

No. A10-716
STATE OF MINNESOTA
IN COURT OF APPEALS

Peggy Greer,

Appellant,

v.

Professional Fiduciary, Inc.; Wells Fargo
Bank, N.A.; Wells Fargo Investments,
L.L.C. d/b/a Wells Fargo Private Bank
Elder Services; and Ruth Ostrom,

Respondents.

**RESPONDENTS WELLS FARGO BANK, N.A. AND
WELLS FARGO INVESTMENTS, LLC'S BRIEF**

**ATTORNEYS FOR RESPONDENTS WELLS
FARGO BANK, N.A., AND WELLS FARGO
INVESTMENTS, LLC**

WINTHROP & WEINSTINE, P.A.

Thomas H. Boyd (200517)

Erin A. Oglesbay (0343092)

Suite 3500

225 South Sixth Street

Minneapolis, MN 55402

(612) 604-6800

and

LINDQUIST & VENNUM, P.L.L.P.

Robert A. McLeod (225460)

Suite 4200

80 South Eighth Street

Minneapolis, MN 55402

(612) 371-3272

**ATTORNEYS FOR APPELLANT
ROBINS, KAPLAN, MILLER & CIRESI
L.L.P.**

David E. Bland (008795)

Andrew J. Pieper (389262)

2800 LaSalle Plaza

800 LaSalle Avenue

Minneapolis, MN 55402-2015

(612) 349-8500

**ATTORNEYS FOR RESPONDENT
PROFESSIONAL FIDUCIARY, INC.
LARSON KING L.L.P.**

Mark Solheim (213226)

Paula Duggan Vraa (219137)

2800 Wells Fargo Place

30 East Seventh Street

St. Paul, MN 55101

(612) 312-6500

(continued)

**ATTORNEYS FOR RESPONDENT RUTH
OSTROM**

BASSFORD REMELE P.A.

Kelly A. Putney (237577)

David A. Turner (0333104)

33 South Sixth Street, Suite 3800

Minneapolis, MN 55402

(612) 333-3000

**ATTORNEYS FOR AMICUS CURIAE
PROBATE AND TRUST LAW
SECTION OF THE MINNESOTA
STATE BAR ASSOCIATION**

BRIGGS AND MORGAN

Diane Bratvoldt (018696X)

220 IDS Center

80 South Eighth Street

Minneapolis, MN 55402-2157

(612) 977-8400

**ATTORNEY FOR AMICUS CURIAE
MINNESOTA ASSOCIATION FOR
GUARDIANSHIP AND CONSERVATORSHIP**

WILLIAM M. HANSEN ASSOCIATES, PLLC

Mary R. Watson (114881)

7500 Olson Memorial Highway, #100

Minneapolis, MN 55427

(763) 398-5804

TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF AUTHORITIES	iii
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	4
STATEMENT OF THE FACTS.....	6
A. <i>Greer Conservatorship</i>	6
B. Ms. Greer’s Subsequent Lawsuit.....	11
C. District Court’s Order And Judgment.....	13
ARGUMENT	16
I. STANDARD OF REVIEW.....	17
II. THE DISTRICT COURT PROPERLY DISMISSED MS. GREER’S CLAIMS AGAINST WELLS FARGO.....	17
A. Ms. Greer’s Claims Against Wells Fargo Are Barred By The Doctrine Of Res Judicata.....	17
1. Res Judicata Applies To Bar Ms. Greer’s Claims.....	18
2. Ms. Greer’s Claims Were Adjudicated By The Final Orders Entered In The <i>Greer Conservatorship</i>	22
3. WFB Was Clearly And Undeniably A Party To The <i>Greer Conservatorship</i>	27
4. Ms. Greer’s Claims In This Case Were Adjudicated By Virtue Of The Final Orders Allowing And Approving WFB’s Accounts And Actions In The <i>Greer Conservatorship</i>	28
B. Ms. Greer’s Attempts To Assert Claims In This Subsequent, Separate Lawsuit Constitute Improper Collateral Attacks On The Final Orders Entered In The <i>Greer Conservatorship</i>	30
C. Ms. Greer’s Lawsuit Is Barred By The Doctrine Of Release.....	31

III. THE DISTRICT COURT CORRECTLY DISMISSED MS. GREER'S CLAIMS AGAINST WELLS FARGO INVESTMENTS.....	33
CONCLUSION	36
CERTIFICATE OF COMPLIANCE	38

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF AUTHORITIES

	<u>Page No.</u>
<u>Cases:</u>	
<i>Barrett v. MacDonald</i> , 121 N.W.2d 165 (Minn. 1963).....	30
<i>Beutz v. A.O. Smith Harvestore Prods.</i> , 431 N.W.2d 528 (Minn. 1988).....	18
<i>Bodah v. Lakeville Motor Express, Inc.</i> , 663 N.W.2d 550 (Minn. 2003).....	17
<i>Brown-Wilbert, Inc. v. Copeland Buhl & Co.</i> , 732 N.W.2d 209 (Minn. 2007).....	29
<i>Dorso Trailer Sales, Inc. v. Am. Body & Trailer, Inc.</i> , 482 N.W.2d 771 (Minn. 1992).....	18
<i>Gerring v. Gerring</i> , A06-2280, 2007 WL 4238999 (Minn. Ct. App. Dec. 4, 2007).....	18
<i>Hanson v. Friends of Minn. Sinfonia</i> , No. A05-1783, 2006 WL 1738243 (Minn. Ct. App. June 27, 2006).....	18
<i>Hauschildt v. Beckingham</i> , 686 N.W.2d 829 (Minn. 2004).....	17, 18, 19
<i>Hauser v. Mealey</i> , 263 N.W.2d 803 (Minn. 1978).....	18, 19
<i>In re Bailey's Trust</i> , 62 N.W.2d 829 (Minn. 1954).....	21
<i>In re Conservatorship of Brady</i> , 607 N.W.2d 781 (Minn. 2000).....	24
<i>In re Conservatorship of Grunlund</i> , 407 N.W.2d 141 (Minn. Ct. App. 1987).....	2, 20, 24
<i>In re Conservatorship of Hopkins</i> , No. A06-1818, 2007 WL 2703091 (Minn. Ct. App. Sept. 18, 2007).....	3, 33

<i>In re Conservatorship of Lundgaard,</i> 453 N.W.2d 58 (Minn. Ct. App. 1990).....	24
<i>In re Conservatorship of Masur,</i> 367 N.W.2d 550 (Minn. Ct. App. 1985).....	24
<i>In re Conservatorship of Nelsen,</i> 587 N.W.2d 649 (Minn. Ct. App. 1999).....	22
<i>In re Conservatorship of Smith,</i> 655 N.W.2d 814 (Minn. Ct. App. 2003).....	24
<i>In re Conservatorship of Torres,</i> 357 N.W.2d 332 (Minn. 1984).....	24
<i>In re Engler's Will,</i> 30 N.W.2d 694 (Minn. 1948).....	2, 21
<i>In re Hudson's Guardianship,</i> 33 N.W.2d 848 (Minn. 1948).....	2, 30
<i>In re Medworth,</i> 562 N.W.2d 522 (Minn. Ct. App. 1997).....	24
<i>In re Warner's Trust,</i> 145 N.W.2d 542 (Minn. 1966).....	2, 20
<i>Lyngen v. Tessum,</i> 211 N.W. 314 (Minn. 1926).....	20
<i>Matter of Irrevocable Inter Vivos Trust Established by R.R. Kemske by Agreement dated Oct. 24, 1969,</i> 305 N.W.2d 755 (Minn. 1981).....	2, 30
<i>Matter of Kelly's Will,</i> 266 N.W.2d 700 (Minn. 1978).....	2, 30
<i>Matter of Trusts by Hormel,</i> 543 N.W.2d 668 (Minn. Ct. App. 1996).....	2, 18, 19, 20, 21
<i>Matter of Ward,</i> 360 N.W.2d 650 (Minn. Ct. App. 1985).....	20

<i>Moffat v. White</i> , 279 N.W. 732 (Minn. 1938).....	32
<i>Reppert v. Marvin Lumber & Cedar Co.</i> , 359 F.3d 53 (1st Cir. 2004).....	3, 31
<i>Rickel v. Peck</i> , 2 N.W.2d 140 (Minn. 1942).....	20
<i>Schmitt-Norton Ford, Inc. v. Ford Motor Co.</i> , 524 F. Supp. 1099 (D. Minn. 1981), <i>aff'd</i> , 685 F.2d 438 (8th Cir. 1982).....	32
<i>Sorensen v. Coast-to-Coast Stores (Cent. Org.), Inc.</i> , 353 N.W.2d 666 (Minn. Ct. App. 1984).....	3, 32
<i>State v. Joseph</i> , 636 N.W.2d 322 (Minn. 2001).....	19
<i>Veline v. Dahlquist</i> , 66 N.W. 141 (Minn. 1896).....	19
<i>Wilson v. Comm'r of Revenue</i> , 619 N.W.2d 194 (Minn. 2000).....	19, 30
<i>Wold v. People's Trust & Sav. Bank</i> , 229 N.W. 785 (Minn. 1930).....	2, 30
<i>Youngstown Mines Corp. v. Prout</i> , 124 N.W.2d 328 (Minn. 1963).....	19

Rules & Statutes:

Minn. R. Civ. App. P. 104.1, subd. 1.....	10, 22
Minn. R. Civ. P. 12.02(e).....	3, 33
Minn. Stat. § 524.5-303.....	23
Minn. Stat. § 524.5-417(a).....	22, 24, 29, 31
Minn. Stat. § 524.5-420(a).....	21, 26, 28
Minn. Stat. § 524.5-420(b).....	26

Minn. Stat. § 524.5-420(d).....	26
Minn. Stat. § 524.5-431(f).....	21, 28, 33
Minn. Stat. § 525.712.....	10, 22

Other:

6 Kirsch, <i>Minnesota Practice</i> § 37.44 (1990).....	21, 32
<i>Black's Law Dictionary</i> 416 (5th ed. 1979).....	32

STATEMENT OF THE ISSUES

Appellant Peggy Greer initiated these proceedings to assert claims against various parties, including Respondents Wells Fargo Bank, N.A.'s ("WFB" or "Conservator") and Wells Fargo Investments, LLC ("Wells Fargo Investments") (collectively, "Wells Fargo"). Ms. Greer's claims against Wells Fargo are based solely and exclusively on WFB's actions as Conservator in a previous conservatorship proceeding. The earlier conservatorship had been created for Ms. Greer's benefit. The Probate Court had appointed WFB to serve as the Conservator of Ms. Greer's property. WFB's actions and accounts were subject to ongoing court supervision, extensive court hearings, and numerous court orders. Ultimately, the Probate Court approved all of WFB's accounts and actions, and discharged WFB as Conservator.

Wells Fargo moved to dismiss Mr. Greer's claims in this separate, subsequent lawsuit on the grounds that, *inter alia*, these claims are barred under the doctrine of res judicata by the final orders that had been entered in the earlier conservatorship proceeding; Ms. Greer cannot use the instant lawsuit to collaterally attack the final orders entered in the prior conservatorship proceeding; Ms. Greer's claims were released when WFB was discharged as Conservator; and, in any event, Ms. Greer has no basis whatsoever upon which to assert claims against Wells Fargo Investments. The District Court properly granted Wells Fargo's Motion to Dismiss, and dismissed all of Ms. Greer's claims against Wells Fargo with prejudice.

The following issues are before the Court of Appeals in this appeal:

1. Whether, under the doctrine of res judicata, the final orders approving, allowing, and settling WFB's accounts, approving WFB's actions, and discharging WFB as the Conservator in the earlier conservatorship proceeding bar Ms. Greer's claims concerning WFB's actions as the Conservator?

The District Court ruled in the affirmative.

Apposite Authority:

Matter of Trusts by Hormel, 543 N.W.2d 668, 671 (Minn. Ct. App. 1996)

In re Warner's Trust, 145 N.W.2d 542, 546-47 (Minn. 1966)

In re Engler's Will, 30 N.W.2d 694, 702 (Minn. 1948)

In re Conservatorship of Grunlund, 407 N.W.2d 141, 143-43 (Minn. Ct. App. 1987)

2. Whether Ms. Greer is barred from using the instant lawsuit to collaterally attack the final orders entered in the earlier conservatorship proceeding?

The District Court ruled in the affirmative.

Apposite Authority:

Matter of Irrevocable Inter Vivos Trust Established by R.R. Kemske by Agreement dated Oct. 24, 1969, 305 N.W.2d 755, 762 (Minn. 1981)

Matter of Kelly's Will, 266 N.W.2d 700, 702-03 (Minn. 1978)

In re Hudson's Guardianship, 33 N.W.2d 848, 852 (Minn. 1948)

Wold v. People's Trust & Sav. Bank, 229 N.W. 785, 787 (Minn. 1930)

3. Whether Ms. Greer's claims are barred by the doctrine of release, as distinct from the doctrine of res judicata, due to her express consent to WFB's discharge and the final order discharging WFB as Conservator in the earlier conservatorship proceeding?

The District Court held in the affirmative.

Apposite Authority:

In re Conservatorship of Hopkins, No. A06-1818, 2007 WL 2703091, at *2 (Minn. Ct. App. Sept. 18, 2007)

Sorenson v. Coast-to-Coast Stores (Cent. Org.), Inc., 353 N.W.2d 666, 669-70 (Minn. Ct. App. 1984)

Reppert v. Marvin Lumber & Cedar Co., 359 F.3d 53, 56 & 58-59 (1st Cir. 2004)

4. Whether Ms. Greer's claims against Wells Fargo Investments are barred because Ms. Greer failed to allege any facts to establish she ever had a relationship of any kind with Wells Fargo Investments, or that Wells Fargo Investments had any involvement with respect to WFB's actions as her Conservator, and, further, because Ms. Greer failed to oppose Wells Fargo Investments' motion to dismiss in any respect?

The District Court held in the affirmative.

Apposite Authority:

Minn. R. Civ. P. 12.02(e)

STATEMENT OF THE CASE

The instant action was commenced by Appellant Peggy Greer through a Complaint dated and filed April 24, 2009, in which Ms. Greer asserted claims against various parties, including Respondents WFB and Wells Fargo Investments. (APP1-APP15) Ms. Greer specifically asserted claims against WFB and Wells Fargo Investments for alleged breach of fiduciary duties, negligence, intentional infliction of emotional distress, and negligent infliction of emotional distress. (APP3-APP6 & APP11-APP12) Wells Fargo brought a Motion to Dismiss Ms. Greer's Complaint as to the claims asserted against Wells Fargo. (APP17-APP18) Wells Fargo argued that Ms. Greer's claims were barred as a matter of law by virtue of, *inter alia*, the final orders that had been entered in a prior conservatorship proceeding. (APP144-APP169 & APP455-APP464)

Wells Fargo's Motion to Dismiss was heard on August 5, 2009 by the Honorable Marilyn J. Kaman. (ADD1)

On November 9, 2009, the District Court filed its Order Granting Motions to Dismiss Claims Against Wells Fargo and Ostrom; Order Granting, In Part, Motion to Dismiss Claims Against Professional Fiduciary, Inc. ("PFI"). (ADD1-ADD26)

Thereafter, the case was reassigned to the Honorable Jay Quam. Following this reassignment, Ms. Greer brought a Motion for Leave to Amend Complaint which was subsequently heard on January 20, 2010. Thereafter, the District Court filed an Order on March 2, 2010, denying Ms. Greer's Motion for Leave to Amend Complaint.

On March 2, 2010, the District Court also issued an Order directing entry of final judgment as to the claims dismissed with prejudice in the November 9, 2009 Order. (APP540) This Order was subsequently amended on March 18, 2010. (APP540-APP541)

On March 16, 2010, Ms. Greer and Respondent PFI entered into a Stipulation dismissing the remaining claims in this action without prejudice. (APP540)

STATEMENT OF THE FACTS

Ms. Greer's claims against Wells Fargo in the instant lawsuit are based entirely upon WFB's actions as her court-supervised Conservator in an earlier conservatorship proceeding. Ms. Greer's claims against Wells Fargo in this case improperly seek to relitigate the matters that were fully adjudicated by the final orders entered by the Probate Court approving, settling, and allowing WFB's accounts as Conservator, approving WFB's actions as Conservator, approving WFB's final accounts as Conservator, and discharging WFB as the Conservator in that prior conservatorship proceeding. The District Court agreed and correctly dismissed Ms. Greer's claims against Wells Fargo with prejudice.

A. *Greer Conservatorship.*

On July 2, 2004, Ms. Greer's daughter, Judith Wryk, filed a Petition for Appointment of Guardian and Conservator ("Petition") with the Probate/Mental Health Division of the Fourth Judicial District to commence the matter captioned *In re: Guardianship and Conservatorship of Peggy Greer*, and assigned Court File No. 27-GC-PR-04-292 ("*Greer Conservatorship*"). (APP192-APP197)

Thereafter, on January 21, 2005, the Petition came on for hearing before the Probate Court. (APP199) Ms. Greer appeared personally and was represented by counsel at the hearing of the Petition brought by Ms. Wryk for the appointment of a Conservator. (APP199) Ms. Greer, by and through her counsel, entered into a settlement with the Petitioner during the hearing. (APP199) The Petition was amended in accordance with the agreement that had been reached between Ms. Wryk and Ms. Greer. (APP199)

The Probate Court found that Ms. Greer was 81 years of age at the time the Petition was heard, and that she was “unable to arrange for her own medical care and does not fully understand or acknowledge her condition.” (APP199) The Probate Court further found:

[Ms. Greer] needs assistance and supervision to properly take her medications. She also requires assistance with many of her activities of daily living. She has recently been the subject of commitment proceedings for involuntary hospitalization for treatment.

* * *

[Ms. Greer] is unable to manage her own finances. [Ms. Greer] is unable to pay bills or manage a checkbook. [Ms. Greer] will be receiving a significant inheritance, and a conservator is needed to protect these funds to ensure they are available for [Ms. Greer’s] on-going care. There is also currently a dispute between [Ms. Greer] and one of her children regarding title to the property located at 6065 Chaska Road.

(APP199-APP200) The Probate Court found by clear and convincing evidence that Ms. Greer was “an incapacitated person” who was “unable to manage property and business affairs because of an impairment to receive and evaluate information or make decisions, even with technological assistance.” (APP200) Based on the foregoing, and in accordance with Ms. Greer’s settlement with Petitioner, WFB was appointed to serve as the court-supervised Conservator for her property in the *Greer Conservatorship*. (APP201)

While Ms. Greer has emphasized “the conservator and guardian expended \$640,127.77 of Ms. Greer’s assets,” she fails to inform the Court as to any of the debts and expenses that were required to be paid from those assets for Ms. Greer’s benefit. (Appellant’s Br. at 5-6) Prior to the creation of the Conservatorship, Ms. Greer had made

a number of poor decisions that had placed her in a distressed and vulnerable economic position. For example, Ms. Greer had deeded her home to her son, Michael Greer, on November 29, 2000, via a quit claim deed. In 2003, Ms. Greer filed suit against her son, Michael, as well as other parties, in order to reacquire title to her home. Michael Greer had failed to comply with orders of the Court which had been issued in the litigation that Ms. Greer had commenced. Thus, Ms. Greer did not have a home in which to live at the time the conservatorship was initiated. It was only after the Conservatorship had been established, and WFB had been appointed to serve as Conservator, that WFB was able to compel Michael Greer to comply with the Court's orders and resolve the title issues regarding Ms. Greer's home. In addition to securing the return of Ms. Greer's home, the Conservator also obtained a judgment against Michael Greer.

During the time Michael Greer had title to the home, debts accrued which were encumbrances on the home. Such debts, which amounted to more than \$150,000, were paid by the Conservatorship in order to prevent foreclosure or tax forfeiture on the home. As a result of these and other expenditures, it became clear that the conservatorship funds would be insufficient to sustain Ms. Greer's ongoing care at the Hillcrest of Wayzata Care Facility indefinitely. Accordingly, WFB eventually petitioned the Probate Court for permission to sell the home or, in the alternative, to obtain a reverse mortgage on the home in order to provide for the payment of Ms. Greer's outstanding debts and the significant costs relating to her ongoing care and other living expenses. The Probate Court approved WFB's request for the authority to obtain a reverse mortgage on the home for these purposes. (APP205-APP206 & APP216) This reverse mortgage had the

dual benefit to Ms. Greer of paying off her extensive medical expenses and other debts, while also ensuring that she will be able to remain in her home for the rest of her life. (*Id.*)

In addition to the significant expenses that were required to secure the return of Ms. Greer's home and paying off the encumbrances on that property, Ms. Greer also required significant medical care and rehabilitation services to help her to recover from her serious drug addiction and mental health issues. Specifically, as noted, she required ongoing care at the Hillcrest of Wayzata Care Facility, and then significant in-home care services after she was able to return to her home. Ms. Greer also received regular cash distributions, in addition to direct payments made on her behalf for medical and dental costs, taxes, homestead repairs, and a variety of other matters.¹

During the course of the *Greer Conservatorship*—which spanned from the initiation of the conservatorship in early 2005 to its termination in July of 2007—WFB regularly filed its accounts (detailing the expenses and costs summarized above) for hearing and approval by the Court as required by statute. During this same time period, WFB also petitioned the Court for approval of its actions, including the order approving a reverse mortgage on Ms. Greer's home. Following proper notice and hearing, the Probate Court entered orders approving and allowing WFB's various accounts and WFB's actions as Conservator. (APP208-APP214, APP218-APP221, APP226, APP235-APP242, APP252-APP255 & APP259)

¹ The total amount of fees that WFB received for serving as Conservator in the *Greer Conservatorship* from 2005 to 2007 totaled approximately \$11,200. (APP208, APP218 & APP235)

Following the initiation of the conservatorship, Ms. Greer continued to be personally represented by legal counsel throughout every stage of the *Greer Conservatorship*. (ADD2-ADD4) Ms. Greer and her various attorneys received notice and had every opportunity to be fully heard on all matters in the *Greer Conservatorship*, including all of the hearings that resulted in final orders allowing WFB's accounts and approving WFB's actions as Conservator. Ms. Greer, by and through her counsel had every opportunity to object and/or otherwise challenge WFB's actions as Conservator. In fact, Ms. Greer, by and through her attorneys, filed objections concerning various matters during those proceedings, including, for example, an objection to WFB's request to sell certain property. (APP227-APP233)

Neither Ms. Greer nor her counsel—nor, for that matter, any other party—ever appealed any of the final orders entered by the Probate Court in the *Greer Conservatorship*. (ADD4-ADD6) The deadlines for taking any such appeals of orders filed by the Probate Court in the *Greer Conservatorship* proceeding have long since expired. Minn. Stat. § 525.712; Minn. R. Civ. App. P. 104.1, subd. 1.

On July 6, 2007, the Probate Court granted Ms. Greer's petition to terminate the conservatorship and WFB was directed to file its final accounts. (APP244-APP248) Thereafter, WFB requested approval and allowance of its final accounts and final discharge as the Conservator of Ms. Greer's estate in the *Greer Conservatorship*. (APP252-APP255, APP259 & APP261)

As was the case throughout the *Greer Conservatorship*, Ms. Greer and her counsel received notice and had the opportunity to be heard on these matters. Ms. Greer did not

object to approval of WFB's final accounts or WFB's final discharge as Conservator. On the contrary, Ms. Greer executed a formal written consent for approval of WFB's final accounts and WFB's full and final discharge as Conservator in the *Greer Conservatorship*. (APP257) In this Consent, Ms. Greer, who at that time was represented by an attorney, Allan Poncin, stated as follows, *inter alia*:

1. I have been advised that I may confer with legal counsel before signing this consent and my attorney is Mr. Allan Poncin.
2. I understand and agree that by signing this consent that I *waive any objections to the Interim Account for the period ended May 31, 2007 and the Final Account for the period ended July 6, 2007 filed by Wells Fargo Bank, N.A. as conservator of my Estate and that by allowing said accounts Wells Fargo Bank, N.A. will be discharged as conservator.*
3. *I have had an opportunity to review said accounts and have no objections to said accounts.*

* * *

6. I have signed this consent on behalf of myself in my individual capacity and on behalf of my heirs, assigns, estate or other parties-in-interest of mine who may have an interest in my Estate.

(APP257) (emphasis added). Thereafter, the District Court approved WFB's final accounts by Order dated October 2, 2007, and the District Court discharged WFB by Order dated October 4, 2007. (APP259 & APP261)

B. Ms. Greer's Subsequent Lawsuit.

In April of 2009—nearly two years after the *Greer Conservatorship* had been terminated and WFB had thereafter been discharged as Conservator—Ms. Greer commenced the instant lawsuit in which she asserted breach of fiduciary duty and negligence claims against Wells Fargo in connection with WFB's actions as the

court-appointed and court-supervised Conservator in the *Greer Conservatorship* proceedings. (APP175-APP190)

All of Ms. Greer's allegations and claims against Wells Fargo in this subsequent lawsuit focus entirely and exclusively on the circumstances in which WFB served as Conservator in the *Greer Conservatorship*. (APP176-APP180 & APP185-APP186) Specifically, the factual allegations made by Ms. Greer to support her claims against Wells Fargo are derived almost verbatim from the account statements and other filings made by WFB as Conservator which were, in turn, encompassed in the final orders entered by the Probate Court in the *Greer Conservatorship*. (APP153-APP157; compare APP177 (Compl. ¶ 10) with APP208 & APP214; compare APP177 (Compl. ¶ 11) with APP219 & APP226; compare APP177 (Compl. ¶ 12) with APP223-APP224 & APP226; compare APP177 (Compl. ¶ 13) with APP224-APP227; compare APP177 (Compl. ¶ 14) with APP252-APP255 & APP259; compare APP178 (Compl. ¶ 16) with APP201; compare APP178 (Compl. ¶ 18) with APP208-APP209 & APP211-APP212; compare APP178 (Compl. ¶ 19) with APP205-APP206, APP216 & APP211-APP212; compare APP178 (Compl. ¶ 20) with APP208-APP209 & APP211-APP212; compare APP178 (Compl. ¶ 21) with APP223-APP224 & APP226)

Thus, the claims that Ms. Greer has asserted against Wells Fargo are all matters that were raised or could have been raised in the *Greer Conservatorship*, and that were adjudicated by the Probate Court's orders approving, settling, and allowing WFB's accounts, approving WFB's actions as Conservator, allowing and approving WFB's final accounts, and discharging WFB in the *Greer Conservatorship*.

C. District Court's Order And Judgment.

Wells Fargo moved to dismiss Ms. Greer's claims on the grounds that, *inter alia*, (1) under the doctrine of res judicata, the Probate Court's final orders settling, allowing, and approving WFB's accounts and actions as Conservator in the *Greer Conservatorship* constitute final adjudications that necessarily bar Ms. Greer's claims against WFB's actions as Conservator; (2) Ms. Greer is barred from using this separate, subsequent lawsuit as a vehicle to collaterally attack the Probate Court's orders in the *Greer Conservatorship*; (3) Ms. Greer's consent to WFB's discharge and the Probate Court's order for final discharge of WFB in the *Greer Conservatorship* constitutes a release of any claims Ms. Greer had against Wells Fargo for WFB's actions as Conservator; and (4) Ms. Greer failed to state a claim against Wells Fargo Investments. (APP144-APP169 & APP455-APP464)

In ruling on Wells Fargo's Motion to Dismiss, the District Court recognized that, during the course of the *Greer Conservatorship*, WFB had petitioned for and received Probate Court approval for the actions it took as Conservator; and that WFB regularly presented its accounts and, upon hearing, the Probate Court entered orders allowing and approving WFB's accounts as Conservator. (ADD3-ADD4) The District Court noted that Ms. Greer was individually represented by various attorneys throughout the entirety of the *Greer Conservatorship*. (ADD3-ADD4) The District Court observed that, following termination of the conservatorship, WFB sought and obtained orders approving its final account and final discharge as the Conservator of Ms. Greer's estate in the *Greer Conservatorship*. (ADD4-ADD5) The District Court specifically took note of the fact

that Ms. Greer expressly consented to approval of Wells Fargo's final account and WFB's full and final discharge as Conservator. (ADD5) Finally, the District Court observed that neither Ms. Greer nor any other party appealed any of the final orders filed by the Court in connection with the *Greer Conservatorship*. (ADD4-ADD6)

The District Court correctly observed "[i]t is well-settled under Minnesota law that a court-approved accounting serves as a final judgment of all matters during the accounting"; "[a]ll court-approved matters determined in an approved accounting are res judicata"; and "[p]rior court approval of an accounting may bar subsequent relitigation under either claim or issue preclusion." (ADD13-ADD14) The District Court also noted that "it is well settled that orders issued by the probate court settling accounts are not subject to collateral attack." (ADD13-ADD14) Yet, as the District Court accurately concluded, "that is exactly what Plaintiff is effectively trying to do in this subsequently-filed lawsuit." (ADD14) "The claims Greer has asserted in her Complaint against Wells Fargo attack its actions as Conservator. These claims are barred by the orders entered by the Court approving Wells Fargo's accounts and discharging Wells Fargo as Conservator of the *Greer Conservatorship* proceedings. It is improper for Greer to attempt to collaterally attack those orders by and through the instant proceedings." (ADD14)

[Ms. Greer's] claims against Wells Fargo are based on Wells Fargo's actions relative to her while Wells Fargo was her conservator. Those are the *very* actions that received Court approval during the Greer Conservatorship and which approval was never appealed. . . .

Further, the probate court's orders approving, settling, and allowing Wells Fargo's accounts as conservator in the Greer Conservatorship constitute a

final judgment on the merits. . . . Neither Greer nor any other party appealed any of these final orders, and the time for such appeal has long since expired. . . . In the event Greer wished to object to any of Wells Fargo's actions or accounts as Conservator, she could have done so. Likewise, in the event Greer took issue with any of the orders entered by the Court in the conservatorship proceeding approving, allowing, and settling Wells Fargo's accounts as Conservator, she could have and should have appealed those orders. Greer has not appealed any of those orders, and the time for appealing those orders has now expired. . . .

(ADD16) (citations omitted & emphasis original).

Separate and apart from holding that Ms. Greer's claims against Wells Fargo were barred by the final orders entered in the *Greer Conservatorship* and that she cannot collaterally attack those orders in this case, the District Court also held that, in any event, Ms. Greer failed to allege any basis for imposing liability on Wells Fargo Investments with regard to the *Greer Conservatorship*. (ADD12) Pointing out that she had not even responded to Wells Fargo's arguments in this regard, the District Court correctly determined that Ms. Greer had conceded she had no basis for asserting claims against Wells Fargo Investments. (ADD12)

Accordingly, the District Court granted Wells Fargo's Motion to Dismiss in all respects, and ordered that all of Ms. Greer's claims against Wells Fargo be dismissed with prejudice. (ADD25) Thereafter, final judgment was entered pursuant to the District Court's order so as to dismiss all of Ms. Greer's claims against Wells Fargo with prejudice. (APP540-APP541)

ARGUMENT

Ms. Greer has sued Wells Fargo for WFB's actions as Ms. Greer's court-appointed and court-supervised Conservator in the *Greer Conservatorship*. The allegations asserted in her Complaint against Wells Fargo are based entirely on the factual circumstances in which WFB served as Conservator. As such, these claims were necessarily adjudicated by the final orders that were filed by the Probate Court in the *Greer Conservatorship* proceedings—final orders that were never appealed by Ms. Greer or any other interested party.

These final and unappealed orders entered in the *Greer Conservatorship* constitute a bar to Ms. Greer's claims in this case under the doctrine of res judicata. Further, under well-established law, Ms. Greer is barred from attempting to use this separate, subsequent lawsuit to collaterally attack the final orders entered in the earlier *Greer Conservatorship* proceeding. In any event, the Probate Court's orders allowing WFB's final accounts and final discharge as Conservator in the *Greer Conservatorship* proceedings—final accounts and final discharge to which Ms. Greer had expressly consented—effectively released any and all claims Ms. Greer had or could have asserted against Wells Fargo with respect to WFB's actions as Conservator in the *Greer Conservatorship*.

Moreover, Ms. Greer has simply failed to allege any facts to establish a basis upon which to impose liability on Wells Fargo Investments. Ms. Greer's Complaint alleges no facts whatsoever that, even if true, would establish that she ever had any contractual or fiduciary relationship with Wells Fargo Investments, or that Wells Fargo Investments ever undertook any action as Conservator in the *Greer Conservatorship*. Indeed,

Ms. Greer failed to even respond to the Motion to Dismiss with respect to Wells Fargo Investments. As a result, the District Court correctly concluded that Ms. Greer conceded that she had no basis upon which to assert claims against Wells Fargo Investments.

Accordingly, Wells Fargo respectfully requests the Court of Appeals to affirm the District Court's dismissal of all of Ms. Greer's claims against Wells Fargo with prejudice in all respects.

I. STANDARD OF REVIEW.

When reviewing a dismissal for failure to state a claim upon which relief may be granted under Minnesota Rule of Civil Procedure 12.02(e), the Court of Appeals considers whether the complaint sets forth a legally sufficient claim for relief. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 836 (Minn. 2004); *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). This Court's standard for reviewing a Rule 12.02(e) dismissal is *de novo*. *Hauschildt*, 686 N.W.2d at 836; *Bodah*, 663 N.W.2d at 553.

II. THE DISTRICT COURT PROPERLY DISMISSED MS. GREER'S CLAIMS AGAINST WELLS FARGO.

A. Ms. Greer's Claims Against Wells Fargo Are Barred By The Doctrine Of Res Judicata.

Ms. Greer's claims against Wells Fargo are barred by virtue of the final and unappealed orders entered in the *Greer Conservatorship* proceedings in which the Probate Court allowed and approved all of WFB's accounts, approved WFB's actions, approved WFB's final accounts, and discharged WFB as Conservator. Ms. Greer was a party and was represented by counsel throughout those prior proceedings. Ms. Greer and

her counsel had a full and fair opportunity to object and otherwise be heard on all matters relating to the conservatorship, including WFB's accounts and actions as the Conservator. Ms. Greer and her counsel could have—but chose not to—appeal the final orders entered in the *Greer Conservatorship*. Consequently, Ms. Greer's claims against Wells Fargo, which are all based on the same factual circumstances that made up the very subject matter of the *Greer Conservatorship*, are barred by the doctrine of res judicata.

1. Res Judicata Applies To Bar Ms. Greer's Claims.

The doctrine of res judicata, or claim preclusion, is designed to prevent the relitigation of causes of action already determined in a prior action. *Matter of Trusts by Hormel*, 543 N.W.2d 668, 671 (Minn. Ct. App. 1996); *Beutz v. A.O. Smith Harvestore Prods.*, 431 N.W.2d 528, 531 (Minn. 1988). Res judicata is a finality doctrine that mandates that there be an end to litigation. *Dorso Trailer Sales, Inc. v. Am. Body & Trailer, Inc.*, 482 N.W.2d 771, 773-74 (Minn. 1992). Minnesota courts have long recognized that the doctrine of res judicata provides an appropriate basis for dismissal for failure to state a claim upon which relief may be granted. *See, e.g., Hauschildt*, 686 N.W.2d at 836-41; *Hanson v. Friends of Minn. Sinfonia*, No. A05-1783, 2006 WL 1738243 (Minn. Ct. App. June 27, 2006) (APP468-APP472); *Gerring v. Gerring*, A06-2280, 2007 WL 4238999 (Minn. Ct. App. Dec. 4, 2007) (APP473-APP476).

The doctrine of res judicata focuses on the circumstances giving rise to a claim and precludes subsequent relitigation—regardless of whether a particular issue or legal theory was actually litigated. *Hauser v. Mealey*, 263 N.W.2d 803, 806-07 (Minn. 1978). Res judicata not only applies to all claims actually litigated, but to all claims that could

have been litigated in the earlier action. *State v. Joseph*, 636 N.W.2d 322, 327 (Minn. 2001). “A judgment on the merits constitutes an absolute bar to a second suit for the same cause of action, and is conclusive between parties and privies, not only as to every matter which was actually litigated, but also as to every matter which might have been litigated therein.” *Youngstown Mines Corp. v. Prout*, 124 N.W.2d 328, 340 (Minn. 1963) (quoting *Veline v. Dahlquist*, 66 N.W. 141, 142 (Minn. 1896)). Once there is an adjudication, res judicata prevents the parties to the earlier action “from relitigating claims arising from the original circumstances, even under new legal theories.” *Hauschildt*, 686 N.W.2d at 836-41 (citing *Wilson v. Comm’r of Revenue*, 619 N.W.2d 194, 198 (Minn. 2000); *Hauser*, 263 N.W.2d at 806-07).

Res judicata applies as an absolute bar to a subsequent claim when (1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter. *Joseph*, 636 N.W.2d at 327; accord *Wilson*, 619 N.W.2d at 198; see also *Matter of Trusts by Hormel*, 543 N.W.2d at 671-672; *Youngstown Mines Corp.*, 124 N.W.2d at 340. All of these elements exist in the instant case.

First, Ms. Greer has asserted claims based on the same factual circumstances as the *Greer Conservatorship* in which WFB served as Conservator. WFB’s actions as the Conservator were the subject of the Probate Court’s ongoing supervision throughout those proceedings, as evidenced by the Probate Court’s orders approving, allowing, and settling WFB’s accounts, including the final account; approving WFB’s actions as the

Conservator in said proceedings; and discharging WFB as Conservator in the *Greer Conservatorship*. Ms. Greer's claims against Wells Fargo in the instant case focus on those very same matters and circumstances because all of her claims are based on allegations that WFB failed to properly fulfill its obligations as Conservator in the *Greer Conservatorship*.

Second, the *Greer Conservatorship* proceedings obviously involved the same parties as the instant case. Specifically, the *Greer Conservatorship* proceedings involved a conservatorship that was established for Ms. Greer's benefit and that focused on Ms. Greer's estate; and WFB was appointed to serve as the court-supervised Conservator throughout those proceedings. Thus, Ms. Greer and WFB both had material interests, and were actively engaged, as parties in interest in the *Greer Conservatorship*.

Third, the Court's orders approving, settling, and allowing WFB's accounts as Conservator in the *Greer Conservatorship* constitute a final judgment on the merits. It is well settled that a court-approved accounting serves as a final judgment of all matters during that accounting. *Matter of Trusts by Hormel*, 543 N.W.2d at 671; *Rickel v. Peck*, 2 N.W.2d 140, 145 (Minn. 1942); *Lyngen v. Tessum*, 211 N.W. 314, 315 (Minn. 1926); *Matter of Ward*, 360 N.W.2d 650, 653 (Minn. Ct. App. 1985). "All court-approved matters determined in an approved accounting are res judicata." *Matter of Trusts by Hormel*, 543 N.W.2d at 671 (citing *In re Warner's Trust*, 145 N.W.2d 542, 546-47 (Minn. 1966)); *Rickel*, 2 N.W.2d at 145; see also *In re Conservatorship of Grunlund*, 407 N.W.2d 141, 142-43 (Minn. Ct. App. 1987). Thus, "[p]rior court approval of an accounting may bar subsequent re-litigation under either claim or issue preclusion."

Matter of Trusts by Hormel, 543 N.W.2d at 671 (citing *In re Engler's Will*, 30 N.W.2d 694, 702 (Minn. 1948)). By statute, the Probate Court's orders filed in the *Greer Conservatorship* approving WFB's final accounts and actions, and discharging WFB as Conservator, fully adjudicated and finally resolved all previously unsettled liabilities relating to the conservatorship and discharged WFB from any further liability. See Minn. Stat. §§ 524.5-420(a) ("An order, after notice and hearing, allowing a final report adjudicates all previously unsettled liabilities relating to the conservatorship.") & 524.5-431(f) ("The Court shall enter a final order of discharge upon the approval of the final report and satisfaction by the conservator of any other conditions placed by the court on the conservator's discharge."). Orders approving accounts are res judicata, even where no objections were filed and there has been consent for the accounts. *In re Bailey's Trust*, 62 N.W.2d 829, 838 (Minn. 1954). The approval of the accounts is deemed to adjudicate the issues that are framed by the accounts, and therefore forecloses any subsequent re-litigation of those matters. *Id.* "The importance of the final account and hearing is to obtain an order discharging the guardian or conservator and his sureties which order unless appealed becomes a final discharge barring any further claims against the guardian or conservator for activities during the guardianship or conservatorship as to matters disclosed in the accounts." 6 Kirsch, *Minnesota Practice* § 37.44, at 599 (1990).

Finally, Ms. Greer received a full and fair opportunity to participate in the *Greer Conservatorship* proceedings in which those final orders were entered. Ms. Greer was represented by legal counsel at all times throughout in the *Greer Conservatorship*. Ms. Greer received notice and the opportunity to be heard when WFB submitted its

accounts for approval and otherwise requested court approval of its actions. Ms. Greer and her counsel had every opportunity to object and otherwise challenge WFB's accounts and actions as Conservator. Furthermore, if Ms. Greer took issue with any of the orders entered by the Probate Court in the *Greer Conservatorship* settling, allowing, and approving WFB's accounts and actions as Conservator, she and her attorneys could have appealed those orders.² Neither Ms. Greer nor her counsel ever appealed any of these final orders, and the time for such appeals has long since expired. Minn. Stat. § 525.712; Minn. R. Civ. App. P. 104.1, subd. 1.

Thus, all of the requisite elements exist for the doctrine of res judicata to apply to bar all of Ms. Greer's claims against Wells Fargo in the instant case.

2. Ms. Greer's Claims Were Adjudicated By The Final Orders Entered In The *Greer Conservatorship*.

Ms. Greer erroneously argues that her claims are not barred by the doctrine of res judicata because “[t]he sole question in a . . . conservatorship proceeding is whether the intended ward is in need of a . . . conservator,” and that, in contrast, her claims in this

² The Conservator ensured that Ms. Greer had her own personal counsel throughout the entire pendency of the *Greer Conservatorship*. This Court has recognized that, even where the conservatee is not allowed to unilaterally retain counsel, “[s]tatutory safeguards exist to protect a conservatee's best interests if a conservatee fails to represent them. A conservator is ‘subject to the control and direction of the court at all times and in all things.’” *In re Conservatorship of Nelsen*, 587 N.W.2d 649, 651 (Minn. Ct. App. 1999) (citing Minn. Stat. § 525.56 [now codified as Minn. Stat. § 524.5-417(a)]). In addition to ongoing and constant supervision by the Probate Court throughout the *Greer Conservatorship*, WFB provided notice to Ms. Greer and her counsel, as well as all interested persons, several of whom were very active in these proceedings. The Probate Court held hearings, and Ms. Greer and these interested persons were given the full opportunity to be heard on all matters. Thus, there can be no question that Ms. Greer received the full benefit of the “statutory safeguards” that protected her best interests.

case relate solely to WFB's actions as Conservator *after* the Conservatorship proceedings had been "initiated." (Appellant's Br. at 10 (citing Minn. Stat. § 524.5-303)). Ms. Greer is simply wrong. The initiation of the conservatorship was just the beginning of the proceedings in the *Greer Conservatorship*. Following the initiation of the conservatorship and appointment of WFB to serve as the Conservator, the Probate Court supervised the subsequent proceedings that encompassed the administration of the conservatorship and the actions of WFB as the Conservator over the next three years. During this time, WFB was statutorily required to file its accounts and report to the Court; WFB exercised its right to obtain instructions and approvals from the Court; and, eventually, WFB requested and obtained final approval of its accounts and full discharge as Conservator. The doctrine of res judicata applies to bar all claims that arise from or are related to the same factual circumstances that made up the entirety of the *Greer Conservatorship*—not just the "initiation" of the conservatorship.

Ms. Greer has also erroneously argued that she could not object to or challenge the Conservator's actions or accountings, and that she could not appeal the Probate Court's orders entered in the *Greer Conservatorship*, because Minnesota Statutes section 524.5-417(3) provided the Conservator with the authority to file lawsuits on her behalf. (Appellant's Br. at 15) This is simply a *non sequitur*. The fact that the Conservator had the authority under section 524.5-417(3) to sue and assert claims on Ms. Greer's behalf did not in any way deprive Ms. Greer or her attorneys of the right to object to or challenge the Conservator's actions or accountings. Ms. Greer and her attorneys always had the right, and were given every opportunity, to object and assert

claims with respect to WFB's actions (or inactions) as Conservator during the *Greer Conservatorship* proceedings. Any and all such objections would necessarily fall squarely within the subject matter of the *Greer Conservatorship* proceeding, which encompassed all aspects of WFB's actions in its capacity as Conservator during the course of those proceedings. See Minn. Stat. § 524.5-417(a) ("A conservator shall be subject to the control and direction of the court at all times and in all things."). As the District Court correctly recognized, Ms. Greer and her various attorneys in the *Greer Conservatorship* could have objected to any action or inaction by WFB as Conservator. (ADD16) Furthermore, as the District Court also correctly held, Ms. Greer and her attorneys in the *Greer Conservatorship* had the ability and right to appeal any and all of the final orders that were entered in the *Greer Conservatorship*. (ADD13-ADD16)³

Even if Ms. Greer's theory were correct—which it is not—and Ms. Greer had been statutorily barred from objecting to the Conservator's accounts and actions and/or appealing any of the final orders entered in the *Greer Conservatorship* while WFB was

³ The District Court was absolutely correct. It is well established that conservatees such as Ms. Greer have the right to appeal orders that are entered in their conservatorship proceedings. See, e.g., *In re Conservatorship of Brady*, 607 N.W.2d 781, 782 (Minn. 2000) (conservatee appealed order that Minnesota should remain conservatee's place of abode); *In re Conservatorship of Torres*, 357 N.W.2d 332, 336 (Minn. 1984) (conservatee appealed order authorizing conservator to order removal of conservatee's respirator); *In re Conservatorship of Smith*, 655 N.W.2d 814, 815-16 (Minn. Ct. App. 2003) (conservatee appealed order appointing conservator); *In re Medworth*, 562 N.W.2d 522, 522-23 (Minn. Ct. App. 1997) (conservatee appealed order authorizing conservator to move the conservatee to an out-of-state residence); *In re Conservatorship of Lundgaard*, 453 N.W.2d 58, 59 (Minn. Ct. App. 1990) (conservatee appealed order appointing professional conservator); *In re Conservatorship of Grunlund*, 407 N.W.2d 141, 141-42 (Minn. Ct. App. 1987) (conservatee appealed order allowing conservator's fourth annual accounting); *In re Conservatorship of Masur*, 367 N.W.2d 550, 551 (Minn. Ct. App. 1985) (conservatee appealed order allowing conservator's final accounting).

serving as the Conservator—which she was not—her claims are still barred. The conservatorship was formally terminated and WFB’s appointment as Conservator terminated by order filed on July 6, 2007. (APP244-APP248) However, the Probate Court’s orders allowing WFB’s final accounts and granting WFB’s final discharge as Conservator were not filed until October 2, 2007, and October 4, 2007, respectively. (APP259 & APP261) Accordingly, Ms. Greer was absolutely free to challenge WFB’s requests for allowance of its final accounts and final discharge as Conservator during the three months following the termination of the conservatorship. Rather than objecting, Ms. Greer, who was represented by counsel, expressly consented to the relief sought by WFB after it had terminated its service as the Conservator in the *Greer Conservatorship*. (APP257) Likewise, Ms. Greer could have appealed either or both of those orders which were entered after the termination of the conservatorship. But Ms. Greer did not appeal either of those orders, and now the time for appealing those orders has long since expired. Having expressly consented to the allowance of the final accounts and final discharge, and having failed to pursue any appeal of those orders in the *Greer Conservatorship*, Ms. Greer cannot now make claims against Wells Fargo that are barred by these final orders.

Indeed, Ms. Greer not only had the right to object and assert claims concerning WFB’s accountings and actions as Conservator, it was imperative that any such objections and claims be made in the *Greer Conservatorship* rather than in some other proceeding or forum. A conservator acts as an agent of the Probate Court in the conservatorship. Objections concerning a conservator’s actions must be brought to the

Probate Court's attention in the conservatorship proceedings to ensure proper and effective supervision. If such objections and claims could be reserved for a later date in a subsequent proceeding, then it would be too late for the supervising court in the conservatorship action to effectively address any legitimate challenges or objections concerning a conservator's actions. In other words, for the Probate Court to properly and effectively exercise its "control and direction" over a conservator's actions, the objections and challenges must be made in the conservatorship proceedings.

At the same time, just as conservatorship proceedings are the appropriate forum for protected persons to assert claims or objections as to the conservator, this is also the proper forum for conservators to obtain approval of their actions, allowance of their accounts, and discharges from liability. The statutory provisions provide that "[t]he court shall establish a system for monitoring of conservatorships, including the filing and review of conservators' reports and plans." Minn. Stat. § 524.5-420(d). Under this system, conservators have an obligation to file their accounts with the Court for inspection and review. *Id.* at § 524.5-420(a) & (b). Conservators also have the right to affirmatively seek court orders which, "upon notice and hearing," allow their accounts so as to adjudicate their liabilities as conservators. *Id.* at § 524.5-420(a) ("[a]n order, after notice and hearing, allowing an intermediate report of a conservator adjudicates the liabilities concerning the matters adequately disclosed in the accounting"). At the conclusion of their service, conservators are further entitled to seek an even more comprehensive type of adjudication that resolves all otherwise "unsettled liabilities." *Id.*

(“[a]n order, after notice and hearing, allowing a final report adjudicates all previously unsettled liabilities relating to the conservatorship”).

Accordingly, not only did Ms. Greer and her attorneys have the right and ability to make objections and assert claims as to any aspect of WFB’s accounts and actions as Conservator, it was incumbent upon them to make those objections and claims, if any, in the *Greer Conservatorship*.

3. WFB Was Clearly And Undeniably A Party To The *Greer Conservatorship*.

Ms. Greer argues that the doctrine of res judicata cannot apply because WFB was not a party to the *Greer Conservatorship* proceedings. (Appellant’s Br. at 11-12) For the reasons set forth previously, this argument is simply wrong and should be discarded out of hand.

WFB was the court-supervised and court-directed Conservator in the *Greer Conservatorship* proceedings. As such, WFB was clearly a necessary party to the *Greer Conservatorship* proceedings once the conservatorship had been established and WFB had been appointed to serve as the Conservator.

Moreover, as the court-appointed Conservator, WFB had the statutory right to participate as a party in the *Greer Conservatorship* to obtain affirmative relief in the form of final orders from the Court for allowance and approval of its accounts and actions as Conservator, and final discharge as Conservator from any and all liability as to all interested parties, including the protected person. In the *Greer Conservatorship*, WFB invoked the statutory procedures to seek and obtain allowance of its accounts and,

following notice and hearing, obtained orders allowing all of its accounts, including its final accounts, so as to adjudicate “the matters adequately disclosed in the accounting” and to “adjudicate all previously unsettled liabilities relating to the conservatorship.” Minn. Stat. § 524.5-420(a). WFB also affirmatively sought and obtained a full and final discharge as Conservator. Minn. Stat. § 524.5-431(f). WFB was necessarily a party in the *Greer Conservatorship* as evidenced by the fact that it sought and obtained this relief in those proceedings.

Thus, there can simply be no doubt that WFB meets the essential definition of being a “party” in the *Greer Conservatorship* proceedings for purposes of applying the doctrine of res judicata.

4. Ms. Greer’s Claims In This Case Were Adjudicated By Virtue Of The Final Orders Allowing And Approving WFB’s Accounts And Actions In The *Greer Conservatorship*.

Ms. Greer erroneously argues the doctrine of res judicata cannot bar the claims she now attempts to assert against WFB in the instant case because the accountings did not expressly address the claims she seeks to assert now. (Appellant’s Br. at 13) Ms. Greer is simply wrong. The Probate Court’s approval of WFB’s accounts bar Ms. Greer’s claims in the instant case. Moreover, apart from the accounts that were filed and approved, the doctrine of res judicata applies even more broadly to bar any and all of Ms. Greer’s claims against Wells Fargo because those claims are, by definition, necessarily based on the factual circumstances that made up the *Greer Conservatorship*—which encompassed any and all aspects of WFB’s actions taken as Conservator during the course of those proceedings. As a result, Ms. Greer is barred by

the doctrine of res judicata from now asserting any claims against Wells Fargo relating to WFB's actions as Conservator.

The Probate Court had complete jurisdiction over all aspects of WFB's activities as the Conservator in the *Greer Conservatorship*. Minn. Stat. § 524.5-417(a) ("A conservator shall be subject to the control and direction of the court at all times and in all things."). The allegations that form the basis for Ms. Greer's claims against Wells Fargo in this case are subsumed within the content of the filings and Probate Court's orders entered in the *Greer Conservatorship*. (APP153-APP157; compare APP177 (Compl. ¶ 10) with APP208 & APP214; compare APP177 (Compl. ¶ 11) with APP219 & APP226; compare APP177 (Compl. ¶ 12) with APP223-APP224 & APP226; compare APP177 (Compl. ¶ 13) with APP224-APP227; compare APP177 (Compl. ¶ 14) with APP252-APP255 & APP259; compare APP178 (Compl. ¶ 16) with APP201; compare APP178 (Compl. ¶ 18) with APP208-APP209 & APP211-APP212; compare APP178 (Compl. ¶ 19) with APP205-APP206, APP216 & APP211-APP212; compare APP178 (Compl. ¶ 20) with APP208-APP209 & APP211-APP212; compare APP178 (Compl. ¶ 21) with APP223-APP224 & APP226) Ms. Greer and her attorneys had the right, and they were given every opportunity, to raise any objections or claims she may have had with respect to WFB's actions (or inactions) as Conservator during the *Greer Conservatorship* proceedings. (ADD16)

The doctrine of res judicata not only bars all claims that were actually brought in the prior action, but also bars all claims that *could have been brought* in the earlier action. *Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 220 (Minn. 2007) ("Res

judicata applies equally to claims actually litigated and claims that could have been litigated in the earlier action.”); *Wilson v. Comm’r of Revenue*, 619 N.W.2d 194, 198 (Minn. 2000) (“res judicata bars . . . every matter that might have been litigated in the prior proceeding”). Thus, Ms. Greer’s claims against Wells Fargo regarding WFB’s actions as the Conservator are barred because they are all matters that were either raised *or could have been raised* in the *Greer Conservatorship* proceedings.

B. Ms. Greer’s Attempts To Assert Claims In This Subsequent, Separate Lawsuit Constitute Improper Collateral Attacks On The Final Orders Entered In The *Greer Conservatorship*.

It is well settled that orders issued by the Probate Court settling accounts are not subject to collateral attack. *Matter of Irrevocable Inter Vivos Trust Established by R.R. Kemske by Agreement dated Oct. 24, 1969*, 305 N.W.2d 755, 762 (Minn. 1981) (citing *Matter of Kelly’s Will*, 266 N.W.2d 700 (Minn. 1978); *Barrett v. MacDonald*, 121 N.W.2d 165 (Minn. 1963)); *see also Wold v. People’s Trust & Sav. Bank*, 229 N.W. 785, 787 (Minn. 1930). The claims Ms. Greer has asserted in her Complaint in this matter against WFB all attack WFB’s actions as Conservator. For the reasons already stated, these claims are necessarily barred by the final orders entered by the Probate Court approving WFB’s accounts and discharging WFB as Conservator in the *Greer Conservatorship*. It is wholly improper for Ms. Greer to attempt to use the instant lawsuit to collaterally attack those orders filed in the *Greer Conservatorship*. *Matter of Kelly’s Will*, 266 N.W.2d 700, 702-03 (Minn. 1978); *see also In re Hudson’s Guardianship*, 33 N.W.2d 848, 852 (Minn. 1948).

The Minnesota Legislature certainly did not intend for final orders regarding a conservator's actions be the subject of collateral attack in multiple proceedings before different courts. The Legislature created a process and a forum for conservatorship matters. Protected persons and conservators are to use those procedures and that forum to adjudicate all matters relating to conservatorships, including all claims and objections to the conservators' actions in connection with the conservatorships in which they have been appointed to serve. That is why the Legislature mandated that conservators like WFB "shall be subject to the control and direction of the court at all times and in all things." Minn. Stat. § 524.5-417(a). Thus, there can be no doubt that the Legislature intended that any protected person who has objections to a conservator's actions should be expected to bring such objections to the Court's attention in the conservatorship proceedings, rather than later on in some other proceedings or forum.

Accordingly, Ms. Greer's attempt in this case to collaterally attack the final orders entered in the *Greer Conservatorship* is barred by both the common law and the Legislature's clearly expressed intent.

C. Ms. Greer's Lawsuit Is Barred By The Doctrine Of Release.

Apart from the doctrine of res judicata, Ms. Greer's claims are also barred by the doctrine of release. The doctrine of res judicata and the doctrine of release are separate and distinct, and each serve to independently bar a party's claim. *See, e.g., Reppert v. Marvin Lumber & Cedar Co.*, 359 F.3d 53, 56, 58-59 (1st Cir. 2004) (subsequent claims can be alternatively barred by the separate doctrines of res judicata and release).

Ms. Greer expressly released all of the claims she may have had, if any, with respect to WFB's actions as Conservator by consenting to approval of WFB's final accounts and WFB's final discharge as Conservator. This express consent serves as a release of any and all claims she might now attempt to assert against WFB as Conservator. (APP257) Having executed this Consent, Ms. Greer cannot legitimately contend that she retained any right to make any claims whatsoever against Wells Fargo for WFB's actions or inactions as Conservator in the *Greer Conservatorship*.

In any event, when the Probate Court filed the Order Discharging Conservator in the *Greer Conservatorship* proceedings on October 4, 2007, that order had the effect of releasing WFB (and any and all of its agents) from all liability with respect to Ms. Greer's conservatorship. See 6 Kirsch, *Minnesota Practice* § 37.44, at 599 (1990) (order discharging conservator and its sureties, unless appealed, becomes the final discharge barring further claims against conservator for activities during conservatorship).

A discharge is commonly defined as a "release." *Black's Law Dictionary* 416 (5th ed. 1979). A release, not procured by fraud, bars claims against the released party. *Sorensen v. Coast-to-Coast Stores (Cent. Org.), Inc.*, 353 N.W.2d 666, 669-670 (Minn. Ct. App. 1984) (release bars action on claims released) (citing *Moffat v. White*, 279 N.W. 732 (Minn. 1938)); *Schmitt-Norton Ford, Inc. v. Ford Motor Co.*, 524 F. Supp. 1099, 1103 (D. Minn. 1981), *aff'd*, 685 F.2d 438 (8th Cir. 1982) (release may only be voided for fraud or misrepresentation if fraud or misrepresentation touches execution of release)).

The claims asserted against Wells Fargo in Ms. Greer's Complaint are nothing more than improper attempts to thwart the discharge of WFB as the Conservator, and as such it is barred by the Probate Court's order for final discharge entered with Ms. Greer's express consent and in accordance with the applicable statutory authority. Minn. Stat. § 524.5-431(f); *see also In re Conservatorship of Hopkins*, No. A06-1818, 2007 WL 2703091 (Minn. Ct. App. Sept. 18, 2007) (“[conservatee] cannot thwart the discharge of [conservator] when statutory requirements for discharge have been fulfilled.”) (APP485-APP487).

The Order Discharging Conservator in the *Greer Conservatorship* released WFB and bars the claims Ms. Greer has subsequently sought to assert against Wells Fargo in the instant lawsuit. (APP257 & APP261)

III. THE DISTRICT COURT CORRECTLY DISMISSED MS. GREER'S CLAIMS AGAINST WELLS FARGO INVESTMENTS.

The District Court properly dismissed Ms. Greer's claims against Wells Fargo Investments with prejudice because Ms. Greer failed to allege any facts that, even if true, would give rise to any cause of action or any liability on the part of Wells Fargo Investments with regard to WFB's actions as Conservator. Minn. R. Civ. P. 12.02(e).

Ms. Greer's pleadings contain no allegation of any facts describing what Wells Fargo Investments supposedly did to give rise to any claim that Ms. Greer may wish to assert against Wells Fargo Investments. Instead, Ms. Greer simply and summarily alleged, “[u]pon information and belief, Wells Fargo thereafter charged Wells Fargo

Elder Services⁴ with administering its duties as Ms. Greer's conservator." (APP177) Ms. Greer has never alleged what duties were delegated to Wells Fargo Investments or any specific actions that Wells Fargo Investments took in connection with the *Greer Conservatorship*. Even now, in her appellate brief, Ms. Greer provides no explanation for her claims against Wells Fargo Investments; she simply and summarily states that, "to the best of Ms. Greer's knowledge, Wells Fargo delegated [the] role [of Ms. Greer's court-appointed conservator] to Wells Fargo Investments, L.L.C. d/b/a Wells Fargo Private Bank Elder Services." (Appellant's Br. at 5)

Frankly, Wells Fargo is at a loss to even imagine the facts that could possibly form the "information and belief" that would cause Ms. Greer to suspect that Wells Fargo Investments had any involvement whatsoever with the *Greer Conservatorship*. There is no mention of Wells Fargo Investments in any of the filings or the orders entered in those proceedings. Furthermore, as Wells Fargo informed the District Court and Ms. Greer, Wells Fargo has been unable to find any record that a brokerage account was ever established for Ms. Greer with Wells Fargo Investments. (APP157 & APP167-APP168) In short, Wells Fargo knows of no facts, and Ms. Greer has pleaded no facts, to support her claims against Wells Fargo Investments.

Finally, as the District Court correctly pointed out, Ms. Greer failed to provide any response whatsoever to the Motion to Dismiss with respect to Wells Fargo Investments. (ADD12) The District Court therefore reasonably concluded that Ms. Greer had

⁴ Ms. Greer defined Wells Fargo Investments as "Wells Fargo Elder Services" in her Complaint. (APP175-APP176)

conceded that she had no basis for asserting claims against Wells Fargo Investments. (ADD12) Notably, Ms. Greer never sought reconsideration of the District Court's conclusion that Ms. Greer had conceded as to Wells Fargo Investments, nor did she ever advise the District Court in any other manner that she wanted to provide a substantive response as to Wells Fargo Investments' Motion to Dismiss.

Accordingly, the District Court properly dismissed Ms. Greer's claims against Wells Fargo Investments with prejudice.

CONCLUSION

For the above-stated reasons, Wells Fargo respectfully requests the Court of Appeals to affirm the District Court's orders and judgments entered in this matter in all respects. The claims asserted by Ms. Greer against Wells Fargo are necessarily barred as a matter of law for several reasons. First, Ms. Greer's claims against Wells Fargo are barred by the doctrine of res judicata because all of her claims regarding WFB's actions as Conservator in the *Greer Conservatorship* have been fully and finally adjudicated by the final and unappealed orders that were entered in those proceedings. Second, Ms. Greer cannot use the instant lawsuit as a vehicle by which to collaterally attack the final orders that were entered by the Probate Court in the *Greer Conservatorship*. Third, Ms. Greer's claims against Wells Fargo as to the conservatorship were fully and finally released when Ms. Greer expressly consented to approval of WFB's final accounts and discharge as Conservator in the *Greer Conservatorship* and, further, when the Probate Court thereafter entered its orders approving WFB's final accounts and discharging WFB as Conservator in the *Greer Conservatorship* proceedings. Finally, Ms. Greer failed to provide any basis on which liability could be imposed upon Wells Fargo Investments, and, in fact, she conceded this point when she utterly failed to provide any response to the Motion to Dismiss as to Wells Fargo Investments.

Dated: July 19 2010

WINTHROP & WEINSTINE, P.A.

By: 
Thomas H. Boyd, #200517
Erin A. Oglesbay, #0343092

Suite 3500
225 South Sixth Street
Minneapolis, MN 55402-4629
(612) 604-6400

and

Robert A. McLeod, #225460
LINDQUIST & VENNUM, P.L.L.P.
80 South Eighth Street
Suite 4200
Minneapolis, Minnesota 55402
(612) 371-3272

Attorneys for Respondents Wells Fargo
Bank, N.A. and Wells Fargo
Investments, LLC

5324518v7

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 132.01 subd. 3, the undersigned hereby certifies, as counsel for Respondents Wells Fargo Bank, N.A., and Wells Fargo Investments, L.L.C., that this Brief complies with the type-volume limitation as there are 9,251 number of words of proportional space type in this brief. This Brief was prepared using Microsoft Word 2003.

Dated: July 19 2010

WINTHROP & WEINSTINE, P.A.

By: 
Thomas H. Boyd, #200517
Erin A. Oglesbay, #0343092

Suite 3500
225 South Sixth Street
Minneapolis, MN 55402-4629
(612) 604-6400

and

Robert A. McLeod, #225460
LINDQUIST & VENNUM, P.L.L.P.
80 South Eighth Street
Suite 4200
Minneapolis, Minnesota 55402
(612) 371-3272

Attorneys for Respondents Wells Fargo
Bank, N.A. and Wells Fargo
Investments, LLC