

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Civil

State of Minnesota, by its Attorney General,  
Keith Ellison,

Court File No. 27-CV-18-19874

Plaintiff,

**ORDER REGARDING RESTITUTION  
AND CIVIL PENALTIES**

vs.

Wall & Associates, Inc., Ernest Kenneth Wall,  
in his individual capacity, and Patrick Mark  
Yates, in his individual capacity,

Defendants.

The above-entitled matter came on for review before the Honorable Francis J. Magill, Judge of Hennepin County District Court in response to the Court’s request for additional briefing on issues related to restitution and civil penalties. Attorneys General Caitlin Micko, Evan Romanoff, Alex Baldwin, represent the State of Minnesota, by and through its Attorney General, Keith Ellison (“Attorney General” or “State”). Attorneys William Mohrman and Elizabeth Nielsen represent Defendants Wall & Associates, Inc. (“Wall”), Ernest Kenneth Wall (“Kenneth Wall”), and Patrick Mark Yates (“Yates”) (collectively “Defendants”).<sup>1</sup>

On October 11, 2024, the Court issued its Findings of Fact, Conclusions of Law, and Order (“October 11, 2024, Order”) requiring the parties to make additional submissions by December 10, 2024.

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<sup>1</sup> Defendants are now represented by Kevin Riach, Esq., as of March 18, 2025.

The parties agreed to an extension of that deadline to December 20, 2024, which was approved by the Court. On December 18, 2024, Defendants filed a letter with the Court requesting an extension of the deadline until January 17, 2025. The same day, the State filed a letter opposing the extension request. After reviewing both letters, the Court found good cause for the extension requested by Defendants. The Court extended the deadline to January 17, 2025.

The State made post-trial submissions on October 24, 2024, and January 17, 2025. Defendant made two post-trial submissions on January 17, 2025.

Based upon the agreement of the parties, and on all the files, records, and pleadings herein, the Court makes the following:

### **ORDER**

1. The State's request for restitution is **granted**.
2. Defendants shall be jointly and severally liable for \$1,317,345.00 in restitution. Judgment is entered in the amount of \$1,317,345.00 in favor of the State and against Defendants, jointly and severally, together with any applicable interest, costs, and disbursements. The State shall use the funds to provide restitution in a manner consistent with the attached memorandum.
3. Wall shall be liable for \$2,734,024.67 in restitution, with \$1,317,345.00 of that amount (referenced in paragraph 2 above), to be joint and several with the individual Defendants. Judgment is entered in the amount of \$2,734,024.67 in favor of the State and against Wall, with \$1,317,345.00 of that amount to be joint and several with the individual Defendants, together with any applicable interest, costs, and disbursements. The State shall use the funds to provide restitution in a manner consistent with the attached memorandum.
4. The State's request for civil penalties is **granted**.

5. Wall shall pay \$786,517.00 in civil penalties. Judgment is entered in the amount of \$786,517.00 in favor of the State and against Wall, together with any applicable interest, costs, and disbursements.

6. Kenneth Wall shall pay \$415,500.00 in civil penalties. Judgment is entered in the amount of \$415,500.00 in favor of the State and against Kenneth Wall, together with any applicable interest, costs, and disbursements.

7. Yates shall pay \$207,750 in civil penalties. Judgment is entered in the amount of \$207,750 in favor of the State and against Yates, together with any applicable interest, costs, and disbursements.

8. The State's request for permission to submit additional evidence of payments made by clients after October of 2023 is **denied**.

9. The attached memorandum is incorporated herein by reference.  
Let judgment be entered accordingly.

BY THE COURT:

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Judge Francis J. Magill  
Judge of District Court

## **MEMORANDUM**

Two issues are before the Court: (1) whether Defendants Ernest Kenneth Wall (“Kenneth Wall”) and Patrick Mark Yates (“Yates”) may be held liable for consumer protection violations related to Wall & Associates (“Wall”) clients who signed contracts prior to December 10, 2015; and (2) pursuant to the Court’s October 11, 2024, Order, which Minnesota clients should be categorized as being entitled to restitution and which Minnesota clients should be categorized as requiring Defendants to pay a civil penalty.

### **I. Statute of Limitations**

Minnesota Statutes Section 541.05 provides a six (6) years statute of limitations for a complaint to be served in the types of cases enumerated therein. In this case, Wall was served with the original complaint on December 11, 2018, but Kenneth Wall and Yates were not included on that complaint. Dkt. 3. A Second Amended Complaint was served on December 10, 2021, and included Kenneth Wall and Yates as Defendants. Dkt. 170; Dkt. 172. The parties agree that the maximum amount of liability the Defendants are exposed to runs from December 11, 2012; however, the State is only requesting relief related to clients who signed up for Wall’s services on or after January 1, 2013. TX. 0062. The question in dispute is whether service of the Second Amended Complaint on December 10, 2021, limits Kenneth Wall’s and Yates’s liability to customers who signed contracts on December 10, 2015, and later.

The State argues that the Amended Complaint relates back to the original Complaint such that Kenneth Wall and Yates can be held liable for statutory violations going back to January 1, 2013. In support of this argument, the State points to Minnesota Rule of Civil Procedure 15.03, which states, in relevant part:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the

original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party, the party to be brought in by amendment (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against that party.

The State argues that all of the requirements of Rule 15.03 are satisfied here and that the Second Amended Complaint should relate back to the first Complaint. There was ample evidence at trial demonstrating the pervasive involvement of both Kenneth Wall and Yates in nearly every aspect of Wall's operations. In light of this, the Court has no hesitation finding that the Complaint and Second Amended Complaint both arose out of the same conduct, transactions, and occurrences. For the same reason, the Court also finds that Kenneth Wall and Yates had notice of the institution of the lawsuit and that they would not be prejudiced in maintaining a defense to the Second Amended Complaint because the substantive defense raised by Wall is very close to that raised by Kenneth Wall and Yates. The last requirement – that Kenneth Wall and Yates “knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against” Kenneth Wall and Yates – is more difficult. The State does not assert that it made a “mistake concerning the identity of the proper party.” Rather, the State argues that a literal mistake is not actually required by Rule 15.03, despite the plain text of the Rule.

In support of its argument, the State cites three cases: *Carlson v. Hennepin County*, 479 N.W.2d 50 (Minn. 1992); *Ortiz v. Gavenda*, 590 N.W.2d 119 (Minn. 1999); and *Grothe v. Shaffer*, 232 N.W.2d 227 (1975). The Court finds these cases distinguishable. *Carlson* involved a genuine mistake as to the identity of the appropriate defendant – the proper defendant was an affiliate of Hennepin County Medical Center (“HCMC”) who often used HCMC's name in dealing with the

public. *Carlson* 479 N.W.2d at 55. The plaintiffs made a justifiable mistake in suing HCMC instead of the correct defendant. No such mistake was made in the case before the Court.

Although the *Ortiz* case included a genuine mistake it did not decide the issue presented here. In that case, a person attempted to become trustee for the estate of a decedent and brought a complaint for wrongful death, but her attorney neglected to file the trusteeship paperwork with the Court. *Ortiz*, 590 N.W.2d at 121. After this oversight was corrected, the now-trustee served a new complaint outside the statutory timeframe and attempted to relate it back to the original complaint. *Id.* The Supreme Court did not allow the relation back due to the strict timelines found in wrongful death actions. *Id.* at 124. The Court found that the relation back doctrine did not apply because Minn. Stat. 573.02 required a trustee to bring a wrongful death action within three years. Due to the mistake, the plaintiff was not appointed as a trustee within the required three year period and therefore lost the right to bring suit and the relation back doctrine did not apply. The Court did not interpret whether an “amendment changing the party against whom a claim is asserted” relates back due a mistake. The trustee in *Ortiz* was not changing the party against whom it asserted the claim, rather it was the Plaintiff who had changed (from a non-trustee to a trustee), not the party being sued. *Ortiz* is inapplicable to the issue before the Court.

Lastly, in *Grothe*, no genuine mistake was made. However, in that case, a new plaintiff was added by amendment, not a new defendant. For this reason alone, the Court finds *Grothe* distinguishable.

None of the cases cited by the State support the State’s claim that the plain language of Rule 15.03 requiring an actual mistake can be disregarded to add an additional defendant even when no mistake has been made. Because the State has not cited to any mistake in the identity of

the Defendants that justifies amendment back to the original Complaint, the Court finds that Yates' and Kenneth Wall's liability must be limited to events which took place after December 10, 2015.

The State requested, in the alternative, that the Court make Kenneth Wall and Yates responsible for all payments made by clients after December 10, 2015, even if those clients signed contracts prior to December 10, 2015. Ordinarily, the statute of limitations begins to run when the cause of action first accrues. *Franklin v. Evans*, 992 N.W.2d 379, 385 (Minn. 2023). The deceptive practices complained of by the State accrued, at the latest, by the time the clients signed their contracts. The State cites no case law or statute that would support liability for a cause of action more than six years after it accrued. Accordingly, Yates's and Kenneth Wall's liability must be limited to clients who signed contracts on or after December 10, 2015.

## **II. Categorizations of Minnesota Clients**

The second issue is which clients should be included in the Court's calculation of restitution and which clients should be included in the Court's calculation of civil penalties. Both parties made submissions regarding this issue. The State produced two charts – Exhibit A, which deals with restitution, and Exhibit B, which deals with civil penalties. Defendants submitted a letter responding to Exhibit A and a letter responding to Exhibit B.

Exhibit A is the State's list of all clients who signed a resolution contract, did not successfully negotiate an Offer in Compromise ("OIC") with the IRS or MNDR, and did not receive any tax savings, along with the total amount of fees those clients paid Wall. Exhibit B is the State's list of all clients who signed a resolution contract, did not successfully negotiate an OIC with the IRS or MNDR, but still received some amount of reduction in their tax liability.

The Court's Order required the parties to use summary charts TX0062 and TX2000 in making their calculations.<sup>2</sup> This was based, in part, on the absence of evidence presented at trial that these charts were significantly wrong. In its motion in limine, the State requested that the Court exclude Exhibit TX2000 for lack of foundation. The Court ruled that TX2000 would be received, but that Defendants must make the underlying documents TX2000 was based on available at trial. Dkt. 327. The underlying documents were not, themselves, admitted into evidence and are not part of the record. Defendants' arguments in opposing Exhibits A and B are premised on further examination of the unadmitted documents that underly TX2000. The Court does not agree that Defendants should be allowed to vary the assertions in TX2000 by reference to evidence outside the record.

This leaves a difficulty, because TX0062 and TX2000 are, on some points, irreconcilable. For example, the State believes that, based on the underlying documents, clients Gary and Mary Heer, Robert Hittle, Meghann Lewis, and John Michael should be included on Exhibit A rather than Exhibit B. The underlying documents are not in evidence. The State could have presented the supporting documents at trial to challenge the validity of TX2000, but it did not do so. Since the State has the burden of proof in this case, the State's failure to present the specific underlying documents upon which it now relies at trial means that the requested restitution or civil penalties must be disregarded. Accordingly, the Court shall exclude Gary and Mary Heer, Robert Hittle, Meghann Lewis, and John Michael from Exhibit A and shall add them to Exhibit B. With the exception of those four, Exhibit A is approved and adopted by the Court as follows:

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<sup>2</sup> TX0062 is a summary chart submitted by the State listing Wall's Minnesota clients, along with various information, such as the date they signed their contract, the amount of fees they paid, and the outcome in their case. TX2000 is a summary chart submitted by Defendants listing Wall's Minnesota clients, describing the outcomes achieved for them, and listing the amount of tax savings they realized. Both exhibits were accepted into evidence.



Total Fees Paid in Exhibit A:	\$2,775,024.67
Minus \$4,100.00 for Gary and Mary Heer:	\$2,770,924.67
Minus \$10,100.00 for Robert Hittle:	\$2,760,824.67
Minus \$20,200.00 for Meghann Lewis:	\$2,740,624.67
Minus \$6,600.00 for John Michael:	\$2,734,024.67

Wall should be ordered to pay \$2,734,024.67 in restitution to the clients listed in Exhibit A minus Gary and Mary Heer, Robert Hittle, Meghann Lewis, and John Michael.

As discussed above, Kenneth Wall and Yates cannot be held liable for clients who signed contracts prior to December 10, 2015. The clients from Exhibit A who signed contracts after December 10, 2015 are:

	Client	Amount Paid
1	Arent, Jeff & Tracy	\$20,000.00
2	Baringer, Larry & Jennifer	\$4,600.00
3	Bentiba, Mesfin & Tesema, Shewalem	\$6,500.00
4	Berggreen, Karl	\$5,300.00
5	Berry, Scott	\$2,500.00
6	Boseck, David	\$5,800.00
7	Brandmire, Barbara	\$6,600.00
8	Butler, Bruce	\$2,500.00
9	Capistrant, Mark & Shelly	\$4,900.00
10	Carroll, Scott & Mary Lou	\$5,250.00
11	Cerny, Matthew & Grege, Michelle	\$6,500.00
12	Chounard, Jessie & Jerri-Jo	\$28,500.00
13	Claussen, Scott & Rachel	\$3,700.00
14	Collins, Gregory & Jocelyn	\$8,000.00
15	Conzemius, Robert	\$500.00
16	Courtney, Gary	\$4,250.00
17	Daniels, Gary & Jessica	\$23,800.00
18	Davis, James	\$6,100.00
19	Day, Brian	\$10,660.00
20	Deklerk, Willem & Konnie	\$20,150.00
21	Engeseth, Barry	\$9,150.00
22	Englund, Terry & Joycelyn	\$3,500.00
23	Erickson, Robert & Tina	\$3,000.00
24	Fleetham, Mark & Diana	\$5,600.00
25	Flowers, Patrice & Willie	\$9,700.00
26	Gieser, Dennis	\$3,400.00

27	Glines, Jeff & Nichole	\$11,500.00
28	Goeden, Brad	\$3,300.00
29	Gowan, Jerry & Lori	\$2,500.00
30	Gustner, Gary	\$11,000.00
31	Haslup, Mark	\$28,000.00
32	Heins, Gregory & Mavis	\$21,150.00
33	Henke, Kevin & Darlene	\$8,050.00
34	Henslin, Craig & Dicke-Henslin, Deborah	\$46,800.00
35	Hepola, Lars	\$5,000.00
36	Hilde, Larry & Nola	\$10,600.00
37	Hjort, Mark	\$4,000.00
38	Horner, Jason & Heather	\$10,800.00
39	Humble, Timothy	\$19,000.00
40	Jacox, Henry & Angela	\$3,000.00
41	Jenkins, David	\$28,900.00
42	Johnson, Corey & Heather	\$13,750.00
43	Johnson, Jeffrey	\$2,900.00
44	Johnson, Robert	\$5,000.00
45	Kaiser, John	\$6,350.00
46	Kiekenapp, Anthony	\$18,600.00
47	Koshiol, James	\$10,000.00
48	Kotchen, David	\$9,500.00
49	Krajewski, Robert & Joyellyn	\$6,500.00
50	Kruger, Michael & Jeanine	\$16,200.00
51	Laucamp, Robert	\$3,000.00
52	Leslie, Peter	\$6,800.00
53	Lien, Gary & Kristine	\$9,500.00
54	Lockler, Daniel & Barbara	\$2,500.00
55	Lyons, Timothy & Stenger, Lori	\$5,000.00
56	Macdonald, Kevin	\$9,050.00
57	MacLaughlin, Doug	\$5,500.00
58	Madsen, Brian	\$2,000.00
59	Martin, Joan	\$4,250.00
60	McClanahan, Tim & Alison	\$9,800.00
61	McManimon, Andrew	\$4,400.00
62	Meier, Gert & Kerry	\$5,100.00
63	Melendez, Ruben & Maria	\$48,500.00
64	Meyer, John & Karen	\$4,250.00
65	Moeller, James & Darlene	\$4,900.00
66	Nelson, Perry	\$14,500.00
67	Nguyen, Kenny & Le, Tham	\$3,400.00
68	Olson, Eric	\$20,000.00
69	Owens, Scott & Jenna	\$24,000.00

70	Pechacek, Jeremy & Dana	\$32,800.00
71	Peterson, Steve & Matthews-Peterson, Jocelyn	\$5,200.00
72	Petrich, Lucas & Holly	\$28,800.00
73	Pfeifer, Michael & Samantha	\$20,400.00
74	Pirami, Paul	\$6,000.00
75	Ragland, Wendy	\$15,600.00
76	Richardson, William [AKA William, Bill]	\$10,700.00
77	Rosati, James & Megan	\$30,000.00
78	Rosenfeldt, Taryn	\$11,200.00
79	Rottschaefer, Joyce	\$12,750.00
80	Sammon, Peter	\$26,000.00
81	Sannes, Kevin & Michelle	\$12,500.00
82	Schnackenberg, Erik & Kristen	\$28,500.00
83	Shea, John	\$11,000.00
84	Sheedy, Daniel & Cindy	\$16,750.00
85	Shevik, Robert	\$49,500.00
86	Smith, Linda	\$13,950.00
87	Stahn, Arthur & Patty	\$4,650.00
88	Steinmetz, Larry & Anderson, Rhonda	\$14,400.00
89	Stevermer, Chuck & Carrie	\$6,600.00
90	Stine, Bradley	\$6,000.00
91	Strehlow, Thomas & Marlene	\$8,600.00
92	Tanner, Steven & Terrie	\$22,600.00
93	Terry, Robert & Susan	\$32,400.00
94	Thiele, Stanley	\$7,900.00
95	Thielen, Joe & Jon	\$8,500.00
96	Tomaszewski, Tim	\$12,500.00
97	Tougas, Stephen & Ebner-Tougas, Deborah	\$26,220.00
98	Tuma, Mark	\$3,000.00
99	Valencia, Jaime & Kelly	\$3,400.00
100	Wagner, William	\$26,555.00
101	Walters, Ronald & Caroline	\$9,000.00
102	Watson, David & Cheryl	\$14,000.00
103	Wells, Michael & Marie	\$4,300.00
104	Wennblom, Stephen	\$8,700.00
105	Wilson, Allen & Barbara	\$8,450.00
106	Winters, Donald & Jennifer	\$9,710.00
107	Wyatt, Lori	\$11,800.00
108	Xiong, Sec & Yvain, Siman	\$29,000.00
109	Zinn, David	\$8,100.00
	<b>Total</b>	<b>\$1,317,345.00</b>

Based on the above chart, and the above calculations, Defendants shall be jointly and severally liable for \$1,317,345.00 in restitution. Wall shall be liable for \$2,734,024.67 in restitution, with \$1,317,345.00 of that amount joint and several with the individual Defendants.

Regarding civil penalties, the Court adopts and incorporates the State's Exhibit B, with the addition of Gary and Mary Heer, Robert Hittle, Meghann Lewis, and John Michael as follows:

Total Fees Paid in Exhibit B:	\$745,517.00
Plus \$4,100.00 for Gary and Mary Heer:	\$749,617.00
Plus \$10,100.00 for Robert Hittle:	\$759,717.00
Plus \$20,200.00 for Meghann Lewis:	\$779,917.00
Plus \$6,600.00 for John Michael:	\$786,517.00

Based upon this calculation, the Defendants' abilities to pay as set forth in the Court's October 11, 2024 Order, and the analysis of the *Alpine Air* factors set forth in the Court's prior order, the Court believes that 100% of that amount should be imposed in civil penalties. Based on Wall's ability to pay, Wall shall pay a civil penalty of \$786,517.00. Only \$415,500.00 of the \$786,517.00 amount calculated above stems from clients who signed contracts after December 10, 2015; this is the maximum amount of civil penalties each of Kenneth Wall and Yates are eligible for due to the statute of limitations. Based on his ability to pay, Kenneth Wall has the ability to pay the full civil penalty amount for which he is eligible, or \$415,500.00. Yates has significantly less ability to pay civil penalties, as described in the Court's prior Order on pages 107 and 108, paragraphs 120-122. At the same time, the Court is aware that Yates was at least nominally in charge of Wall's operations during the post-statute-of-limitations period. Based on Yates's historical income and net assets, the Court believes it would be appropriate for Yates to pay 50% of the amount of civil penalties for which he would otherwise be eligible. Based on these factors, Yates shall pay a civil penalty of \$207,750, which the Court notes is close to the high range of

annual income Yates earned during his time as CEO of Wall. This amount is also appropriate given that Yates had a net worth of approximately \$532,000.00 as of February 13, 2023.

### **III. Additional Evidence of Payments**

Finally, the State requested that the Court permit it to submit updated evidence regarding payments that clients made after October of 2023. The record in this matter is closed. The Court has discretion to reopen the record upon a motion. *King v. Larsen*, 306 Minn. 546, 546, 235 N.W.2d 620, 621 (1975). However, in some circumstances, reopening the record may be an abuse of discretion. *See Mike Allen Homes, LLC v. Hiley*, No. A23-1242, 2024 WL 3565853, at \*4 (Minn. Ct. App. July 29, 2024) (determining that the district court's attempt to reopen the record constituted a new trial and noting that Rule 59 does not permit a new trial to be granted "so that a party may present additional evidence on damages because they did not prove their damages at the initial trial."). The record is closed, and the submission of additional evidence would be inappropriate. This matter began in 2018, over six years ago. Finality is necessary and appropriate; the parties should not be allowed for the first time, post-trial, to expand the already voluminous record. Accordingly, the State's request is denied.

-FJM