

The Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON,

Plaintiff,

v.

ALDERWOOD SURGICAL CENTER,
LLC, a Washington limited liability
company; NORTHWEST NASAL
SINUS CENTER P.S., a Washington
professional service corporation; and
JAVAD A. SAJAN, M.D.,

Defendants.

NO. 2:22-cv-01835-RSM

CONSENT DECREE

[CLERK’S ACTION REQUIRED]

I. JUDGMENT SUMMARY

1.1	Judgment Creditor	State of Washington
1.2	Judgment Debtors	Alderwood Surgical Center, LLC; Northwest Nasal Sinus Center P.S.; and Javad A. Sajan, M.D.
1.3	Principal Judgment Amount	\$5,000,000
1.4	Post-Judgment Interest Rate:	12 percent per annum
1.5	Attorneys for Judgment Creditor:	Matthew Geyman Zorba Leslie Alexandra Kory Bret Finkelstein Ben Brysacz Rabi Lahiri Assistant Attorneys General

1 1.14 Entry of this Consent Decree is in the public interest.

2 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED
3 as follows:

4 **II. GENERAL**

5 2.1 This Court has jurisdiction of the subject matter of this action and over the Parties.
6 The State's Complaint in this case states claims upon which relief may be granted under the
7 provisions of the CRFA, 15 U.S.C. § 45b, HIPAA, 42 U.S.C. § 1320d-5(d) and
8 45 C.F.R. § 164.508(b)(4), and the CPA, Wash. Rev. Code § 19.86. The Court is fully informed
9 of the allegations raised by all Parties, and finds no just reason to delay entry of this Consent
10 Decree to resolve this matter.

11 2.2 This Consent Decree or the fact of its entry does not constitute evidence or an
12 admission by any Party regarding the existence or non-existence of any issue, fact, or violation
13 of any law alleged by the State. Nor does this Consent Decree modify or vacate the Court's
14 ruling on April 12, 2024 (Dkt. #97), which granted the State's Motion for Partial Summary
15 Judgment and held that Defendants' pre-service nondisclosure agreements violated the CRFA.

16 2.3 This Consent Decree resolves with prejudice all of the State's claims against
17 Defendants arising out of or relating to the facts and matters specifically described in the
18 Complaint (Dkt. #1), and all of Defendants' defenses, allegations, or claims against the State
19 arising out of or relating to the facts and matters described in the Amended Answer (Dkt. #30).
20 Nothing herein shall affect any claims against the Defendants by individuals or entities not a
21 party to the lawsuit or defenses the Defendants have to any such allegations or claims.

22 **III. INJUNCTIVE RELIEF**

23 Application and Scope of Injunctive Terms. These injunctive provisions shall apply to
24 Defendants and Defendants' successors, assigns, transferees, owners, officers, managers,
25 employees, agents, representatives, and all other persons or entities acting on behalf of or in
26 concert with Defendants. For clarity, the term Defendants encompasses all persons or entities

1 authorized to act on Defendants' behalf or with their authority on issues subject to this Consent
2 Decree. These injunctive provisions are intended to have the same form, scope, and application
3 as set forth in Fed. R. Civ. P. 65(d).

4 Notice. Within thirty (30) days following entry of this Consent Decree, Defendants shall
5 inform all of their owners, officers, managers, current employees, agents, representatives, and
6 any other persons or entities acting in concert with Defendants or on their behalf of this Consent
7 Decree in sufficient detail to ensure that those persons and entities comply with this
8 Consent Decree.

9 3.1 Injunctive Relief. Defendants shall comply with the following:

10 3.3.1 Pre-Service Nondisclosure Agreements. For as long as the CRFA remains
11 effective, Defendants shall not use any form of pre-service agreement that prohibits or restricts
12 prospective patients from offering honest reviews or descriptions of their experiences, whether
13 such reviews are posted online or otherwise.

14 3.3.2 As to pre-service nondisclosure agreements signed by Defendants'
15 patients before March 24, 2022 (hereafter, the pre-service NDAs), Defendants shall not enforce,
16 attempt to enforce, or assert the validity of such pre-service NDAs.

17 3.3.3 Post-Service Nondisclosure Agreements. For as long as the CRFA
18 remains effective, Defendants shall not condition any refund for (a) patients who receive goods
19 only (e.g., non-prescribed aftercare products), or (b) patients who receive no actual medical
20 treatment, procedures or services (e.g., patients who cancel a consultation), on a patient signing
21 any form of post-service nondisclosure agreement (hereafter, post-service NDA).

22 3.3.4 For as long as the CPA remains effective, Defendants shall not offer
23 patients cash payments, free products or services, or other inducements to enter into post-service
24 NDAs without disclosing at the time of such offer that entering into the nondisclosure agreement
25 is a condition for receipt of the inducement.

26 3.3.5 Any post-service NDA that Defendants use with patients who have

1 received actual medical treatments or procedures shall fully comply with the CPA, CRFA
2 and HIPAA.

3 3.3.6 Reviews on Third-Party Platforms. Within sixty (60) days following entry
4 of this Consent Decree, Defendants shall perform a full audit of all public reviews of Defendants
5 on the following third-party platforms: Google, Yelp, RateMD, Healthgrades, WebMD, and
6 Vitals. Defendants shall use reasonable best efforts to identify every review they had any role in
7 creating, posting, or shaping in any manner, and request that each platform take down all such
8 reviews, and any other fake reviews Defendants identify during their audit. Defendants shall
9 simultaneously copy the State on such correspondence and cooperate with any request from the
10 platform or the State for additional information. Defendants shall provide the State with
11 confirmation, in the form of a declaration under oath, once they have complied with this term.

12 3.3.7 For as long as the CRFA remains effective, Defendants shall not directly
13 or indirectly create reviews for posting on third-party review platforms (e.g., Google, Yelp,
14 RateMD, Healthgrades, WebMD, and Vitals). Defendants shall not post fake reviews, or hire
15 third parties to post fake reviews, or directly or indirectly cause reviews to be posted by anyone
16 who has not received services from Defendants, regardless of whether Defendants offer payment
17 or other inducement in return for such reviews. Notwithstanding the foregoing, nothing herein
18 shall restrict Defendants from responding to consumer reviews in compliance with the HIPAA
19 Privacy Rule.

20 3.3.8 For as long as the CRFA remains effective, Defendants shall not threaten
21 to sue or sue patients who post reviews on third-party platforms unless the review is defamatory
22 or “clearly false or misleading” as defined in the CRFA, 15 U.S.C. § 45b(b)(2). Defendants shall
23 not publicly disclose patient personal health information, or threaten to do so, in response to
24 patient reviews.

25 3.3.9 Followers on Social Media and “Best Doctor” Voting. Defendants shall
26 not directly or indirectly purchase followers on social media, or directly or indirectly purchase

1 votes for voting contests such as “best doctor” lists. The use of legitimate third-party vendors to
2 help increase Defendants’ social media presence and engagement with prospective followers is
3 not prohibited. This term will sunset after ten (10) years. While it is in place, upon request,
4 Defendants shall provide the State with information about any arrangements with such vendors.

5 3.3.10 Photographs. Within sixty (60) days following entry of this Consent
6 Decree, Defendants shall conduct a full audit of the “before and after” photographs on their
7 websites and social media and remove any photographs that contain photoshopped changes other
8 than cropping, sizing, lighting adjustments, and/or removing protected health information. All
9 remaining “after” photos on Defendants’ websites and social media shall accurately reflect the
10 actual result of the procedure, and shall not include any changes to patient anatomy, including
11 changes in body (or body part) size, implant position, implant size, nipple position, nipple size,
12 or any other body morphology. Accurate photographic images may be mechanically
13 straightened. This section does not apply to animations, graphics, and videos. Defendants shall
14 provide the State with confirmation, in the form of a declaration under oath, once they have
15 complied with this term. This term and the terms in Paragraphs 3.3.11, 3.3.12 and 3.3.13 relating
16 to photographs will sunset after ten (10) years.

17 3.3.11 For all future “before and after” photographs displayed on Defendants’
18 websites or social media, Defendants will only post photographs in their original forms or with
19 the following non-material adjustments or enhancements: cropping, lighting adjustments, and/or
20 removing personally identifying information at the patient’s request. Defendants will not allow
21 third parties to post photos to Defendants’ websites or social media accounts that violate
22 this term.

23 3.3.12 If a photograph is adjusted or enhanced in a manner consistent with the
24 preceding paragraphs, Defendants will post a clear and conspicuous photograph disclaimer on
25 its website and social media to ensure a reasonable consumer understands the photograph has
26 been enhanced in a non-material manner.

1 3.3.13 If a patient requests that protected health information (such as a scar or
2 tattoo) be removed, Defendants will only blur out the information from the photograph and will
3 not otherwise alter the image. This term does not permit Defendants to blur or otherwise obscure
4 the appearance of scarring resulting from patient treatments depicted in the images.

5 **IV. MONETARY RELIEF AND NOTICE TERMS**

6 4.1 Monetary Payment. Defendants shall pay \$5,000,000 as directed by the Attorney
7 General and described below, including payments to patients who signed Defendants' pre-
8 service NDAs. and a payment to the Attorney General's Office for recovery of the Attorney
9 General's costs and attorneys' fees, future monitoring and enforcement of this Consent Decree,
10 future enforcement of the CPA and other consumer protection laws, or any lawful purpose in the
11 discharge of the Attorney General's duties at the sole discretion of the Attorney General. Any
12 remaining balance amount shall be made after payments due per sections 4.5, 4.6 below.

13 4.2 The payments in Paragraph 4.1 do not include any disgorgement identified and
14 paid to patients as a result of the audit of the Galderma rebate program described in Section V
15 below, nor does it include administrative costs Defendants may incur in complying with this
16 Consent Decree.

17 4.3 Notice Letter. Within thirty (30) days following entry of this Consent Decree,
18 Defendants shall send (at their expense through a third-party vendor) a notice letter to every
19 identified patient who signed one of the pre-service NDAs informing them that: (a) Defendants
20 release the patient from the terms restricting them from sharing accurate reviews; (b) Defendants
21 will not try to enforce those terms against the patient; and (c) Defendants will not publicize any
22 patient's health information or otherwise retaliate against a patient for posting an honest review.
23 The Parties estimate that Defendants will send this notice letter to approximately 21,000 patients
24 or former patients.

25 4.4 Restitution Letter. Within thirty (30) days following entry of this Consent Decree,
26 Defendants shall also send (at their expense through a third-party vendor) a second, separate

1 letter from the Attorney General to all patients who signed Defendants' pre-service NDAs,
2 enclosing a check payable to the patient as set forth in Paragraphs 4.5 and 4.6 below. The
3 Attorney General's Office will provide the text, letterhead, and envelopes to the vendor for
4 this mailing.

5 4.5 For all patients not previously refunded who signed one of Defendants' pre-
6 service NDAs after paying a \$100 consultation fee to schedule a consultation with Dr. Sajan, the
7 restitution letter described in Paragraph 4.4 shall include a payment of \$120, representing the
8 \$100 consultation fee and interest estimated at \$20. The Parties estimate that approximately
9 6,000 patients will receive approximately \$720,000 under this provision.

10 4.6 For patients who signed one of Defendants' pre-service NDAs, but who did not
11 pay a consultation fee, the letter described in Paragraph 4.4 shall enclose a payment of \$50 as
12 restitution or equitable disgorgement from Defendants' profits. The Parties estimate that 15,000
13 patients will receive approximately \$750,000 under this provision.

14 4.7 Defendants shall not send any other contemporaneous communication in any
15 form to patients about this Consent Decree, or the notice or restitution letters described above,
16 without the prior agreement of the Attorney General's Office.

17 4.8 Following entry of this Consent Decree, Defendants shall pay the remaining
18 balance of the \$5,000,000 in Paragraph 4.1 (minus the total amounts sent to patients under
19 Paragraphs 4.5 and 4.6) to the Office of the Attorney General, Consumer Protection Division,
20 Attention: Margaret Farmer, Litigation Support Manager, 800 Fifth Avenue, Suite 2000,
21 Seattle, WA 98104, unless otherwise directed. Defendants will make payments as follows:

22 (a) An initial payment of \$2,000,000 within thirty (30) days of entry of this
23 consent decree;

24 (b) A second payment of \$1,000,000 within ninety (90) days of entry of this
25 consent decree; and
26

1 (c) A third payment for the full amount of the balance remaining, including the
2 funds remitted for any uncashed checks sent to patients under Paragraphs 4.5
3 and 4.6, by the date set forth in Paragraph 4.9.

4 4.9 In the event that a consumer does not cash a check sent under the provisions of
5 Paragraphs 4.5 and 4.6, such funds shall revert to the Attorney General's Office to be used for
6 any lawful purpose at the sole discretion of the Attorney General. Defendants shall provide an
7 accounting of any uncashed checks to the Attorney General's Office, and remit those funds to
8 the Attorney General's Office within one hundred eighty (180) days of the date the checks
9 were mailed.

10 4.10 Absent extraordinary circumstances, Defendants' failure to timely make any
11 payment required by this Consent Decree shall be a material breach of this Consent Decree.

12 **V. AUDIT OF GALDERMA REBATE PROGRAM**

13 5.1 Defendants hired a forensic accounting firm (JS Held) in April 2024 to conduct a
14 full independent audit (Audit) of their administration of the Galderma Consumer Loyalty
15 Program to Defendants' patients. Such Audit is anticipated to be completed by August 15, 2024.
16 Upon entry of this Consent Decree, Defendants shall authorize JS Held to communicate directly
17 with the Attorney General's Office regarding all relevant aspects of the Audit, including
18 JS Held's assignment and qualifications, and the data and information Defendants provided to
19 JS Held. The Attorney General's Office will have thirty (30) days from that communication to
20 approve or reject the retention of JS Held for the purposes of the Audit, or to raise any issue with
21 the Audit, JS Held's assignment, or the scope of JS Held's work. In the event the Attorney
22 General's Office rejects the retention of JS Held, Defendants agree to retain a different forensic
23 accounting firm, subject to the Attorney General's Office's approval, to conduct the Audit.
24 Defendants further agree to fully cooperate with JS Held's requests (or those of any subsequently
25 retained firm) for information or documents related to the Audit.

26 5.2 If JS Held (or such other firm as may be retained in its place) identifies

1 6.2 If Defendants violate a condition of this Consent Decree they shall notify the
2 Attorney General’s Office immediately. If Defendants violate a condition of this Consent
3 Decree, the Attorney General may seek, and the Court may impose, additional conditions, civil
4 penalties of up to \$125,000 per violation pursuant to the CPA, Wash. Rev. Code § 19.86.140,
5 restitution, injunctive relief, attorneys’ fees, costs, and such other remedies as the Court may
6 deem appropriate. The Attorney General may present any such violations to the Court in an
7 evidentiary hearing in which Defendants shall have an opportunity to be heard, and the Court
8 may order such relief if it finds by a preponderance of the evidence that Defendants have violated
9 a material condition of this Consent Decree. In any successful action to enforce this Consent
10 Decree against Defendants, they shall bear the State’s reasonable costs, including reasonable
11 attorneys’ fees.

12 6.3 Jurisdiction is retained by this Court for the purpose of enabling any Party to this
13 Consent Decree to apply to the Court, to the extent permitted herein, for enforcement of
14 compliance with this Consent Decree, or otherwise address the provisions of this
15 Consent Decree.

16 6.4 Nothing in this Consent Decree shall grant any third-party beneficiary or other
17 rights to any person who is not a Party to this Consent Decree.

18 6.5 Nothing in this Consent Decree shall be construed to limit or bar any other
19 governmental entity or person from pursuing other claims or remedies against Defendants or any
20 other person, i.e., other than the Consumer Protection Division of the Attorney General’s Office
21 whose claims against Defendants are released under this Consent Decree as set forth in
22 Paragraphs 2.3 and 8.4.

23 6.6 Under no circumstances shall this Consent Decree, or the name of the State of
24 Washington, this Court, the Attorney General’s Office, the Consumer Protection Division, or
25 any of their employees or representatives, be used by Defendants or any of their successors,
26 assigns, transferees, owners, officers, managers, employees, agents, representatives, or any other

1 persons or entities acting in concert with Defendants, in connection with any selling, advertising,
2 or promotion of products or services, or as an endorsement or approval of Defendants' acts,
3 practices, or conduct of business.

4 6.7 This Consent Decree in no way limits the State from conducting any lawful
5 non-public investigation to monitor Defendants' compliance with this Consent Decree or to
6 investigate other alleged violations of the CPA or other consumer protection laws.

7 6.8 Until such time as Defendants have fully and completely satisfied all obligations
8 under Sections III, IV, and V of this Consent Decree, this Consent Decree shall be binding upon
9 Defendants' successors and assigns. Defendants and their successors and assigns shall notify the
10 Attorney General's Office at least thirty (30) days prior to any change-in-control of Defendants
11 that would change the identity of the corporate entity responsible for compliance obligations
12 arising under this Consent Decree; including, but not limited to, dissolution, assignment, sale,
13 merger, or other action that would result in the emergence of a successor corporation; the creation
14 or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to
15 this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or
16 address. Provided, however, that with respect to any proposed change in the corporation about
17 which Defendants and their successors and assigns learn less than thirty (30) days prior to the
18 date such action is to take place, Defendants and their successors and assigns shall notify the
19 Attorney General's Office as soon as is practicable after obtaining such knowledge.

20 6.9 Any notice or other communication required or permitted under this Consent
21 Decree shall be in writing and delivered to the following persons or any person subsequently
22 designated by the Parties:
23
24
25
26

1 For Plaintiff:

2 Office of the Attorney General
3 Consumer Protection Division
4 Attention: Matthew Geyman, AAG
5 800 Fifth Avenue, Suite 2000
6 Seattle, WA 98104

For Defendants:

Corr Cronin LLP
Attention: Steven Fogg and Blake Marks-Dias
1015 Second Avenue, Floor 10
Seattle, WA 98104

Alderwood Surgical Center, LLC
3500 188th Street SW, Suite 670
Lynnwood, WA 98037

6 **VII. COMPLIANCE AND RELATED TERMS**

7 7.1 Recordkeeping. Defendants shall retain all records relevant to their compliance
8 for a period of ten (10) years. Specifically, Defendants shall maintain records identifying all
9 personnel, including all third parties, who provide services in relation to any aspect of the
10 settlement and shall maintain all records necessary to demonstrate full compliance with the
11 provisions of the settlement. Defendants shall provide such records to the Attorney General's
12 Office within ten (10) business days of a request.

13 7.2 Training. Within one hundred twenty (120) days, to the extent such internal
14 policies and training programs do not already address the CPA, HIPAA, and/or the CRFA,
15 Defendants shall develop internal policies and implement a training program to train employees
16 and staff on truthful non-deceptive advertising and compliance with the CPA, HIPAA, and the
17 CRFA. Defendants shall provide records concerning such policies and trainings to the State
18 within ten (10) business days of a request.

19 7.3 Implementation as to Third Parties. Defendants shall inform any current vendors,
20 independent contractors, or other third parties working for Defendants involved in providing
21 online marketing, social media, or reputation management services to Defendants of the
22 principal terms of the settlement sufficient to ensure the third party's compliance with this
23 Consent Decree.

24 7.4 Defendants shall not retaliate against any current or former employee or patient
25 for cooperating with the State in its investigation and discovery in this case.
26

VIII. OTHER PROVISIONS

1
2 8.1 This Consent Decree represents the full and complete terms of the settlement
3 entered into by the Parties hereto.

4 8.2 The Parties agree and affirm that each of them has the authority to execute and
5 perform the terms of this Consent Decree.

6 8.3 This Consent Decree may be executed in counterparts, and a facsimile or .pdf
7 signature shall be deemed to be, and shall have the same force and effect as, an original signature.

8 8.4 This Consent Decree releases with prejudice all claims against Defendants
9 described in the State’s Complaint (Dkt. #1) and any claims against the Attorney General, the
10 Attorney General’s Office, or any of its employees arising out of or relating to the allegations in
11 Defendants’ Amended Answer (Dkt. #30). As part of its release of claims, Defendants agree to
12 withdraw the Public Records Act request submitted by Defendants’ in-house counsel Erin
13 O’Leary dated March 26, 2024.

14 8.5 The Consent Decree releases Defendants (and their respective agents, owners,
15 employees, officers, related business entities, business affiliates, lawyers and accountants), with
16 respect to all claims or counterclaims that were or could have been brought by the State related
17 to any acts or omissions by Defendants alleged in the Complaint that predate entry of this
18 Consent Decree, including any claim under common law or under any federal, state, or local
19 statute or ordinance.

20 8.6 The parties acknowledge that the Court issued a ruling regarding violations of the
21 Consumer Review Fairness Act as to pre-service NDAs.

22 8.7 The State acknowledges that the Defendants do not agree that any violation as
23 alleged by the State occurred, any certainly not intentionally. Moreover, this settlement
24 agreement is not intended, and shall not be construed as, any admission of liability by
25 Defendants, as such liability is in fact and law denied.
26

IX. DISMISSAL OF ACTION

9.1 Upon entry of this Consent Decree, and with continuing jurisdiction for enforcement as provided above, this action, and any and all claims asserted against the Defendants herein, are dismissed with prejudice and without costs or fees to any Party other than as expressly provided in this Consent Decree.

The Clerk of the Court is ordered to immediately enter the foregoing Judgment and Consent Decree.

DONE IN OPEN COURT this ___ day of July, 2024.

THE HONORABLE RICARDO S. MARTINEZ

Presented by:

ROBERT W. FERGUSON
Attorney General

/s Matthew Geyman
MATTHEW GEYMAN, WSBA #17544
ZORBA LESLIE, WSBA #58523
ALEXANDRA KORY, WSBA #49889
BRET FINKELSTEIN, WSBA #48845
BEN BRYSAZ, WSBA #54683
RABI LAHIRI, WSBA #44214
Assistant Attorneys General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Attorneys for Plaintiff State of Washington

Notice of Presentment Waived and
Approved as to Form by:

CORR CRONIN LLP

/s Blake Marks-Dias
STEVEN W. FOGG, WSBA #23528
BLAKE MARKS-DIAS, WSBA #28169
1015 Second Avenue, Floor 10
Seattle, WA 98104
Attorneys for Defendants Alderwood Surgical
Center, LLC, Northwest Nasal Sinus Center
P.S., and Javad A. Sajan, M.D.

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing to be served on all counsel of record via the ECF system.

I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 1st day of July, 2024, at Seattle, Washington.

s/ Matthew Geyman
MATTHEW GEYMAN
Assistant Attorney General

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