

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

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R. ALEXANDER ACOSTA, Secretary of Labor, :  
United States Department of Labor, :

Plaintiff, :

v. :

SAMUEL GINSBERG, ROY G. GERONEMUS, :  
and LASER AND SKIN SURGERY CENTER :  
OF NEW YORK EMPLOYEE STOCK :  
OWNERSHIP PLAN, :

Defendants. :

Civil Action No. 15 Civ. 00985 (AJN)

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**[PROPOSED] CONSENT ORDER AND JUDGMENT**

Plaintiff R. Alexander Acosta, Secretary of Labor, United States Department of Labor (the "Secretary"), and Defendants Samuel Ginsberg ("Ginsberg"), Roy G. Geronemus ("Geronemus" or "Dr. Geronemus"), and Laser and Skin Surgery Center of New York Employee Stock Ownership Plan (the "ESOP") (collectively referred to as the "Parties") have agreed to settle the matters in controversy in this civil action and agreed to the entry of this Consent Order and Judgment in accordance herein:

A. The Secretary filed a Complaint against Defendants on February 11, 2015, pursuant to Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., as amended, wherein the Secretary alleged that Ginsberg and Geronemus violated ERISA while acting as fiduciary to the ESOP, which is an employee benefit plan subject to the ERISA. The Complaint sought to enjoin acts and practices which violate the provisions of

ERISA, to obtain appropriate relief for alleged breaches of fiduciary duty under ERISA § 409, 29 U.S.C. § 1109, and to obtain other appropriate relief to redress violations and enforce the provisions the provisions of ERISA.

B. On May 1, 2015, Geronemus filed his Answer responding to the allegations in the Secretary's Complaint. On May 18, 2015, Ginsberg filed his Answer responding to the allegations in the Secretary's Complaint.

C. Defendants admit that this Court has subject matter jurisdiction over this action pursuant to ERISA section 502(e)(1), 29 U.S.C. § 1132(e)(1), that venue of this action lies in the Southern District of New York pursuant to ERISA section 502(e)(2), 29 U.S.C. § 1132(e)(2), and that this Court has personal jurisdiction over them for all purposes relevant to this matter including the entry of this Consent Order and Judgment.

D. Defendants neither admit nor deny the allegations in the Secretary's complaint, and this agreement to settle the case is not to be deemed or considered an admission or denial of wrongdoing by the Defendants.

E. Geronemus represents that, on December 31, 2015, he executed a waiver releasing and disclaiming any right to be paid any portion of the approximately \$5.43 million amount that had been reflected as a "loan payable to shareholder" on the financial statements of Dr. R.G. Geronemus M.D., P.C. (the "PC") in the years 2008 to 2014 ("Loan"), and that, by virtue of said waiver has permanently and irrevocably waived his right to be paid any portion of the Loan. Plaintiff expressly relies on these representations in agreeing to the terms of this Consent Order and Judgment.

F. Geronemus represents that the chart attached as Exhibit A to his Amended Response to the Secretary of Labor's First Interrogatories dated May 31, 2017, a copy of which

was appended to the July 19, 2017 letter from counsel for the Secretary to counsel for the Defendants, is an accurate representation of the actual compensation he received from the PC and the Laser and Skin Surgery Center of New York Management Corporation (the “Management Company”) between 2009 and 2016. Plaintiff expressly relies on these representations in agreeing to the terms of this Consent Order and Judgment.

G. Geronemus represents that neither he nor any of his immediate family members is or was a participant in the ESOP. Plaintiff expressly relies on these representations in agreeing to the terms of this Consent Order and Judgment.

H. The Parties have agreed to resolve all matters in controversy between them in this matter, including the imposition by the Secretary of any penalty pursuant to ERISA section 502(l), 29 U.S.C. § 1132(l), and the Parties do now consent to entry of a Consent Order and Judgment by this Court.

**IT IS THEREFORE ORDERED that:**

1. The Court has jurisdiction over all parties to this Agreed Order and subject matter of this action and is empowered to provide the relief herein.
2. Geronemus shall make a one-time cash payment of \$5,000,000 to the ESOP (“ESOP Payment”) within 120 days after entry of this Consent Order and Judgment.
3. Geronemus shall provide the Secretary with proof of the ESOP Payment within 10 days of such payment in a form satisfactory to the Secretary as determined in the Secretary’s sole discretion. Such proof of payment shall be submitted to:

Regional Director  
U.S. Department of Labor  
Employee Benefits Security Administration  
33 Whitehall Street, Suite 1200  
New York, NY 10004

4. No portion of the ESOP Payment shall be allocated to Geronemus or any of his immediate family members.

5. The Secretary hereby assesses a penalty under ERISA section 502(l), 29 U.S.C. § 1132(l), of 20% of each applicable recovery amount as defined in ERISA section 502(l)(2) (the "§ 502(l) Penalty"). However, under the circumstances of this case, the Secretary does and will accept, as full satisfaction of the assessed penalty, payment of 10% of the applicable recovery amount. Within 120 days after entry of this Consent Order and Judgment, Geronemus shall pay to the Secretary \$500,000, which represents 10% of the applicable recovery amount specified in Paragraph 2 hereto.

6. The section 502(l) Penalty payment described herein shall be paid by check referencing EBSA case number 30-104045(48), sent via regular mail or overnight service to the following address:

U.S. Department of Labor  
ERISA Civil Penalty  
P.O. Box 71360  
Philadelphia, PA 19176-1360

7. Geronemus hereby waives the notice of assessment and service requirement of 29 C.F.R. 2570.83 with respect to ERISA § 502(l), 29 U.S.C. § 1132(l), and waives all legal rights to appeal, contest, or seek a further reduction of those assessments or payments.

8. Geronemus hereby waives any and all rights to collection of any accrued but unpaid compensation under his Employment Agreement dated February 11, 2009, attached hereto as Exhibit A, or otherwise from the PC or the Management Company from February 11, 2009 up to the date of entry of this Consent Order and Judgment.

9. Prospectively, Geronemus shall collect no more than \$663,439 (the “Compensation Limit”) in total compensation per calendar year from the PC and the Management Company combined. The Compensation Limit shall include all payments due under his Employment Agreement, and any other things of value, including but not limited to any additional salary payments, management fees, automobile allowances, or other expenses, except that nothing in this paragraph or Agreement shall limit the rights of Geronemus to receive the benefits and payments set forth in paragraphs 5 (other than paragraph 5(f)(i)) and 13 of his Employment Agreement, including but not limited to vacation, medical, retirement, and insurance benefits, and reimbursement of business expenses. The Compensation Limit shall also have no application to compensation received by Geronemus from outside sources for matters other than patient care, such as director fees or business consulting fees, including in connection with the matters listed in paragraph 2(g) of his Employment Agreement. The Compensation Limit applies to any indirect payments to Geronemus that are paid directly by the PC or Management Company to others with the intent that such amounts be remitted to Geronemus. This paragraph and the Compensation Limit it imposes shall terminate immediately in the event that the ESOP no longer owns shares of the Management Company.

10. Geronemus is hereby permanently enjoined and restrained from serving as a fiduciary of, or service provider to, any ERISA-covered employee benefit plan. Specifically, Geronemus is hereby enjoined and restrained from directly or indirectly, individually or through any entity or any other person: (a) serving or acting, for compensation or otherwise, as a fiduciary, service provider, administrator, officer, trustee, custodian, counsel, agent, employee or representative in any capacity to any employee benefit plan covered by ERISA; (b) serving or acting, for compensation or otherwise, as a consultant or adviser to any employee benefit plan

covered by ERISA or to any entity whose activities include the provision of goods or services to any employee benefit plan covered by ERISA; (c) serving or acting, for compensation or otherwise, in any capacity that involves decision making authority or custody or control of the monies, funds, assets or property of any employee benefit plan covered by ERISA; and (d) selling, promoting, marketing, or providing any product or service to, making any recommendation to, or bringing any product, service or investment to the attention of, any employee benefit plan covered by ERISA or to any person acting on behalf of such plan, or facilitating or encouraging any expenditure or investment by any employee benefit plan covered by ERISA. Notwithstanding the above, nothing in this Agreement shall be construed to preclude Geronemus from managing the Management Company as a director and/or officer of the Management Company.

11. Ginsberg is hereby permanently enjoined and restrained from serving as a fiduciary of, or service provider to, any ERISA-covered employee benefit plan. Specifically, Ginsberg is hereby enjoined and restrained from directly or indirectly, individually or through any entity or any other person: (a) serving or acting, for compensation or otherwise, as a fiduciary, service provider, administrator, officer, trustee, custodian, counsel, agent, employee or representative in any capacity to any employee benefit plan covered by ERISA; (b) serving or acting, for compensation or otherwise, as a consultant or adviser to any employee benefit plan covered by ERISA or to any entity whose activities include the provision of goods or services to any employee benefit plan covered by ERISA; (c) serving or acting, for compensation or otherwise, in any capacity that involves decision making authority or custody or control of the monies, funds, assets or property of any employee benefit plan covered by ERISA; and (d) selling, promoting, marketing, or providing any product or service to, making any

recommendation to, or bringing any product, service or investment to the attention of, any employee benefit plan covered by ERISA or to any person acting on behalf of such plan, or facilitating or encouraging any expenditure or investment by any employee benefit plan covered by ERISA.

12. Upon completion and receipt of the payments outlined herein, the Secretary expressly waives, releases, and forever discharges all claims he has or could have asserted against Defendants or their affiliated entities (including but not limited to the PC and Management Company), or their successors under ERISA, and all such claims that the Secretary has or could have asserted against Defendants in this lawsuit are dismissed with prejudice. This is a complete resolution of any and all issues relating to ERISA known to the Department of Labor at this time. Notwithstanding the foregoing, nothing in this Consent Order and Judgment shall be deemed to waive any claim relating to the obligations set forth in this Consent Order and Judgment. The Secretary expressly preserves any claims that he may have against any other person or entity other than Defendants or their affiliated entities or their successors. The Secretary expressly preserves all claims against Defendants and their affiliated entities or their successors relating to facts unknown to the Department of Labor at this time. For the avoidance of doubt, the Department of Labor shall be deemed at a minimum to know all facts disclosed or otherwise discovered or obtained during the course of any previous investigation or this lawsuit.

13. Defendants each expressly waive, release, and forever discharge any and all claims that they have or may have against the Secretary, or any of his agents, attorneys, employees, or representatives, relating to, arising out of, or in connection with the investigation and litigation of the claims in the complaint filed in this action and the settlement relating thereto. In particular, Defendants each expressly waive any and all claims under the Equal

Access to Justice Act (Pub. Law No. 96-481 [1980], reenacted at Pub. Law No. 99-80 [1985] and amended at Pub. Law No. 104-121 [1996]), which they have or may have against the Secretary or any of his agents, attorneys, employees, or representatives, relating to, arising out of, or in connection with the investigation or litigation of the claims in the complaint filed in this action and the settlement relating thereto.

14. Defendants shall not recover from the Secretary any attorneys' fees or costs associated with the litigation and settlement of this case. The Secretary shall not recover from Defendants any attorneys' fees or costs associated with the litigation and settlement of this case.

15. The parties agree that this document may be executed via counterpart signatures and that a signature via facsimile or PDF and electronic mail will be deemed an original signature and will be binding upon the party transmitting the signature by facsimile or PDF and electronic mail.

16. The Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of enforcing and/or interpreting this Consent Order and Judgment.

17. Nothing in this Consent Order and Judgment is binding on any government agency other than the United States Department of Labor.

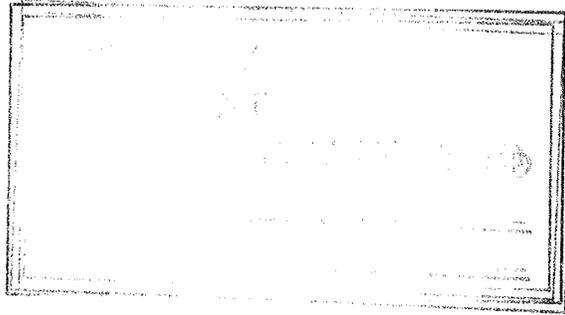
18. If the Court does not enter this Consent Order and Judgment, this agreement will become void and the parties may proceed with litigation of the action as if they had never executed this document.

19. The Court finds that there is no just reason to delay the entry of this Consent Order and Judgment and, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, expressly directs the entry thereof as a Final Order and Judgment.

SO ORDERED this 24<sup>th</sup> day of Jy, 2017.



HON. ALISON J. NATHAN  
UNITED STATES DISTRICT JUDGE





**FOR DEFENDANT SAMUEL GINSBERG:**

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/s/  
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Dated: July 21, 2017

**FOR DEFENDANT ROY G. GERONEMUS AND LASER AND SKIN SURGERY  
CENTER OF NEW YORK EMPLOYEE STOCK OWNERSHIP PLAN**

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Dated: July 21, 2017