

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

Court of Appeals of New Mexico
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2 **ALBERT SMITH,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-42066

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

6 Defendant-Appellant

7 and

8 **NUSENDA CREDIT UNION,**

9 Defendant.

10 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

11 **Elaine P. Lujan, District Court Judge**

12 Feferman, Warren & Mattison

13 Susan Warren

14 Nicholas H. Mattison

15 Albuquerque, NM

16 for Appellee

17 Holland & Hart LLP

18 Larry J. Montañó

19 Olga Serafimova

20 Santa Fe, NM

21 for Appellant Reliable Chevrolet (NM), LLC

22 Decker Law Office

23 Benjamin E. Decker

24 Albuquerque, NM

25 for Appellant Nusenda Credit Union

1 **MEMORANDUM OPINION**

2 **HANISEE, Judge.**

3 {1} Plaintiff Albert Smith sued Defendants Reliable Chevrolet (NM), LLC, and
4 Nusenda Credit Union for compensatory and punitive damages, claiming that
5 Defendants’ unfair business practices harmed Plaintiff. A jury found Defendants
6 guilty of violating the Unfair Practices Act (UPA), NMSA 1978, §§ 57-12-1 to -27
7 (1967, as amended through 2025), and of committing fraud and conversion,
8 awarding Plaintiff both compensatory and punitive damages. Defendants appeal the
9 district court’s order denying their posttrial motion for judgment as a matter of law,
10 order denying their motion to set aside or remit the jury’s punitive damages award,
11 and order partially granting Plaintiff’s motion for a fee multiplier. We affirm.

12 **BACKGROUND**

13 {2} Plaintiff purchased a used vehicle from Defendant Reliable Chevrolet and in
14 the process traded in two vehicles, one of which had an outstanding loan balance.
15 Defendant Reliable Chevrolet paid Plaintiff the balance of the trade-in and agreed to
16 pay the outstanding loan balance. Before securing financing for the outstanding loan
17 balance, Defendant Reliable Chevrolet sold both trade-in vehicles. Defendant
18 Reliable Chevrolet did not pay the payments due monthly on the outstanding loan
19 balance for two months. The two missed payments decreased Plaintiff’s credit score
20 by over 100 points and consequently prevented him from obtaining a consolidation

1 loan to pay down his credit card balances. Defendant Reliable Chevrolet submitted
2 Plaintiff's loan applications to several financial institutions, which were controlled
3 by Defendant Reliable Chevrolet, but all were denied because the terms of the loan
4 exceeded the institutions' loan-to-value lending guidelines. Finally, Defendant
5 Nusenda Credit Union agreed to make an exception to its guidelines and purchased
6 the loan.

7 {3} Plaintiff filed a complaint against Defendants on January 4, 2021, alleging
8 fraud, conversion, and violations of the UPA. Defendants moved to compel
9 arbitration, but were denied. In its denial, the district court found the arbitration
10 agreement substantively unconscionable due to the following limitation on damages:

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

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

19 {4} The case went to jury trial in September 2023. Plaintiff presented evidence of
20 Defendants' intentional and repeated misconduct in relation to Plaintiff's trade-ins
21 and purchase. Defendants did not object to the proposed jury instructions. The jury
22 returned a verdict for Plaintiff and awarded him \$87,000 in compensatory damages

1 and \$2.5 million in punitive damages. Three months after trial, Defendants filed a
2 motion for judgment as a matter of law or in the alternative for reconsideration on
3 punitive damages, which the court denied. Defendants also moved the court to set
4 aside or remit the jury’s punitive damages award, which the district court denied.
5 Plaintiff later moved for an enhancement of attorney fees, which the district court
6 granted. Defendants appeal all three orders.

7 **DISCUSSION**

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

10 {s} Defendants first argue that the district court erred in holding that Defendants’
11 motion for judgment as a matter of law was untimely and in failing to recognize a
12 futility exception to Rule 1-050(A)(2).¹ A district court’s denial of a Rule 1-050
13 motion is reviewed de novo. *See Goodman v. OS Rest. Servs., LLC*, 2020-NMCA-
14 019, ¶ 25, 461 P.3d 906.

¹Defendants 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).

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

12 {7} Defendants contend that *Rojas v. Reliable Chevrolet (NM), LLC*, 2024-
13 NMCA-003, ¶ 2, 539 P.3d 1253, which was decided after trial in this case, changed
14 the legal landscape of punitive damages and provided a good faith basis for
15 Defendants to reraise the damages limitation’s—set forth in the otherwise
16 unenforceable arbitration agreement—enforceability. *Rojas* held that punitive
17 damages and treble damages under the UPA are distinct, so barring the former does
18 not disallow the latter. *See id.* To Defendants, this holding means the damages
19 limitation did not render the contract unconscionable and therefore the district
20 court’s determination that it did is now erroneous, given what Defendants contend

1 to be *Rojas*'s retroactive application under New Mexico precedent. *See Potras v.*
2 *ADT Solar LLC*, A-1-CA-40912, mem. op. ¶ 6 n.1 (N.M. Ct. App. July 29, 2024)
3 (nonprecedential); *Marckstadt v. Lockheed Martin Corp.*, 2010-NMSC-001, ¶ 31,
4 147 N.M. 678, 228 P.3d 462 (explaining the “presumption that the holding of a civil
5 case will apply retroactively.”).

6 {8} Anticipating Plaintiff's responsive argument, Defendants next assert they did
7 not waive their ability to argue the damages limitation's enforceability. Defendants
8 concede, however, they did not appeal the denial of their motion to compel
9 arbitration; rather, they explain their uncertainty at the efficacy of doing so since the
10 law is ambiguous as to whether an appeal would have stayed the judicial proceeding
11 and since there was no guarantee that an appeal would address the damages
12 limitation's enforceability when there was a wholly separate ground (time-to-sue
13 provision) on which the district court could have been affirmed. Defendants also pin
14 their decision to forgo appeal on the absence of controlling authority about the
15 damages limitation's enforceability and the additional expense of an uncertain
16 appeal. Finally,² Defendants assert they did not waive the ability to raise the

²To 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.*

1 damages limitation’s enforceability when they stipulated to the jury instructions and
2 special verdict form on punitive damages. Defendants again point to the district
3 court’s decision on the motion to compel arbitration that, in their view, struck the
4 punitive damages limitation and assert that objecting to the jury instructions or the
5 special verdict form would have only caused unnecessary expense and delay.

6 ¶9) Plaintiff responds primarily by emphasizing the timeliness requirement for
7 Rule 1-050 motions and by pointing out that no futility exception exists in New
8 Mexico law. Plaintiff goes on to argue that *Rojas* is inapplicable, so even if a futility
9 exception to Rule 1-050 motions existed in our jurisprudence, such would not excuse
10 the untimeliness. Finally, addressing Defendants’ assertion that before *Rojas* they
11 did not have a good faith basis to reraise an already-decided issue, Plaintiff contends
12 that regardless of *Rojas*’s effect on the case, the already-decided issue was not
13 actually decided at all. The district court’s order on the motion to compel arbitration
14 found that the damages limitation provision precluded Plaintiff from treble damages
15 under the UPA to which he was statutorily entitled. The order did not, as Defendants
16 assert, rule whether Plaintiff was entitled to or prohibited from receiving punitive
17 damages altogether. Without such a ruling, Defendants had the obligation to raise
18 the issue of the damages limitation’s enforceability at trial. What is more,

Corona, 2014-NMCA-071, ¶ 28, 329 P.3d 701 (“This Court has no duty to review an argument that is not adequately developed.”).

1 Defendants abandoned the issue, Plaintiff argues, by neglecting to appeal the order
2 on the motion to compel arbitration, stipulating to both the jury instructions and the
3 special verdict form, failing to object to evidence in support of punitive damages,
4 and forgetting to provide their own evidence of the existence of a contractual
5 limitation on punitive damages.

6 {10} We agree with Plaintiff. Defendants’ Rule 1-050 motion was untimely. *See*
7 Rule 1-050(A)(2); *see also First Nat’l Bank in Albuquerque v. Sanchez*, 1991-
8 NMSC-065, ¶ 6, 112 N.M. 317, 815 P.2d 613 (motion for directed verdict must be
9 made at the close of evidence). Defendants offered no precedential support for a
10 futility exception to correct the untimeliness. *See Curry v. Great Nw. Ins. Co.*, 2014-
11 NMCA-031, ¶ 28, 320 P.3d 482 (“Where a party cites no authority to support an
12 argument, we may assume no such authority exists.”). And, however the parties may
13 disagree as to the meaning of the district court’s order on the motion to compel
14 arbitration or the effect of *Rojas* on this case, Defendants never appealed the order
15 and thereby abandoned the issue altogether. *See Seipert v. Johnson*, 2003-NMCA-
16 119, ¶ 26, 134 N.M. 394, 77 P.3d 298 (“An unchallenged finding of the trial court is
17 binding on appeal.”). Nor did Defendants raise or object to the issue at trial. *See* Rule
18 12-321 NMRA (“To preserve an issue for review, it must appear that a ruling or
19 decision by the trial court was fairly invoked.”); Rule 1-051(I) NMRA (“For the
20 preservation of any error in the charge, objection must be made to any instruction

1 given.”). We therefore affirm both the district court’s denial of the Rule 1-050
2 motion and its alternative motion for reconsideration under Rule 1-059 NMRA.

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

5 {11} Defendants next argue that the district court erred in denying Defendants’
6 motion to set aside or remit the punitive damages award. Whether a punitive
7 damages award is constitutional is a question of law reviewed de novo. *See Aken v.*
8 *Plains Elec. Generation & Transmission Coop., Inc.*, 2002-NMSC-021, ¶ 19, 132
9 N.M. 401, 49 P.3d 662 (“Under de novo review, [this Court is] to make an
10 independent assessment of the record.”).

11 {12} Defendants maintain that because UPA claims have their own remedial
12 scheme, they cannot be the basis for a punitive damages award; therefore, the district
13 court erred when it based its decision regarding the constitutionality of the award
14 partially on UPA claims. Defendants argue that the district court erred when it
15 compared the punitive damages award (\$2,500,000) to Plaintiff’s compensatory
16 damages under the UPA (\$87,000) rather than to nonexistent compensatory damages
17 under the non-UPA claims.³

³Defendants 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).

1 {13} Defendants’ view rests on the incorrect assertion that the jury awarded
2 compensatory damages only under the UPA and not for fraud or conversion—
3 suggesting that the jury awarded punitive damages without any actual damages. That
4 is not what happened. Rather, the special verdict form asked the jury to first
5 determine whether Defendants were liable under each of the three theories (UPA,
6 fraud, and conversion), and then award compensatory damages if liability was found.
7 The jury ultimately found liability for both fraud and conversion and subsequently
8 awarded punitive damages therefrom, contrary to Defendants’ assertions. We see no
9 error in the district court’s punitive damages analysis of the jury’s award and
10 emphasize that such was based on the jury’s finding of liability for both fraud and
11 conversion and award of compensatory damages to those claims.

12 {14} Defendants also assert that the punitive damages award of \$2,500,000 is
13 unconstitutionally excessive when analyzed against the following three guideposts
14 in *Dollens v. Wells Fargo Bank, N.A.* and that the district court erred in concluding
15 otherwise: “1) the degree of reprehensibility of the defendant’s misconduct; 2) the
16 disparity between the harm (or potential harm) suffered by the plaintiff and the
17 punitive damages award; and 3) the difference between the punitive damages

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

1 awarded by the jury and the civil . . . penalties authorized or imposed in comparable
2 cases.” 2021-NMCA-039, ¶ 25, 495 P.3d 580 (internal quotation marks and citation
3 omitted). According to Defendants, their misconduct was hardly reprehensible and
4 the disparity between the harm and the award was great.

5 {15} Defendants contend that the district court erroneously applied a “strong
6 presumption of validity of the jury’s punitive damages,” a presumption only
7 applicable when “fair procedures [are] followed.” *See TXO Prod. Corp. v. Alliance*
8 *Res. Corp.*, 509 U.S. 443, 457 (1993) (stating that “[a]ssuming that fair procedures
9 were followed, a judgment that is a product of that process is entitled to a strong
10 presumption of validity.”). But, in Defendants’ view, fair procedures were not
11 followed here because the jury instructions were incorrect: they applied to an
12 individual and not to entities. *See* UJI 13-1827 NMRA use note (applying one of two
13 paragraph alternative options “[w]here the case includes a claim for punitive
14 damages against *an individual* who directly injured the plaintiff.” (emphasis added)).

15 {16} Plaintiff responds that Defendants waived any argument against the special
16 verdict form’s treatment of damages, and which damages were awarded to which
17 claims, when it stipulated to giving a special verdict form that did not distinguish
18 between the UPA claims and the non-UPA claims. *See Est. of Saenz ex rel. Saenz v.*
19 *Ranack Constructors, Inc.*, 2018-NMSC-032, ¶ 23, 420 P.3d 576. Plaintiff also
20 points to New Mexico law establishing that the same conduct may form the basis for

1 a UPA claim and a non-UPA claim—which, we point out, does not mean that
2 damages may be awarded for both, based on the same conduct. *See McLelland v.*
3 *United Wis. Life Ins. Co.*, 1999-NMCA-055, ¶ 11, 127 N.M. 303, 980 P.2d 86
4 (“[T]he same conduct that violates the UPA may also form the basis of another cause
5 of action that permits an award of punitive damages.”). Here, the jury did not award
6 (and the district court did not allow) both UPA damages *and* fraud and conversion
7 damages for the same conduct. Finally, Plaintiff explains that the punitive damages
8 award was constitutional when held up against the *Dollens* guideposts. First,
9 Defendants’ conduct was reprehensible because Plaintiff was financially vulnerable,
10 Defendants’ conduct was repeated, and Defendants acted with intention, malice, and
11 deceit, and disregarded health and safety. Second, the punitive damages are
12 proportionate to the harm. Third, the punitive damages award is comparable to civil
13 and criminal penalties for similar conduct.

14 {17} We again agree with Plaintiff. Defendants waived any argument that there was
15 insufficient evidence supporting the punitive damages award or that the jury
16 instructions were erroneous when they stipulated to the jury instructions or otherwise
17 raise the issue during trial. *See* Rules 1-050, -051.

18 {18} Additionally, when viewed through the lens of the *Dollens* guideposts, the
19 punitive damages award is appropriate for the reasons provided by Plaintiff, above.
20 The United States Supreme Court agrees that a high ratio can be justified where “the

1 scheme employed . . . was part of a larger pattern of fraud, trickery and deceit,” and
2 when the defendant has substantial wealth. *TXO Prod. Corp.*, 509 U.S. 443, 462
3 (1993). Here, Defendants’ scheme was a pattern that affected at least twelve
4 individuals, and although this Court cannot consider potential harm to others but
5 rather must focus on the harm Defendants caused Plaintiff alone, the risk of harm to
6 others can be considered when determining the reprehensibility of the conduct. *See*
7 *Dollens*, 2021-NMCA-039, ¶ 22. And we can authorize damages that deter similar
8 conduct from occurring again in this state. *See id.* Thus, the punitive damages award
9 here punishes Defendants only for the harm they caused Plaintiff and not the twelve
10 pattern witnesses; as well, the punitive damages award takes into account the
11 reprehensibility of the conduct, in light of its repeated nature, and aims to deter such
12 conduct in the future. *See id.*

13 {19} Furthermore, Defendants’ profit, assets, and net worth are such that the
14 punitive damages award of \$2,500,000 will “accomplish but not exceed New
15 Mexico’s goals of punishment and deterrence.” *Id.* ¶ 23 (emphasis omitted). We also
16 note that there is no bright line ratio between constitutional and unconstitutional
17 awards. *See id.* ¶ 35. As this Court has done before, we “recogniz[e] that too small
18 an award of punitive damages would create an incentive to engage in an
19 economically efficient breach of duty in circumstances . . . where the individual
20 compensatory damages are small, and there is little incentive for a potential plaintiff

1 to take on the costs of litigation.” *Id.* ¶ 37 (internal quotation marks omitted).
2 Therefore, the punitive damages award, in our view, falls within constitutional limits
3 because it serves as a wake-up call for Defendants, but not a devastating one. We
4 therefore affirm the district court’s denial of Defendants’ request to set aside or remit
5 the punitive damages award.

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

7 {20} Defendants aver that the district court erred when it enhanced Plaintiff’s
8 attorney fees by a 1.5 multiplier. “We review an award of attorney[] fees for abuse
9 of discretion.” *Cobb v. Gammon*, 2017-NMCA-022, ¶ 60, 389 P.3d 1058.

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

14 {21} Defendants argue that the district court based its award of a multiplier on
15 factors that are present in every UPA case in which a plaintiff prevails, thus making
16 this case undeserving of anything more than the traditional lodestar method of
17 compensation. Defendants insist that while an attorney’s fee award “may be
18 increased by a multiplier if the lower court finds that a greater fee is more reasonable
19 after the court considers the risk factor and the results obtained,” *see id.* ¶ 34, the

1 record here supports neither risk nor any other grounds for a multiplier, such as a
2 novel issue or difficulty in securing local counsel.

3 {22} In response, Plaintiff points out that his counsel financed the case for five
4 years against wealthy Defendants' counsel, who individually took no similar risk
5 when litigating this case. Furthermore, in Plaintiff's view, Defendants ignore the
6 important public interest promoted by Plaintiff's lawsuit, arguing that such an effort
7 also supports a multiplier. To support his contention that he had excellent results,
8 Plaintiff comprehensively compares this case to other New Mexico cases wherein
9 our appellate Courts have upheld multipliers when plaintiffs' recoveries were far
10 smaller than the one here. *See Puma v. Wal-Mart Stores E., LP*, 2023-NMCA-005,
11 523 P.3d 58, *vacated in part on other grounds*, S-1-SC-39540, disp. order (N.M.
12 Dec. 19, 2024) (nonprecedential); *Atherton v. Gopin*, 2012-NMCA-023, 272 P.3d
13 700.

14 {23} We again agree with Plaintiff. The district court considered the complexity of
15 the case, the number of depositions taken, and the number of out-of-state subpoenas
16 issued. It also weighed the benefit to the public good of a case like this, wherein a
17 company has exploited numerous customers for its financial gain and to the
18 customers' disadvantage. The district court recognized that Plaintiff's counsel
19 leveraged its vast experience in consumer protection law—no doubt saving Plaintiff
20 a great deal of time, worry, and expense were he to have hired counsel with less

1 experience—and requested fair and reasonable fees representing their work. For
2 these reasons, we see no abuse of discretion in the district court’s award of a
3 multiplier.

4 **CONCLUSION**

5 {24} We affirm.

6 {25} **IT IS SO ORDERED.**

7 
8 **J. MILES HANISEE, Judge**

9 **WE CONCUR:**

10 
11 **MEGAN P. DUFFY, Judge**

12 
13 **SHAMMARA H. HENDERSON, Judge**