the loan. As noted in the emails, the reason for the practice is because of "the incredibly high reputational risk associated with these loans. 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."

Yet, in this case, that practice was not followed. Instead, 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. Clearly, Wells Fargo did not honor the trust and confidence decedent placed in it when he purchased the policy with the intent of avoiding this very scenario. Wells Fargo Vice President, Robert Dudacek, stated that decedent's decision to purchase the mortgage accidental death policy ensured his "family's financial security." (Stip. Exhibit 3) Unfortunately, Wells Fargo took a course of action that was for its benefit rather than decedent's family's financial security. The conduct by Wells Fargo was a breach of the covenant of good faith and fair dealing and resulted in a wrongful foreclosure. Plaintiffs' entitlement to damages is discussed separately.

CLAIM FOR VIOLATION OF THE UNFAIR PRACTICES ACT

The Court was persuaded by Plaintiffs' evidence with regards to this claim. Specifically, the Court finds that Wells Fargo violated the Act by marketing and selling mortgage accidental death insurance to decedent for the purposes of protecting his "family's financial security", and then after it received notice of decedent's death, attempted to collect the mortgage payments, and then instituted a foreclosure when it knew there was a mortgage accidental death policy in place, for which it had collected premiums for some months. The Court finds that because Wells Fargo was the "licensed agency representing...the insurer", it had knowledge that the purpose of the policy was to pay the mortgage balance in the event of the mortgagor's accidental death. The Court further finds that Wells Fargo also knew that the decedent's Estate would not be liable for the debt unless the claim was denied, after all appeals.

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. 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.

The previously set forth acts by Wells Fargo are also a violation of the UPA. In particular the improper fees and costs assessed against the account and continuing to try to collect on the account after the charge-off of the loan, and improperly claiming that the Estate owed more money than was due are violations of the UPA.

There is no doubt that Wells Fargo's conduct 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. Further, its conduct caused damages to Plaintiffs for which they are entitled to compensation.

CLAIM FOR BREACH OF CONTRACT

The previously set forth acts by Wells Fargo are also a breach of contract. Plaintiffs met their burden on this claim. The Court finds that 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. In fact, Wells Fargo concedes that approximately $400.00 of inspections fees paid by the Estate shall be reimbursed by it. (Pretrial Order and #51 of Wells Fargo's closing argument)

The evidence established that Wells Fargo violated the terms of the Note by using the insurance proceeds to pay its fees and costs first instead of interest and the balance due. 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. Plaintiffs are entitled to damages.

DAMAGES

Wells Fargo's contention that Plaintiffs failed to mitigate their damages is unpersuasive. Wells Fargo admits that the Estate should be reimbursed approximately $400.00 for improper fees, but Wells Fargo has not paid that amount. Wells Fargo has not taken its own action that could have lowered its damages or displayed any consideration for its customer/decedent's heirs.

Plaintiffs[1] presented credible evidence of 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 acted in compliance with its duties to its customer. The Court finds each of these causes of action, Wrongful Foreclosure; Breach of the Covenant of Good Faith and Fair Dealing; Breach of Contract; and Unfair Trade Practices have identical damages of $15,633.42.

Undoubtedly, there was sufficient evidence presented to justify imposition of punitive damages against Wells Fargo, or treble damages under the UPA. The evidence of Wells Fargo's misconduct was staggering. Certain evidence in particular highlights Wells Fargo's indifference to its customers. Wells Fargo charged the Estate for lawn care of the property (i.e., cutting the grass), even though no grass was actually cut. The reason for this was that Wells Fargo claimed that pursuant to the Freddie Mac guidelines, it was required to have the grass cut every 25-30 days; thus, it believed it was appropriate to bill the Estate for this regardless of whether it was necessary. The property at issue did not have a lawn. This is but one of many facts supporting an award of punitive damages.

Compelling evidence was presented that Wells Fargo acted intentionally by improperly assessing fees and costs against the estate, misapplying the MLIC insurance proceeds check, failing to follow the Freddie Mac servicer guidelines, failing to credit the account with the MLIC check when it was received and assessing interest against the account for the five days it did not credit the MLIC check, improperly initiating a foreclosure action, misrepresenting the status of the foreclosure to the Court in pleadings, sending collection letters/monthly statements to the estate claiming amounts not due, and improperly assessing fees against the estate for inspections which were not necessary. All of Wells Fargo's actions were designed to increase its profits without regard for the decedent or his family, and in many instances, violated the terms of the Note.

[1] Plaintiffs made no apportionment of damages. All damages awarded herein are awarded to Christopher Dollens, as Personal Representative of the Estate of James Dollens.

Contrary to Wells Fargo's arguments, the mistakes were not "minor." During the pendency of the litigation, and at trial, Wells Fargo used its computer-driven systems as an excuse for its "mistakes". However, the evidence established that this misconduct was systematic and not the result of an isolated error, or an error because of some unique fact.

Plaintiff's expert testified that Wells Fargo has previously been assessed with significant punitive damages or fines for improper behavior similar to the conduct that occurred in this matter. No evidence was offered that Wells Fargo has changed its behavior as a result of any prior sanction or punitive damage award. Instead the evidence was of ongoing systematic misconduct that Wells Fargo prefers to label as "minor."

The evidence in this case established that 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.); 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).

Plaintiff's expert testified to an Office of the Comptroller of the Currency's Consent Order which found that Wells Fargo systematically mishandled foreclosures and applied payments improperly. He further testified that what happened in this case is not an isolated incident.

While the Court cannot punish Wells Fargo for being "an unsavory individual or business", it nonetheless may consider its similar conduct when assessing reprehensibility as it relates to the imposition of punitive damages. *State Farm Mut. Auto. Ins. Co., v. Campbell,* 538 U.S. 408, 422-23(2003). In addition, under New Mexico law, the conduct of the Defendant towards others may be considered in the determining the nature and enormity of the wrongful conduct. *UJI 13-1827A, NMRA*.

The Court is aware that it cannot punish Wells Fargo for acts in other cases, or for conduct outside this case. Likewise, Wells Fargo cannot be punished for acts for which it has already been punished. However, the Court can consider the reprehensibility of Wells Fargo's systemic misconduct, Wells Fargo's net worth, and the need for deterrence. The evidence of wrongful conduct in this case merits significant punitive damages.

This Court finds that Plaintiffs' argument is persuasive that the attorneys' fees which were incurred by them should be considered in factoring the amount of punitive damages that should be awarded. Due to the egregious nature of the conduct of Wells Fargo, the Court will consider the fees in its calculation of punitive damages.

This Court finds that but-for this misconduct by Wells Fargo, Plaintiffs would have incurred a small amount of attorney fees. Attorney fees are a recoverable damage under the UPA and under NMSA §48-7-24.

Despite having multiple opportunities to contest the reasonableness of Plaintiffs' attorneys' fees, Defendant raised no objection to their hourly rate or the time expended on each task. In spite of Defendant's failure to object to the reasonableness of the fees claim, the Court reviewed each page of the Attorney Fee Affidavit and finds that the fees claimed shall be reduced by $15,164.00 due to the fact that there appeared to be duplication of work among the Plaintiffs' counsel, or the work did not require the efforts of more than one counsel. The claimed 1470 hours was reduced by 51 hours for total hours expended of 1419 hours[2]. The Court denies the request for costs for electronic filing and attorney travel expenses with the exception of travel expenses incurred to depose Wells Fargo's 30(b)(6) witnesses in St. Paul, Minnesota, but otherwise awards all fees and costs as requested by Plaintiffs for an award of $439,051.44, plus gross receipts taxes on the fees.

As for the attorneys' travel expenses incurred for the deposition of Wells Fargo's 30(b)(6) witnesses, the Court finds that those expenses are recoverable in this circumstance. The depositions were the subject of Plaintiffs' Motion to Compel 30(b)(6) depositions, filed on September 10, 2012. In response to the motion, Wells Fargo filed a Response and Motion for Protective Order protesting the taking of the witnesses' deposition in Albuquerque. The Court, at that time, decided that Plaintiffs' counsel would travel to St. Paul, Minnesota to take the depositions. Plaintiffs' counsel reserved the right to seek re-allocation of the costs. The Court believes that it is appropriate for these expenses to be a recoverable cost due to Wells Fargo's unwillingness to reduce fees and expenses by objecting to the witnesses' deposition being taken in Albuquerque, in spite of Wells Fargo's presence in Albuquerque. Further, Wells Fargo brought two of the three witnesses to Albuquerque for trial. It was only when Plaintiffs wished to reduce the fees/expenses in the litigation that Wells Fargo objected to them traveling to New Mexico. Accordingly, the Court finds that the travel expenses of $3,071.07 for travel to St. Paul, Minnesota, are recoverable and included that amount in the award of $439,051.44. The Court finds damages of $15,633.42, plus attorneys' fees and costs of $439,051.44, for a total of $454,684.86.

The Court awards $2,728,109.16 in punitive damages. As stated above, the Court considered attorneys' fees and costs incurred in factoring the award of punitive damages. By the time of the completion of the briefing on the attorney fees issue and responding to Defendant's Motion to Strike, attorneys' fees and costs amounted to $439,051.44.

Mindful of the ratios to be considered with regards to punitive damages, the Court believes that Wells Fargo's conduct justifies a higher ratio. In light of the repeated, systematic nature of Wells Fargo's misconduct, the Court calculated the punitive damages at six times the compensatory damages of $454,684.86. Awarding a ratio of 6 results in a punitive damages award of $2,728,109.16. Total damages, without treble damages under the UPA, are

[2] The fees and hours were calculated through the end of the briefing for the closing arguments.

compensatory damages of $15,633.42, attorneys' fees and costs of $439,051.44, and punitive damages of $2,728,109.16, for a total damages award of $3,182,794.02.

If Plaintiffs elect to recover all of their relief under the UPA, the Court believes that pursuant to *Atherton v. Gopin*, 272 P. 3d 700 (Ct. App. 2012), the fee award may also be trebled. Thus, if Plaintiffs elect for a recovery under the UPA, the total award would be $1,364,054.58.

DEFENDANT'S MOTON TO WITHDRAW ADMISSIONS

At the time of trial, in response to Plaintiffs' Motion for an Order Showing Admitted Facts As Uncontroverted, Wells Fargo requested that it be allowed to withdraw the following admissions:

(2) In January of 2010 Wells Fargo sold Mr. Dollens mortgage accidental death insurance under the group policy with Minnesota Life. (Wells Fargo's Answer to Plaintiffs' Second Amended Complaint, ¶4, 73 and 99)

(18) Wells Fargo applied the Minnesota Life payment first to fees and costs assessed on mortgage loan [sic], then to accrued interest and outstanding principal. (Wells Fargo's Answer to Plaintiffs' Second Amended Complaint, ¶51 and 111.)

With regards to (2), Wells Fargo argued that this issue was contested by it and was mistakenly admitted in its Answer. While Wells Fargo argued that its admission in the Answer to the Second Amended Complaint was a mistake, the Court believes the facts belie the admission being a mistake. For example, in the Answer to the Second Amended Complaint, Wells Fargo admitted the fact three times. Also, in its Answer to the Amended Complaint, filed on March 12, 2012, (several months earlier) it admitted the very same fact. The Court believes that due to Wells Fargo's admission of this fact numerous times during the pendency of the litigation, Plaintiffs were entitled to rely on it. Additionally, the admissions, coupled with the last-minute request to withdraw the admissions, lead the Court to believe that Wells Fargo was attempting to place Plaintiffs at a disadvantage for trial by attempting to change its defense strategy at a time when Plaintiffs would have no opportunity to challenge the denial.

As for (18), Wells Fargo admitted the fact two separate times, and claims, yet again, that the admission was a mistake. The Court was not persuaded that the admission was a mistake, but a last-minute attempt to change strategy at trial. The Motion is denied.

DEFENDANT'S MOTION TO RECONSIDER RULING IN DUHIGG LAW FIRM V. WELLS FARGO

At the conclusion of Plaintiffs' evidence at trial, Wells Fargo moved for reconsideration of the Court's ruling in this companion case. [3] The Court denies the motion and its ruling stands as to its denial of Defendant's Motion to Dismiss the Unjust Enrichment claim.

[3] The two cases were consolidated to this Court on July 18, 2012.

As a result of that ruling, Plaintiffs' counsel submitted an attorney fee affidavit to establish its attorneys' fees incurred due to pursuing the insurance proceeds under the Minnesota Life policy, and fees incurred for having to file the lawsuit for unjust enrichment. The Court overrules Wells Fargo's objections as to the fees and concludes that the fees are reasonable, and prejudgment interest of 15% is allowed. As for the costs, the Court finds that the itemized costs are recoverable, with the exception of $26.00 in e-filing fees. Accordingly, fees and costs totaling $51,879.08 up through April 16, 2013 should be awarded to Plaintiffs for those claims.

DEFENDANT'S MOTION TO STRIKE AND FOR SANCTIONS

In response to Plaintiffs filing an Attorney Fee Affidavit for attorneys' fees incurred as an element of damages due to Wells Fargo's misconduct, rather than address the reasonableness of the fees, Wells Fargo's counsel instead chose to file the above-referenced Motion. The Court deems Wells Fargo's failure to object to the reasonableness of the fees as a waiver. For the record, Wells Fargo misconstrued the Court's ruling as to the issue of attorneys' fees when the matter was briefly discussed at the conclusion of trial. The Court does not believe that Plaintiffs' counsel submission of the attorney fee affidavit is in violation of any ruling, nor does it merit sanctions.

To the extent that an argument can be made that the evidence of the attorneys' fees incurred during the litigation was submitted after the close of evidence, the Court finds that neither of the statutes under which the Court is awarding fees limit the recovery to the time evidence closes. Even if this was the law, Plaintiffs' counsel presented good cause for the evidence to be re-opened for this limited purpose. Wells Fargo failed to establish prejudice as a result of this attorney fee affidavit being submitted during the closing argument briefing period. Moreover, prior to Plaintiffs' counsel filing the affidavit, they offered to counsel for Wells Fargo the opportunity to file a sur-reply to the Closing Argument Reply. Wells Fargo's counsel's response to this offer was that they were "not interested." Thus, Wells Fargo waived the right to provide rebuttal argument/evidence to the Court on this issue.

As for the remaining arguments that portions of Plaintiffs' Closing Argument should be stricken, the Court was not persuaded, except with regards to Footnote 8 of the Closing Argument Reply, which Plaintiff's counsel agreed should not be considered by the Court.

The Motion to Strike and for Sanctions is denied.

EXHIBIT CE

The Court withheld ruling on the admissibility of this document to allow Plaintiffs' counsel an opportunity to review it. Plaintiffs' counsel has informed the Court that it does not object to the admission of the document, thus it is admitted.

Finally, the judgment that is entered in this matter should carry post-judgment interest at 15%.

A copy of this letter decision shall be placed in the Court file.

Beatrice J. B rickhouse
District Judge

BJB/bjw