

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

BLUE CROSS AND BLUE SHIELD)	
OF KANSAS CITY,)	
)	
Plaintiff,)	
)	
v.)	Cause No.: 4:21-cv-00525-FJG
)	
GS LABS LLC,)	
)	
Defendant.)	

MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW, Blue Cross and Blue Shield of Kansas City (“Blue KC”), by and through its undersigned counsel, and for its Motion for Partial Summary Judgment, states as follows:

1. GS Labs, LLC (“GSL”) asserted a Counterclaim against Blue KC seeking various forms of relief “relating to COVID-19 testing of Blue KC’s members totaling over \$9.7 million.” *See* Doc. No. 4, ¶ 6.

2. Although GSL asserts eight individual counts, GSL’s Counterclaim depends on its contention that it administered COVID-19 diagnostic testing services covered by the Families First Coronavirus Response Act and that GSL is entitled to reimbursement from Blue KC for these purported testing services. *See generally* Doc. No. 4, Counterclaim.

3. Despite identifying “patient consent records and test results” in its Rule 26(a) disclosures as materials it will use to support its case and Blue KC requesting these same materials through its discovery requests, GSL has only produced a small fraction of the records (approximately 13%) relating to the purported testing at issue.

4. The summary claim data GSL has produced regularly includes a diagnostic code that is inconsistent with the corresponding patient records.

5. In light of its failure to produce underlying patient records, GSL is unable to demonstrate that a large majority of its claims at issue were (1) diagnostic in nature; and (2) actually administered and produced test results.

6. Under these circumstances, GSL is unable to make a showing “sufficient to establish the existence of an element essential to its [Counterclaim], and on which [it] will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

7. Blue KC is entitled to partial summary judgment on all testing claims which GSL is unable to substantiate with admissible evidence.

WHEREFORE, Blue KC respectfully requests that this Court GRANT Blue KC’s Motion for Partial Summary Judgment on GSL’s Counterclaim, enter judgment for Blue KC and against GSL with to respect to all claims not identified on Blue KC’s Exhibit A27.3, and award any and all further relief that this Court deems is just and warranted under the circumstances.

Respectfully submitted,

CAPE, SOKOL, GOODMAN & SARACHAN, P.C.

By: /s/ Aaron E. Schwartz
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served on all parties of record by operation of the Court's electronic case filing and management system this 10th day of March, 2022:

/s/ Aaron E. Schwartz _____