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

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

BLUE KC'S SUGGESTIONS IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT

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Each of GS Labs, LLC's counterclaims depend on its contention that it administered FFRCA-covered COVID-19 diagnostic testing services to Blue KC members. However, Blue KC estimates that GS Labs, LLC ("GSL") has produced corresponding consent and intake forms and test results for ***only approximately 13%*** of the claims identified on GSL's most recent claim summary (GS LABS 00000002-B). Exhibit A & Exhibit A27. Based on GSL's document production to date, however, GSL is unable to demonstrate that a large majority of its claims were (1) diagnostic in nature and/or (2) were actually administered and produced test results. GSL's inability or unwillingness to produce core documents critical to its Counterclaim requires the entry of partial summary judgment on those claims for reimbursement that GSL cannot substantiate with admissible evidence.

I. UNCONTROVERTED MATERIAL FACTS

1. GSL's Counterclaim arises from its contention that it "submitted claims relating to COVID-19 testing of Blue KC's members totaling over $9.7 million" Doc. No. 4, ¶ 6.

2. GSL rests its Counterclaim on the Family First Coronavirus Response Act (FFRCA) and the CARES Act. *See* Doc. No. 4, Counterclaim, ¶¶ 6, 39-41, 49, 51, 54-56, 71-72, 75-76, 80, 90-93, 101-107, 111-119, 121, 126, 131, 137, 142, 146, 148, 154, 165, 173, 179, 187, & 190.

3. GSL has not specifically identified in its pleading the claims for which it seeks reimbursement. *See generally* Doc. No. 4; *see also* Doc. No. 24 (arguing claim-specific detail improperly omitted from pleading).

4. On September 15, 2021, GSL served its Rule 26(a) automatic disclosures. Exhibit A1.

5. In its Rule 26(a) disclosures, GSL identified "Blue KC Member Patient Records including consent document and test results" as records it may use to support its defenses or claims. Exhibit A1.

6. GS Labs further stated in its Rule 26(a) disclosures that it would "produce the documents [described in its Rule 26(a) disclosures] within seven (7) days of the Court issuing a Protective Order." Exhibit A1.

7. On August 30, 2021, Blue KC requested that GSL produce "all medical records, certifications, billing records, records of collections or write-offs, consent forms, physician or nurses orders, or other records or data collected or generated as a result of any Blue KC member's receipt of services from GSL." Exhibit A2.

8. On September 30, 2021, GSL responded to this discovery by stating that "once the parties have an executed protective order, GS Labs will provide a rolling production of the thousands of medical records at issue." Exhibit A3.

9. The Court entered a stipulated protective order on October 14, 2021. Doc. No. 56.

10. GSL has not produced intake and consent forms and test results for the large majority of the testing for which it seeks relief. *See* Exhibit A, A27

11. GSL has also not agreed to complete its production of the records in question before the close of fact discovery on May 15, 2022. Exhibit A, paragraph 22.

12. On or about December 29, 2021, GSL produced a document labeled GS LABS 00000002-A. GS LABS 00000002-A is marked as Exhibit A4.

13. Exhibit A4 contains approximately 13,632 unique claims and $10,128,722 in charges for services purportedly administered between November 28, 2020, and November 8, 2021. Exhibit A4

14. Exhibit A4 includes a "primary diagnosis code" for each of the claims and over 99% of the codes supplied are Z20.822 or Z20.828.[1] Exhibit A4

15. On or about February 4, 2022, GSL produced GS LABS 00000002-B. GS LABS 00000002-B is marked as Exhibit A5.

16. Specifically, Exhibit A5 contains approximately 20,473 unique claims and $13,056,082 in charges for services purportedly administered between November 28, 2020, and January 10, 2022. Exhibit A5.

17. Unlike GS LABS 00000002-A, GS LABS 00000002-B does not include a column identifying primary diagnosis code. *Compare* Exhibit A4 *with* Exhibit A5.

18. GSL has also produced reimbursement claim forms ("Form 1500s") that include claim information such as patient name, date of purported service, and diagnostic code. Examples are attached and marked as Exhibits A6, A7, A8, A9, A10, A11.

19. Blue KC estimates that GSL has produced corresponding consent and intake forms and test results for ***only approximately 13%*** of the claims identified on GSL's most recent claim summary (GS LABS 00000002-B). Exhibit A & Exhibit A27.

20. With respect to the limited number of consent and intake forms produced by GSL in this litigation, those records contain material information inconsistent with the claim forms and summary claim data GSL produced. *See infra* ¶¶ 21-28.

[1] Blue KC requests the Court take judicial notice of the translation of these codes. These codes were implemented by the Centers for Disease Control and Prevention's National Center for Health Statistics. *See generally*, https://www.cdc.gov/nchs/data/icd/Announcement-New-ICD-code-for-coronavirus-19-508.pdf and https://www.cdc.gov/nchs/data/icd/COVID-19-guidelines-final.pdf (last visited March 7, 2022).

21. Blue KC's retained expert, R. Garrison Harvey, estimated that 47% of patient intake and consent forms produced by GSL contains diagnostic information inconsistent with the corresponding Form 1500's and the summary billing data. Exhibit A12, pg. 45-46.

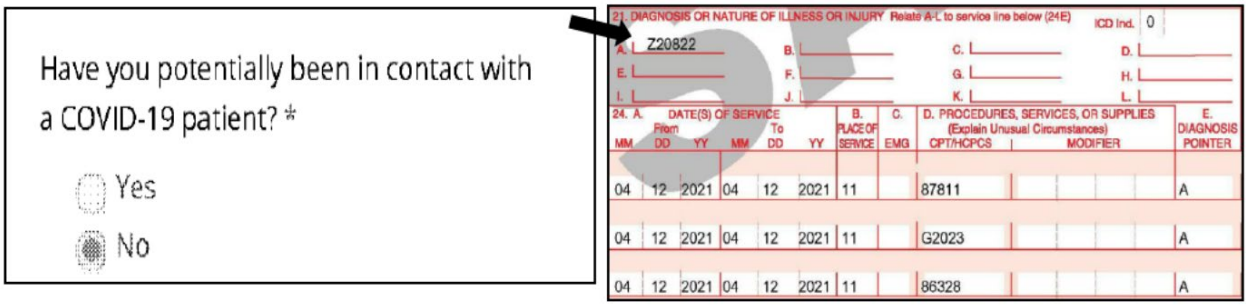
22. By way of example only, the following table summarizes a small subset of the documents produced:

Patient Initials	**Diagnostic Code Used by GSL on the GS LABS 00000002-A**	**Diagnostic Code Used by GSL on Form 1500**	**Translation of Diagnostic Code Used by GSL on Form 1500 and GS LABS 00000002-A**	**Did patient report contact with a COVID-19 patient on the consent and intake form?**
S.C.	Z20.822	Z20.822	Contact with and (suspected) exposure to COVID-19	***No.***
R.F.	Z20.822	Z20.822	Contact with and (suspected) exposure to COVID-19	***No.***
E.H.	Z20.822	Z20.822	Contact with and (suspected) exposure to COVID-19	***No.***
A.H.	Z20.828	Z20.828	Contact with and (suspected) exposure to other viral communicable diseases.	***No.***
Q.O.	Z20.822	Z20.822	Contact with and (suspected) exposure to COVID-19	***No.***
T.S.	Z20.822	Z20.822	Contact with and (suspected) exposure to COVID-19	***No.***

Compare Summary Claim Data Exhibit A4, Form 1500 Exhibits A6, A7, A8, A9, A10, A11 *with* Intake and Consent Form Exhibits A13, A14, A15, A16, A17, A18.

23. For example, Patient S.C.'s consent and intake form and the associated Form 1500 contain the following:[2]

[2] An arrow highlights the diagnostic code. That arrow does not appear in the original.



24. Similarly, the diagnostic code on the summary claims data is inconsistent with S.C.'s medical records. *See* Exhibit A4, line 34888-34890.

25. Beyond these discrepancies, GSL has also produced Form 1500s for patients that are not identified on Exhibit A4.

26. As an example, GSL produced the following Form 1500s in this litigation which do not appear on Exhibit A4.

a. GS LABS 00074526. Exhibit A19.

b. GS LABS 00074507. Exhibit A20.

c. GS LABS 00074493. Exhibit A21.

27. The intake and consent forms associated with each of these Form 1500s was produced and bates labeled:

a. GS LABS 00074522. Exhibit A22.

b. GS LABS 00074502. Exhibit A23.

c. GS LABS 00074489. Exhibit A24.

28. Eric Rubenstein discusses the significance of false or inconsistent information in claim information in his report dated March 1, 2022. Exhibit A25, pg. 7 & 27-28.

29. Several witnesses with firsthand knowledge of GSL's operations reported frequent serious problems with the administration of COVID-19 tests and GSL's failure to deliver testing

results to patients. *See generally* declaration of KT Thiessen (Exhibit B) and Stacey Johnson-Sweany (Exhibit C).

30. Mr. Thiessen, a former assistant site manager at GSL's Lee's Summit facility, reported:

> I observed many instances - at least weekly and potentially more - where one person's results were mixed up with another person's results. On many occasions one person's results were mixed up and placed in the wrong person's file. Other times, incorrect results were accidently marked on the records. Customers called frequently about results not being sent on all three types of tests or the wrong person's results being delivered.

Exhibit B.

31. Ms. Johnson-Sweany a former site manager at GSL's Lee's Summit facility reported:

> I observed many serious problems with the administration of COVID-19 tests and delivery of results at GS Labs. As an example, on many occasions one person's results were mixed up and placed in the wrong person's file. Other times, incorrect results were accidently marked on the records. Customers called frequently about results not being sent on all three types of tests or the or the wrong person's results being delivered . . . I observed problems with testing like those described above approximately 10 times per day and believe they may have impacted many more tests.

Exhibit C.

32. An example of a GSL test result is included as Exhibit A26.

II. BACKGROUND ON THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Although the Families First Coronavirus Response Act requires that insurers and other group health plans generally provide coverage for certain COVID-19 testing, it does not require insurers pay claims simply because a bill for a purported testing was submitted. Instead, the testing must have been (1) actually performed and (2) be diagnostic. Nothing in the FFRCA prevents plans and insures from combatting fraud and abusive claims. *See* Department Guidance, FAQ 44 Q2.[3] ("[t]o the extent not

[3] https://www.cms.gov/files/document/faqs-part-44.pdf

inconsistent with the FFCRA's prohibition on medical management, plans and issuers may continue to employ programs designed to detect and address fraud and abuse.")

Section 6001(a) of the FFCRA provides:

> A group health plan and a health insurance issuer offering group or individual health insurance coverage . . . shall provide coverage, . . . for the following items and services furnished during any portion of the emergency period . . . .:
>
> (1) In vitro diagnostic products (as defined in section 809.3(a) of title 21, Code of Federal Regulations) for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19 that are approved, cleared, or authorized under section 510(k), 513, 515 or 564 of the Federal Food, Drug, and Cosmetic Act, and the administration of such in vitro diagnostic products.
>
> (2) Items and services furnished to an individual during health care provider office visits (which term in this paragraph includes in-person visits and telehealth visits), urgent care center visits, and emergency room visits that result in an order for or administration of an in vitro diagnostic product described in paragraph (1), but only to the extent such items and services relate to the furnishing or administration of such product or to the evaluation of such individual for purposes of determining the need of such individual for such product.

Departmental guidance clarifies that tests administered on patients without symptoms of COVID-19 or exposure to another person with COVID-19 are not diagnostic and therefore, need not be reimbursed:

> **Q2. May plans and issuers distinguish between COVID-19 diagnostic testing of asymptomatic people that must be covered, and testing for general workplace health and safety, for public health surveillance, or for other purposes not primarily intended for individualized diagnosis or treatment of COVID-19?**
>
> Yes. Plans and issuers must provide coverage without imposing any cost-sharing requirements (including deductibles, copayments, and coinsurance), prior authorization, or other medical management requirements for COVID-19 diagnostic testing of asymptomatic individuals when the purpose of the testing is for individualized diagnosis or treatment of COVID-19. However, plans and issuers are not required to provide coverage of testing such as for public health surveillance or employment purposes.

https://www.cms.gov/files/document/faqs-part-44.pdf.

> **Q5. Is COVID-19 testing for surveillance or employment purposes required to be covered under section 6001 of the FFCRA?**

> No. Section 6001 of the FFCRA requires coverage of items and services only for diagnostic purposes as outlined in this guidance. Clinical decisions about testing are made by the individual's attending health care provider and may include testing of individuals with signs or symptoms compatible with COVID-19, as well as asymptomatic individuals with known or suspected recent exposure to SARS-CoV-2, that is determined to be medically appropriate by the individual's health care provider, consulting CDC guidelines as appropriate. However, testing conducted to screen for general workplace health and safety (such as employee "return to work" programs), for public health surveillance for SARS-CoV-2, or for any other purpose not primarily intended for individualized diagnosis or treatment of COVID-19 or another health condition is beyond the scope of section 6001 of the FFCRA.

https://www.cms.gov/files/document/FFCRA-Part-43-FAQs.pdf.

The FDA explains the difference between a "diagnostic test" and a "screening test."

> Diagnostic testing: Diagnostic testing identifies current infection at the individual level and is performed when a person has signs or symptoms of infection, or when a person is asymptomatic but has recent known or suspected exposure. Most tests the FDA has authorized are for diagnosing SARS-CoV-2 in people suspected of COVID-19 by their health care provider, whether or not they are symptomatic. Some diagnostic tests are authorized for use only in symptomatic individuals.
>
> Screening testing: Screening testing looks for individual infections in a group even if there is no reason to suspect those individuals are infected. Screening involves testing asymptomatic individuals who do not have known or suspected exposure to COVID-19 in order to make individual decisions based on the test results. The FDA has authorized some tests for screening.

See https://www.fda.gov/media/146666/download

III. STANDARD FOR SUMMARY JUDGMENT AGAINST PARTY WITH BURDEN OF PRODUCTION

Summary judgment is proper if the evidence, when viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact in dispute and that the defendant is entitled to entry of judgment as a matter of law. Fed. R. Civ. P. 56. Rule 56(c) requires "the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986).

"Where the nonmovant bears the ultimate burden of proof on a particular claim at trial . . . the movant may [] demonstrate that the nonmovant's evidence is insufficient to establish an essential element of his or her claim . . . ." *Roath v. Chrysler Corp.*, 2000 WL 35527086, at *1 (W.D. Mo. Feb. 2, 2000). The burden on the party moving for summary judgment "is only to demonstrate . . . that the record does not disclose a genuine dispute on a material fact." *City of Mt. Pleasant, Iowa v. Associated Elec. Co–Op.,* 838 F.2d 268, 273 (8th Cir.1988). "This burden is met when the moving party identifies portions of the record demonstrating an absence of a genuine issue of material fact." *Budd v. ADT Sec. Sys.*, 1996 WL 932707, at *4 (W.D. Mo. Mar. 12, 1996), aff'd sub nom. *Budd v. ADT Sec. Sys., Inc.*, 103 F.3d 699 (8th Cir. 1996). In other words, if the dispositive issue is one on which the nonmoving party will bear the burden of proof at trial, the moving party may satisfy its burden by pointing out that the evidence in the record is insufficient with respect to an essential element of the nonmoving party's claim. *See Celotex Corp.*, 477 U.S. at 325.

If the moving party meets the requirement of demonstrating insufficient evidence, the burden shifts to the nonmoving party who "must set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248-49 (1986). The trial judge then determines whether a trial is needed. *Id.* at 250 ("[W]hether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.") The nonmovant may not rest upon the pleadings but must identify specific facts that establish a genuine issue for resolution. *See, e.g., id.* at 248*; Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) ("Rule 56 'mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'") (quoting *Celotex Corp.*, 477 U.S. at 322). A claimant cannot "sit back and simply poke holes" in the motion. *Fitzpatrick v. Catholic Bishop of Chicago*, 916 F.2d 1254, 1256 (7th Cir. 1990);

Buford v. Tremayne, 747 F.2d 445, 447 (8th Cir. 1984). Rather, the claimant must come forward with admissible evidence of specific facts that "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson*, 477 U.S. at 249-50 (citations omitted). "[A] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Celotex Corp.*, 477 U.S. at 323.

IV. ANALYSIS

To date, GSL has been unwilling or unable to produce documents supporting its Counterclaim seeking over $9.7 million for diagnostic testing. Each of its legal theories, to the extent these claims were to survive the pending motion to dismiss (Doc. No. 23), are dependent on FFCRA-covered testing actually being administered. Doc. No. 4, Counterclaim, ¶¶ 39-41, 49, 51, 54-56, 71-72, 75-76, 80, 90-93, 101-107, 111-119, 121, 126, 131, 137, 142, 146, 148, 154, 165, 173, 179, 187, & 190.

Nevertheless, for the large majority of the claims at issue, GSL has not produced core records related to these purported testing services. To date, GSL is unable or unwilling to produce records required to be maintained under state law. *See* Mo. Rev. Stat. 334.097 (requiring the maintenance of patient records showing "the current status of the patient, including reason for the visit," "observation of pertinent physical findings," "assessment and clinical impression of diagnosis," "[p]lan for care and treatment, or additional consultations or diagnostic testing . . . ." and "any informed consent for office procedures"); KAR 100-24-1 (requiring the maintenance of adequate patient documentation including "significant information concerning the patient's condition," "reflect what examinations, vital signs, and tests were obtained, performed, or ordered and the findings and results of each," and "reflect the initial diagnosis and the patients initial reason for seeking the licensee's service"). These records were identified as part of GSL's Rule 26(a) disclosures, and have been requested by Blue KC through a Rule

34 Request. Despite these requests and GSL's agreement to produce the records, GSL has only produced a fraction of the records in question.

GSL summary claim data is deficient because it fails to include diagnostic data (Exhibit A5) and is contradicted by patient intake and consent forms (Exhibit A4). Neither document is authenticated or admissible evidence. Further, summary charts are inadmissible where the underlying records have not been made available for inspection or produced. *See* F.R.E. 1006; *White Industries, Inc. v. Cessna Aircraft Co.*, 611 F. Supp. 1049, 1069-70 (W.D. Mo. 1985) (noting that for summary evidence to be admissible under F.R.E. 1006 it: (1) "must be of 'voluminous writings, recordings or photographs which cannot be conveniently examined in court'" (2) "the proponent of the evidence must establish that the 'underlying writing, recordings or photographs' are themselves admissible in evidence," (3) "the originals or duplicates of the underlying materials must be made available for examination or copying by the other parties, at a reasonable time and place," and (4) "a summary must be an *accurate* summarization of the underlying materials involved.") (emphasis in original) (citations omitted). Here, GSL has not produced the records underlying its summaries.

As explained in the Report of Gary Harvey, the summary claim data is contradicted by apparent statements of the patients in the intake and consent forms. Exhibit 12, ¶ 108-113; s*ee also* Exhibit 25 pages 27-28, 38 (discussing significance of inconsistent information).

Further, Blue KC has produced evidence that certain testing results were not reliably delivered to patients. *See* Exhibit B, C. These declarations cast further doubt on the summary data for which GSL has failed to produce the underlying documents. HHS-OIG Senior Special Agent Eric Rubenstein (retired) opined that the failure to produce the patient records was indicative of the testing not being administered as billed, the records being maintained so poorly that GSL's results were not reliable, or GSL's effort to hide the records from additional scrutiny. *See* Exhibit A25 p. 28.

In order for a COVID-19 testing provider to demonstrate it is entitled to reimbursement under the FFCRA, it must, at a bare minimum, produce medical records or other admissible evidence which would demonstrate that it is entitled to reimbursement under FFCRA. For at least an estimated eighty-seven percent of the claims identified in its most recent summary claim data, GSL has failed to make this preliminary and necessary showing. GSL's lack of evidence when considered in light of other circumstances described in this motion is sufficient to shift the burden to GSL to set forth specific facts showing that there is a genuine issue for trial on the claims that remain unsubstantiated. *Anderson,* 477 U.S. at 248. If GSL cannot present evidence to substantiate its Counterclaim, partial summary judgment should be granted.[4]

GSL will not be able to demonstrate that it administered over $9.7 million of FFCRA-covered COVID-19 testing to Blue KC's members. GSL's failure to produce necessary records to substantiate its claims demonstrates that it is unable to meet its burden to support its counterclaims for all claims not included on Exhibit A27.3. Blue KC has made a showing sufficient to shift the burden to GSL to produce competent, admissible evidence substantiating the large majority of its claims. Based on the lack of production to date, it appears that GSL is unable to satisfy its burden.

CONCLUSION

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.

[4] For the Court's convenience Exhibit A27.3 is a list of all claims Blue KC is not currently seeking partial summary judgment.

Respectfully Submitted,

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

By: */s/ Aaron E. Schwartz*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on all parties of record by filing a copy of the same with the Court's electronic filing system this 10th day of March, 2022.

/s/ Aaron E. Schwartz

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

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

GS LABS LLC'S RULE 26(a)(1) DISCLOSURES

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Defendant GS Labs LLC ("GS Labs"), makes the following initial disclosures ("Initial Disclosures").

GS Labs makes these Initial Disclosures in good faith based upon the information reasonably available at this time and without the benefit of complete investigation or discovery. Pursuant to Rule 26(e), GS Labs reserves the right to supplement these disclosures if subsequent investigation reveals additional information. In particular, these disclosures should not be construed to limit GS Labs' ability to later identify individuals with knowledge of relevant facts or documents as they may become known to GS Labs through discovery, investigation, or otherwise.

A. The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless solely for impeachment.

RESPONSE: Based on information presently available, and subject to further investigation of the issues raised in this case, GS Labs submits the following names of individuals

EXHIBIT A1

likely to have discoverable information that GS Labs may use to support its claims and defenses. GS Labs expressly reserves the right to identify additional individuals with discoverable information, up to and including at trial.

1. **Corporate representatives of Plaintiff Blue Cross Blue Shield of Kansas City ("Blue KC") and/or any related corporate entities, including but not limited to, Provider Relations, Legislative & Regulatory, Member Care & Benefits representatives.**

Information relating to the allegations in Plaintiff's Complaint and Defendant's Answer and Counterclaims including but not limited to Blue KC's implementation of the Families First Coronavirus Response Act ("FFCRA") and/or Coronavirus Aid, Relief, and Economic Security ("CARES") Act of 2020 and the requirement for health insurers and plans to pay for COVID-19 diagnostic testing, as well as prohibitions on cost-sharing and medical pre-authorization for diagnostic testing and Blue KC's decision not to pay for COVID-19 testing provided by GS Labs.

2. **Erin Cutler, Department Vice President of Provider Contracting & Network Strategy, Blue KC.**

Erin Cutler likely has knowledge of the claims submitted by GS Labs to Blue KC, Blue KC's response to these claims, and the negotiations between the parties regarding such claims.

3. **Christopher Brammer, Chief Operating Officer**
   c/o Counsel for GS Labs
   Jeffrey B. Jensen, Tim Garrison, Matthew Diehr
   HUSCH BLACKWELL LLP
   190 Carondelet Plaza, Suite 600
   St. Louis, Missouri 63105

Chris Brammer has general knowledge of the establishment and operations of the testing sites.

4. **Darin E. Jackson, MD, Medical Director**
   c/o Counsel for GS Labs
   Jeffrey B. Jensen, Tim Garrison, Matthew Diehr
   HUSCH BLACKWELL LLP
   190 Carondelet Plaza, Suite 600
   St. Louis, Missouri 63105

Dr. Darin E. Jackson has knowledge about the medical necessity of the COVID-19 testing provided at GS Labs.

5. **Steven W. Powell, M.D.**
   c/o Counsel for GS Labs
   Jeffrey B. Jensen, Tim Garrison, Matthew Diehr
   HUSCH BLACKWELL LLP
   190 Carondelet Plaza, Suite 600
   St. Louis, Missouri 63105

Dr. Steven Powell has knowledge about the standing orders issued for GS Labs.

6. **Tina Schneckloth**
   c/o Counsel for GS Labs
   Jeffrey B. Jensen, Tim Garrison, Matthew Diehr
   HUSCH BLACKWELL LLP
   190 Carondelet Plaza, Suite 600
   St. Louis, Missouri 63105

Tina Schneckloth has general knowledge of the billing and reimbursement of COVID-19 testing provided by GS Lab.

7. **Gabriel Sullivan**
   c/o Counsel for GS Labs
   Jeffrey B. Jensen, Tim Garrison, Matthew Diehr
   HUSCH BLACKWELL LLP
   190 Carondelet Plaza, Suite 600
   St. Louis, Missouri 63105

Gabriel Sullivan has general knowledge of the COVID-19 testing provided by GS Lab, establishment and operations of the testing sites, and in general, some of the claims and defenses at issue in this lawsuit.

8. **Kirk Thompson**
   c/o Counsel for GS Labs
   Jeffrey B. Jensen, Tim Garrison, Matthew Diehr
   HUSCH BLACKWELL LLP
   190 Carondelet Plaza, Suite 600
   St. Louis, Missouri 63105

Kirk Thompson has general knowledge of all aspects of the COVID-19 testing provided by GS Lab, establishment and operations of the testing sites, pricing of the COVID-19 tests, the claims submitted to Blue KC, negotiations with Blue KC and in general, the claims and defenses at issue in this lawsuit.

9. **Daniel R. White**
   c/o Counsel for GS Labs
   Jeffrey B. Jensen, Tim Garrison, Matthew Diehr
   HUSCH BLACKWELL LLP
   190 Carondelet Plaza, Suite 600
   St. Louis, Missouri 63105

Daniel White has knowledge about the establishment and ramp-up of testing sites created to provide COVID-19 testing across the country.

Answering further, GS Labs states there may be additional witnesses upon whom GS Labs may rely to support its claims and defenses who are unknown to Defendant at this time. Further, those individuals listed above may have information on subjects in addition to those noted above. GS Labs reserves the right to amend this disclosure as further information becomes available.

B. A copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

GS Labs continues to conduct its investigation and search for responsive documents, and expressly reserves the right to supplement this disclosure and identify additional documents, up to and including at trial. GS Labs will produce the documents outlined below within seven (7) days of the Court issuing a Protective Order.

GS Labs may use the following documents to support its defenses and counterclaims:

1. Screenshots and/or html screen capture of GS Labs COVID-19 Pricing Transparency Website;

2. Blue KC Member Patient Records including consent document and test results;

3. Claims data showing all claims submitted to Blue KC by GS Labs for COVID-19 testing performed for Blue KC's members;

4. Available Explanation of Benefits issued by Blue KC regarding COVID-19 testing provided to Blue KC's members;

5. Written communications between Blue KC and GS Labs regarding the negotiations of reimbursement of the COVID-19 testing provided by GS Labs; and

6. Claims data reflecting individual patients not covered by an insurance policy who paid the posted cash price;

7. Documents identified by Plaintiff in this litigation.

By making this disclosure, GS Labs does not waive any objection to the relevance of any of the disclosed documents or any other appropriate objections, including, but not limited to accountant-client privilege. GS Labs will only produce such confidential documents at such time as an appropriate Protective Order is in place.

C. A computation of each category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including material bearing on the nature and extent of injuries suffered.

GS Labs will produce claims data reflecting an outstanding balance of $9,924,132 once the Court has issued a HIPAA Compliant Protective Order.

In addition, GS Labs will supplement its disclosures as to attorneys' fees, interest, and other damages incurred by GS Labs as a result of Blue KC's failure to comply with its obligations as part of GS Labs' damages calculation.

D. For inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

GS Labs is not unaware of any potentially applicable insurance agreement.

Respectfully submitted,
HUSCH BLACKWELL LLP

/s/ Matthew P. Diehr

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Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on all parties of record by emailing counsel of record for the Defendant this 15th day of September, 2021.

/s/ Matthew P. Diehr
MATTHEW P. DIEHR

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

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

BLUE KC's FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO GS LABS, LLC

COMES NOW Blue Cross and Blue Shield of Kansas City ("Blue KC") pursuant to Rules 34 and 26(d)(2) of the Federal Rules of Civil Procedure, and propounds its First Request for Production on Defendant GS Labs LLC ("GSL").

INSTRUCTIONS

1. Unless otherwise noted below, you may limit your responses to documents created or transmitted between December 1, 2019 and July 22, 2021.

2. Copies of all documents requested may be produced in lieu of the production of originals, provided that such copies are legible and complete, except to the extent that the undersigned requests an opportunity to view the original document(s).

3. These Requests are continuing in nature. Pursuant to Fed.R.Civ.P. 26(e), please timely supplement responses if the response is incomplete or incorrect and/or if additional information (which is presently unknown) becomes known. Please complete any such supplement within ten (10) days of receipt of such information.

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4. If you do not understand or have questions about any request, GSL's counsel is requested to promptly contact Blue KC's undersigned counsel.

REQUESTS

1. Produce documents identifying GSL's direct and indirect owners and members.

RESPONSE:

2. Produce documents describing the business relationship, common management, and/or common ownership of "88 Medicine LLC" and GSL.

RESPONSE:

3. Produce all bills, receipts, invoices, correspondence, or other documents relating to or evidencing any injuries, damages, or right to equitable relief that you claim as a result of the incidents alleged in your Counterclaim.

RESPONSE:

4. Produce all medical records, certifications, billing records, records of collections or write-offs, consent forms, physician or nurses orders, or other records or data collected or generated as a result of any Blue KC member's receipt of services from GSL. This request includes documents or data identifying the amounts charged and collected directly from Blue KC Members for "concierge fees," "administrative fees," or other similar fees.

RESPONSE:

5. To the extent not produced in response to the preceding request for production, produce all medical records, certifications, billing records, records of collections or write-offs, consent forms, physician or nurses orders, or other records or data collected or generated in connection with any claim for reimbursement GSL submitted to Blue KC. This request includes documents or data identifying amounts charged and collected directly for "concierge fees," "administrative fees," or other similar fees.

RESPONSE:

6. Produce all communications to or from consultants, experts (excluding those retained for purposes of litigation), or physicians retained by GSL, its promoters, or its predecessors to provide expertise or advice regarding GSL's business model, COVID-19 testing, COVID-19 testing pricing, record keeping practices, billing practices, and GSL's expansion.

RESPONSE:

7. With respect to any claims GSL made with respect to the Federal Employee Program administered by Blue KC, produce documents sufficient to show GSL's receipt of payments for claims billed.

RESPONSE:

8. Produce all medical records, certifications, billing records, records of collections or write-offs, consent forms, physician or nurses orders, or other records or data collected or generated in connection with any GSL patient that paid cash or cash equivalent to GSL as a result of that patient's receipt of COVID-19 testing services from GSL.

RESPONSE:

9. Produce all policies, guidelines, procedures, or instructions from GSL management to employees or independent contractors regarding:

a. COVID-19 testing generally;

b. Reporting COVID-19 testing results to state and local officials;

c. Facility sanitation and safety;

d. GSL's refusal to perform testing procedures for Medicare or Medicaid enrollees;

e. Whether or under what circumstances to perform multiple COVID-19 tests on the same patient;

f. Whether or under what circumstances to offer a patient or prospective patient a discount from GSL's posted "cash prices;"

g. Whether or under what circumstances to bill a specimen collection fee;

h. Whether or under what circumstances to bill an administrative fee or concierge fee; and,

i. Whether or under what circumstances to administer any particular type of testing such as rapid antigen, rapid antibody, COVID-19 PCR, or large panel PCR.

You may exclude from this response documents that relate solely to GSL facilities located outside of the following zip codes: 15237; 43240; 44116; 46032; 55123; 55379; 63044; 64081; 65201; 66219; 68118; 68130; 76501; 97503; 98003; 98004; 98036.

RESPONSE:

10. All documents and data GSL has voluntarily or involuntarily provided to state or federal law enforcement agencies or officers relating to COVID-19 testing.

RESPONSE:

11. All documents created or collected in connection with complaints or investigations regarding the following:

(a) COVID-19 testing;

(b) Unsafe or unsanitary working or testing conditions;

(c) Forged or inaccurate COVID-19 testing consent forms;

(d) Failure to obtain patient consent for testing;

(e) Unqualified employees taking biological samples from patients;

(f) Testing not being performed according to the test manufacturer's instructions;

(g) Inaccurate COVID-19 test results;

(h) Insufficient documentation of testing;

(i) Unreliable COVID-19 test results;

(j) Failure to return testing results to the patient;

(k) Improper methods of sample collection with respect to COVID-19 testing;

(l) Posting of a false, misleading, or excessive cash price;

(m) Price gouging, disaster profiteering, excessive fees, improperly charging insured patients directly;

(n) Employee or management misconduct;

(o) Wrongful termination of staff; and,

(p) Misclassification of employees as independent contractor staff.

RESPONSE:

12. Produce all data, images, video, and statements currently or formerly posted on the https://gslabstesting.com/ website or any other website used by GSL to promote its business.

RESPONSE:

13. Produce all data, images, video, and statements currently or formerly posted on the https://88med.com/ website referring to COVID-19 testing, cash prices for COVID testing, or GSL.

RESPONSE:

14. Produce all sworn statements, whether written or otherwise recorded, made by any individual relating to the occurrences alleged in the Amended Complaint and GSL's Answer and Counterclaims.

RESPONSE:

15. Produce all communications or other documents describing or referring to the process by which GSL used to establish its purported posted "cash prices."

RESPONSE:

16. Produce all scripts or other directions used by GSL employees or contractors answering GSL's "Nurse Call in Line" or "General Call in Line."

RESPONSE:

17. Produce advertisements, communications, promotional materials, or other statements made by GSL concerning:

(a) The types of test offered;

(b) GSL's pricing structure;

(c) The costs or charges a prospective patient would be responsible for if that patient were to receive diagnostic services at a GSL facility; and

(d) The nature or quality of GSL's services.

You may exclude from this response documents that relate solely to GSL facilities located outside of the following zip codes: 15237; 43240; 44116; 46032; 55123; 55379; 63044; 64081; 65201; 66219; 68118; 68130; 76501; 97503; 98003; 98004; 98036.

RESPONSE:

18. Produce all receipts, purchase orders, or other documents identifying delivery dates, delivery locations, manufacturer, and type of COVID-19 tests administered to Blue KC members.

RESPONSE:

19. Produce invoices and other documents that describe or identify the following costs or expenses incurred by GSL:

a. COVID-19 testing equipment and supplies;

b. Other medical or laboratory supplies and protective equipment;

c. Wages, salaries, overtime, or bonuses GSL paid to employees and independent contractors;

d. Payments made to subcontractors such as ImmunoGenomics or Quest Labs;

e. Real-estate or rental expenses; and

f. Consultant expenses (you may exclude any consultant retained for purposes of this litigation).

You may exclude from this response documents that relate solely to GSL facilities located outside of the following zip codes: 15237; 43240; 44116; 46032; 55123; 55379; 63044; 64081; 65201; 66219; 68118; 68130; 76501; 97503; 98003; 98004; 98036.

RESPONSE:

21. All documents in which GSL admits or acknowledges any of its COVID-19 testing may not have been safe, accurate, or reliable. An example of one type of responsive document is identified below for purposes of illustration:

February 15, 2021

Testing performed at GS Labs between 7/1/2020 and 10/31/2020 may be inaccurate due to incomplete equipment validation studies and quality control records. While the lab results were used as a guide, prescribed therapy was based on symptom relief. I have reviewed the test results and treatment protocol and I do not recommend any changes to therapy based on the lab results from GS Labs.

DocuSigned by:
DARIN JACKSON
04ECE035521944E1...

Darin Jackson, MD
Medical Director/Lab director
GS Labs

RESPONSE:

22. All documents from government officials or entities warning, sanctioning, reprimanding, or punishing GSL and GSL's responses to the same.

RESPONSE:

23. All documents from government officials or entities ordering GSL to cease or limit any of its operations or threatening that GSL's operations may need to be limited in the future and GSL's responses to the same.

RESPONSE:

24. Documents sufficient to identify by name and last known address and telephone number, the former employee or contractor of GSL making the complaint identified in the following public record excerpt:

Printed: 06/04/2021
Due Date:
Priority: Non-IJ (Admin Review/Offsite Investigation)

INTAKE INFORMATION

Intake Number: MO00179928
Facility ID: MO22028198
Provider Number: 26D2205929
State Region: 03

FACILITY INFORMATION:

Name: GS LABS
Address: 1103 SW OLDHAM PKWY
City/State/Zip/County: LEES SUMMIT, MO, 64081, JACKSON
Telephone: (402) 681-4030
License #:
Type: LAB-WAIV
Administrator:

INTAKE INFORMATION:

Intake Number: MO00179928
Taken by - Staff: (b)(6) & (b)(7)(c)
Location Received: BDS - OFFICE STAFF
Intake Type: Complaint
Intake Subtype: Federal COPs, CFCs, RFPs, EMTALA, CLIA
CBER #:
SA Contact:
RO Contact: (b)(6) & (b)(7)(c)
Responsible Team: BDS - CLIA/RHC/FQHC SURVEY STAFF
Source: Former Staff

Received Start: 12/31/2020 At 17:08
Received End: 12/31/2020 At 17:08
Received by: E-Mail
State Complaint ID:
CIS Number:
External Control #:
Certificate at Time of Alleged Event: Waiver

COMPLAINANTS:

Name	Address	Phone	EMail
(b)(6), (b)(7)(c) & (b)(7)(d)			

Link to: (b)(6), (b)(7)(c) & (b)(7)(d)
Confidentiality Requested : Y

INTAKE DETAIL:

Date of Alleged Event: 12/22/2020 Time: Shift:

Standard Notes: Former employee for this lab made multiple allegations to the MO SA on 12/30/20. See below and attached. As this is a Waived Lab, it is referred to the CMS KC RO for any appropriate action or referral. (b)(6) & (b)(7)(c)

To: CLIA, DHSS <CLIA@health.mo.gov <mailto:CLIA@health.mo.gov>>
Subject: Attn: (b)(6) & (b)(7)(c) Complaint re GS Labs in Lees Summit MO, Colombia, MO, St Louis MO

Hi am writing to you to submit a formal complaint against GS LABS out of Omaha Ne who has set up pop up Covid testing sites in Missouri, as well as other states. I am writing to let you know that they are in violation of several state laws, regulations, and codes. I worked there as a (b)(6) & (b)(7)(c) and was hire as a contract 1099 worker/ee to manage the site. I quit on Dec. 22 due to not being able to work under their conditions and refused to be a part of their non compliance and violations of Mo health and sanitation - they never were inspected, fire safety violations and no inspections - I also filed complaint and turned them into the Mo health and sanitation department for not being inspected to run a lab in MO or pass an inspection. They are also performing testing on patients via RN's that are complaining of work environment and work conditions that aren't sterile or up to code and people are getting covid tested and their results being determined in a rapid testing make shift lab that is in an RV and now being moved inside the old pizza hut building - which hasnt been inspected. Patients aren't getting their results rapidly and taking days and people are literally walking around positive for Covid and don't know it and also the LAB is sending out wrong results to people and some people are receiving negative results but actually positive. This is an ongoing problem and why I quit working there. The owners of the company, (b)(6) & (b)(7)(c) (all owners of GS LABS Nebraska, 88 Med, and City + Ventures) all affiliated with running these pop up sites in MO. I personally filed a complaint with the Missouri Atty General who is now working on opening an investigation into this company. I filed a complaint with the Jackson County Health department stating this facility hasn't been inspected and violating hundreds of codes and regulations and sanitation and bio waste management violations, etc. etc. I filed a complaint with the Mo Insurance Commission as well due to the insurance fraud they are committing by price gouging for tests and submitting through insurance companies - insurance companies are denying the claims due to over reasonable and customary and then GS LABS bills patients.

Lenexa Kansas site is currently being investigated by the Kansas Atty General , Kansas Insurance commissioner and health departments as well due to the same issues. They closed them down and said to stop administering testing until the investigation is completed. I believe the site is still operating though and providing covid rapid antigen tests even though they were told not to.

RESPONSE:

Respectfully Submitted,

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

By: */s/ Aaron E. Schwartz*
Aaron E. Schwartz, #58745
8182 Maryland Avenue, Fifteenth Floor
St. Louis, MO 63105
Phone: 314-721-7701
Fax: 314-721-0554
schwartz@capessokol.com

Attorney for Blue Cross and Blue Shield of Kansas City

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on all parties of record by emailing counsel of record for the Defendant this 31st day of August, 2021.

/s/ Aaron E. Schwartz

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

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

GS LABS LLC'S RESPONSE TO BLUE CROSS AND BLUE SHIELD OF KANSAS CITY'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

COMES NOW GS Labs LLC ("GS Labs"), which hereby responds to Blue Cross and Blue Shield of Kansas City's ("Blue KC's") First Request for the Production of Documents ("Requests").

GENERAL OBJECTIONS

1. GS Labs objects to Plaintiff's Instructions to the extent they exceed or call for a greater response, or have a broader or different meaning or definition, than required by or defined in the Federal Rules of Civil Procedure.

2. GS Labs objects to the extent the Requests seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other legally cognizable privilege, protection, or immunity. GS Labs incorporates this objection into its response to each Request.

3. GS Labs objects to the extent the Requests seek information and documents related to GS Labs' testing facilities across the country which are not relevant to the parties' claims or

EXHIBIT
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defenses and not certainly not proportional to the needs of the case. GS Labs has appropriately limited its responses to the testing facilities at issue in this case—the facilities located in Lenexa, Kansas and Lee's Summit, Missouri—as the only facilities that administered COVID-19 tests to members of Blue KC.

REQUESTS

1. Produce documents identifying GSL's direct and indirect owners and members.

RESPONSE:

GS Labs objects to this Request regarding the phrase "indirect owners and members" as such phrase is vague, ambiguous, and not relevant to the claims and defenses in this case. Subject to this objection, GS Labs will produce a copy of the Operating Agreement of GS Labs LLC effective February 26, 2020, the Unanimous Written Consent of the Member of GS Labs LLC and Assignment of LLC Interest dated January 22, 2021.

2. Produce documents describing the business relationship, common management, and/or common ownership of "88 Medicine LLC" and GSL.

RESPONSE:

GS Labs objects to this Request as seeking documents that are not relevant to the claims and defenses in this case and not proportional to the needs of the case. Further, such information is not important in resolving the issues in this case. 88 Medicine LLC is a separate legal entity, not a party to this case, and is not owned by GS Labs. None of the claims for payment for COVID-19 testing services submitted to Blue KC members were provided by 88 Medicine LLC. In addition, GS Labs objects to the phrase "business relationship" as vague and ambiguous. Finally, GS Labs objects to this Request to the extent it seeks confidential and proprietary information that is irrelevant to the underlying litigation.

3. Produce all bills, receipts, invoices, correspondence, or other documents relating to or evidencing any injuries, damages, or right to equitable relief that you claim as a result of the incidents alleged in your Counterclaim.

RESPONSE:

GS Labs objects to this Request to the extent it seeks information protected under the Health Insurance Portability and Accountability Act (HIPAA), and such information will

not be produced unless adequate steps are taken to safeguard such information, including an executed HIPAA-compliant protective order.

Subject to this objection, GS Labs will produce summary claims data reflecting the outstanding accounts receivable for each CPT code associated with the COVID-19 testing provided to Blue KC members along with the electronic claims data. GS Labs is in the process of gathering and reviewing for potential responsiveness additional bills, receipts, and documents reflecting its relief sought and will supplement its production as necessary.

4. Produce all medical records, certifications, billing records, records of collections or write-offs, consent forms, physician or nurses orders, or other records or data collected or generated as a result of any Blue KC member's receipt of services from GSL. This request includes documents or data identifying the amounts charged and collected directly from Blue KC Members for "concierge fees," "administrative fees," or other similar fees.

RESPONSE:

Both the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) generally require group health plans and health insurance issuers offering group or individual health insurance coverage to provide benefits for certain items and services related to diagnostic testing for the detection of SARS-CoV-2 or the diagnosis of COVID-19. Under both Acts, plans and issuers must provide this coverage without imposing any cost-sharing requirements or other medical management requirements. As such, GS Labs objects to this request as it seeks "*all* medical records, certifications, billing records, records of collections or write-offs, consent forms, physician or nurses orders, or other records or data collected or generated as a result of any Blue KC member's receipt of services from GSL." This Request is overly burdensome, specifically in light of the Congress' directives set out in the FFCRA and CARES Act.

Further, GS Labs objects to this Request as overly burdensome and not proportional to the claims and defenses in this case as Blue KC has already requested and received thousands of medical records from GS Labs despite the fact that such requests were rendered unnecessary and irrelevant by the FFCRA and CARES Act. In order to produce the thousands of medical records requested by this Request, an individual will need to manually request and print to produce each individual patient record. This is a time-consuming process that will take many man hours.

GS Labs further objects to this Request to the extent it seeks information protected under HIPAA, and such information will not be produced unless adequate steps are taken to safeguard such information, including an executed HIPAA-compliant protective order.

Subject to this objection and once the parties have an executed protective order, GS Labs will provide a rolling production of the thousands of medical records at issue.

5. To the extent not produced in response to the preceding request for production, produce all medical records, certifications, billing records, records of collections or write-offs, consent forms, physician or nurses orders, or other records or data collected or generated in connection with any claim for reimbursement GSL submitted to Blue KC. This request includes documents or data identifying amounts charged and collected directly for "concierge fees," "administrative fees," or other similar fees.

RESPONSE:

GS Labs objects to this Request to the extent it is duplicative of Request for Production No. 4 and incorporates its Objections to Request for Production No. 4.

6. Produce all communications to or from consultants, experts (excluding those retained for purposes of litigation), or physicians retained by GSL, its promoters, or its predecessors to provide expertise or advice regarding GSL's business model, COVID-19 testing, COVID-19 testing pricing, record keeping practices, billing practices, and GSL's expansion.

RESPONSE:

GS Labs objects to this Request as overly broad and unduly burdensome as it seeks "all communication" with consultants and experts regarding very broad topics such as "COVID-19 testing," "GSL's business model," "billing practices," and "GSL's expansion." This Request would require GS Labs to spend an unreasonable amount of time and/or money to search and find all documents responsive to Respect and such information is not reasonably needed regarding the issues in the case. In addition, GS Labs objects to this Request seeking documents that are not relevant to the claims and defenses in this case. GS Labs further objects to the terms "consultants," "experts," "promoters," "its predecessors," and "business model" as unduly vague and not reasonably likely to lead to the discovery of admissible evidence. GS Labs further objects to the extent the Request calls for communications to or from individuals subject to the attorney-client privilege or work product protections.

GS Labs further objects to this Request to the extent it seeks information protected under HIPAA, and such information will not be produced unless adequate steps are taken to safeguard such information, including an executed HIPAA-compliant protective order.

Subject to these objections, GS Labs states that it is in the process of gathering and reviewing communications for potential responsiveness, and will supplement its production as necessary.

7. With respect to any claims GSL made with respect to the Federal Employee Program administered by Blue KC, produce documents sufficient to show GSL's receipt of payments for claims billed.

RESPONSE:

GS Labs objects to this Request as overly broad, unduly burdensome and seeks information and documents that are not relevant and not likely to lead to the discovery of admissible evidence. GS Labs has testing facilities across the United States and this Request is not limited to the testing facilities at issue in this case.

GS Labs states that it is not aware of receiving any payments for claims billed to Blue KC with respect to the Federal Employee Program administered by Blue KC for patients tested at the Lenexa, Kansas or Lee's Summit, Missouri testing facilities.

8. Produce all medical records, certifications, billing records, records of collections or write-offs, consent forms, physician or nurses orders, or other records or data collected or generated in connection with any GSL patient that paid cash or cash equivalent to GSL as a result of that patient's receipt of COVID-19 testing services from GSL.

RESPONSE:

GS Labs objects to this Request as overly broad and seeks documents that are not relevant to the claims and defenses in this case, and therefore not reasonably likely to lead to the discovery of admissible evidence. This Request appears to seek medical records or any other records regarding patients with absolutely no relationship to Blue KC. As such, GS Labs further objects to this Request to the extent it seeks highly confidential information protected under HIPAA. Blue KC has no right to the medical records or any other records regarding patients with no relationship to Blue KC.

Subject to these objections, GS Labs agrees to produce redacted summary claims data showing an invoice date, payment date, payment method, and amount paid for all patients who received a COVID-19 test from the Lenexa, Kansas or Lee's Summit, Missouri testing facilities and paid the cash price listed on GS Labs' website.

9. Produce all policies, guidelines, procedures, or instructions from GSL management to employees or independent contractors regarding:

a. COVID-19 testing generally;

b. Reporting COVID-19 testing results to state and local officials;

c. Facility sanitation and safety;

d. GSL's refusal to perform testing procedures for Medicare or Medicaid enrollees;

e. Whether or under what circumstances to perform multiple COVID-19 tests on the same patient;

f. Whether or under what circumstances to offer a patient or prospective patient a discount from GSL's posted "cash prices;"

g. Whether or under what circumstances to bill a specimen collection fee;

h. Whether or under what circumstances to bill an administrative fee or concierge fee; and,

i. Whether or under what circumstances to administer any particular type of testing such as rapid antigen, rapid antibody, COVID-19 PCR, or large panel PCR.

You may exclude from this response documents that relate solely to GSL facilities located outside of the following zip codes: 15237; 43240; 44116; 46032; 55123; 55379; 63044; 64081; 65201; 66219; 68118; 68130; 76501; 97503; 98003; 98004; 98036.

RESPONSE:

GS Labs objects to this Request as overly broad, unduly burdensome and seeking information and documents that are not relevant and not proportionate to the needs of this case. GS Labs has testing facilities across the United States and this Request is not limited to the testing facilities at issue in this case. In addition, GS Labs objects to vague descriptions of these policies, including the phrase "COVID-19 testing generally." GS Labs further objects to the extent the Request calls for documents subject to the attorney-client privilege or attorney work product protections.

Subject to these objections, GS Labs states that it is in the process of gathering and reviewing documents for potential responsiveness to this Request, and will supplement its production as necessary.

10. All documents and data GSL has voluntarily or involuntarily provided to state or federal law enforcement agencies or officers relating to COVID-19 testing.

RESPONSE:

GS Labs objects to this Request as overly broad, unduly burdensome and seeking information and documents that are not relevant and not likely to lead to the discovery of admissible evidence, including as to the phrase "relating to COVID-19 testing." GS Labs has testing facilities across the United States and this Request is not limited to the testing facilities at issue in this case. In addition, GS Labs objects to this Request as vague and ambiguous regarding the phrase "relating to COVID-19 testing." GS Labs similarly objects to the phrase "state or federal law enforcement agencies or officers," and as such, GS Labs is not clear which agencies this Request is referencing.

Subject to these objections, GS hereby provides copies of the documents provided to the Missouri Attorney General and the Kansas Attorney General as they relate to testing at the Lenexa, Kansas and Lee's Summit, Missouri testing facilities.

11. All documents created or collected in connection with complaints or investigations regarding the following:

(a) COVID-19 testing;

(b) Unsafe or unsanitary working or testing conditions;

(c) Forged or inaccurate COVID-19 testing consent forms;

(d) Failure to obtain patient consent for testing;

(e) Unqualified employees taking biological samples from patients;

(f) Testing not being performed according to the test manufacturer's instructions;

(g) Inaccurate COVID-19 test results;

(h) Insufficient documentation of testing;

(i) Unreliable COVID-19 test results;

(j) Failure to return testing results to the patient;

(k) Improper methods of sample collection with respect to COVID-19 testing;

(l) Posting of a false, misleading, or excessive cash price;

(m) Price gouging, disaster profiteering, excessive fees, improperly charging insured patients directly;

(n) Employee or management misconduct;

(o) Wrongful termination of staff; and,

(p) Misclassification of employees as independent contractor staff.

RESPONSE:

GS Labs objects to this Request as overly broad, unduly burdensome and seeking information and documents that are not relevant and not likely to lead to the discovery of admissible evidence, including information that may relate to other pending litigation. GS Labs was formed in January 2020 and quickly expanded its operations in response to the pandemic and focused on eliminating the barriers to providing safe, reliable COVID-19 testing. Unlike most facilities offering COVID-19 testing, such as hospitals and clinics, GS Labs had to develop its infrastructure for delivering safe, accurate, and reliable testing from the ground up, and thus has focused its efforts and resouces on ensuring a high quality of testing services and patient experience, including through developing an advanced platform to ensure efficient delivery of results to patients. To assist our patients, GS Labs has a call center that receives approximately 5,000 calls per day, but given its infrastructure priorities during this critical time, has not separately and specifically tracked all communications with a patient or family member that could be characterized as a "complaint" and as such, locating responsive documents to this request will take a significant amount of time and effort. Relatedly, GS Labs has testing facilities across the United States and this Request is not limited to the testing facilities at issue in this case. Further, GS Labs objects to this Request as unduly argumentative, including "false, misleading, or excessive cash price," and "price gouging, disaster profiteering, excessive fees, [and] improperly charging insured patients directly." GS Labs further objects to the extent this Request calls for documents protected by the attorney-client privilege or work product doctrine. In addition, to the extent this Request seeks documents that contain protected health information, GS Labs objects to this Request as seeking highly confidential information protected under HIPAA, particularly to the extent that such patients have no relationship with Blue KC.

Subject to these objections, GS Labs states that it is in the process of gathering and reviewing documents for potential responsiveness to this Request, and will supplement its production as necessary.

12. Produce all data, images, video, and statements currently or formerly posted on the https://gslabstesting.com/ website or any other website used by GSL to promote its business.

RESPONSE:

GS Labs objects to this Request as overly broad, unduly burdensome, and seeks information and documents that are not relevant to and are not likely to lead to the discovery of admissible evidence. GS Labs further objects to the Request as unreasonably vague, including the terms "statements" and "promote," and the phrase "any other website used."

Subject to these objections, GS Labs will produce images, statements and video currently posted on GS Labs' website.

13. Produce all data, images, video, and statements currently or formerly posted on the https://88med.com/_website referring to COVID-19 testing, cash prices for COVID testing, or GSL.

RESPONSE:

GS Labs objects to this Request as overly broad, unduly burdensome, and seeks information and documents that are not relevant to and are not likely to lead to the discovery of admissible evidence. 88 Medicine LLC, which this website link appears to reflect, is a separate entity, not a party to this case, and is not owned by GS Labs.

14. Produce all sworn statements, whether written or otherwise recorded, made by any individual relating to the occurrences alleged in the Amended Complaint and GSL's Answer and Counterclaims.

RESPONSE:

GS Labs objects to the extent this Request calls for material subject to the attorney-client privilege or attorney work product protections. Subject to this objection, GS Labs states that it is not aware of any sworn statements or other recorded statements made by any individual related to any member of Blue KC receiving COVID-19 testing at the Lenexa, Kansas and Lee's Summit, Missouri testing facilities.

15. Produce all communications or other documents describing or referring to the process by which GSL used to establish its purported posted "cash prices."

RESPONSE:

GS Labs objects to the Request as unreasonably vague regarding the phrase "other documents." GS Labs further objects to the extent this Request calls for communications or other documents subject to the attorney-client privilege or work product protections. GS Labs further objects to this Request as argumentative as to the word "purported." Finally, GS Labs objects to this Request to the extent it seeks confidential and proprietary information that is irrelevant to the underlying litigation.

Subject to these objections, GS Labs states that it is in the process of gathering and reviewing communications for potential responsiveness to this Request and will supplement its production as necessary.

16. Produce all scripts or other directions used by GSL employees or contractors answering GSL's "Nurse Call in Line" or "General Call in Line."

RESPONSE:

GS Labs objects to this Request as overly broad, unduly burdensome, and seeks information and documents that are not relevant to and are not likely to lead to the discovery of admissible evidence. GS Labs further objects to this Request as vague and ambiguous, including as to the phrase "other directions," and therefore unlikely to lead to the discovery of admissible evidence.

Subject to these objections, GS Labs will produce the following documents as identified as responsive to this request: Call Center Training Manual, Nurse Script and Guidelines, and Respiratory Panel Information for Nurse Call Center published by the CDC.

GS Labs further states that it is in the process of gathering and reviewing documents for potential responsiveness to this Request, and will supplement its production as necessary.

17. Produce advertisements, communications, promotional materials, or other statements made by GSL concerning:

(a) The types of test offered;

(b) GSL's pricing structure;

(c) The costs or charges a prospective patient would be responsible for if that patient were to receive diagnostic services at a GSL facility; and

(d) The nature or quality of GSL's services.

You may exclude from this response documents that relate solely to GSL facilities located outside

of the following zip codes: 15237; 43240; 44116; 46032; 55123; 55379; 63044; 64081; 65201; 66219; 68118; 68130; 76501; 97503; 98003; 98004; 98036.

RESPONSE:

GS Labs objects to this Request as overly broad, unduly burdensome and seeks information and documents that are not relevant and not likely to lead to the discovery of admissible evidence, and not proportional to the needs of the case. This Request seeks "communications" or "other statements" regarding such incredibly broad topics such as the "types of tests offered," "pricing structure," "costs or charges a prospective patient would be responsible for," and the "nature or quality of GSL's services." It would be impossible to search for and find all communications regarding such broad topics. Further, the discovery of this information does little to resolve the issues in this case, while the burden and expense of researching and finding all responsive information outweighs any benefit.

GS Labs further states that it is in the process of gathering and reviewing documents for potential responsiveness to this Request, and will supplement its production as necessary.

18. Produce all receipts, purchase orders, or other documents identifying delivery dates, delivery locations, manufacturer, and type of COVID-19 tests administered to Blue KC members.

RESPONSE:

GS Labs objects to this Request to the extent that this request is overly burdensome and not proportional to the claims and defenses in this case. GS Labs has testing facilities across the United States. It would be impossible to identify receipts, purchase orders or other documents to reflect the tests administered specifically to Blue KC members. To comply with such a request would take an unreasonable amount of time and effort to track down and provide the requested documents and is not proportional to the needs of the case. Further, GS Labs' inventory of COVID-19 tests is not tracked or administered based on a patient's insurance plan. In addition, GS Labs objects to this Request to the extent it seeks confidential and proprietary information that is irrelevant to the underlying litigation. GS Labs objects to this request to the extent that such information is subject to attorney-client privilege or work product protections.

19. Produce invoices and other documents that describe or identify the following costs or expenses incurred by GSL:

a. COVID-19 testing equipment and supplies;

b. Other medical or laboratory supplies and protective equipment;

c. Wages, salaries, overtime, or bonuses GSL paid to employees and independent contractors;

d. Payments made to subcontractors such as ImmunoGenomics or Quest Labs;

e. Real-estate or rental expenses; and

f. Consultant expenses (you may exclude any consultant retained for purposes of this litigation).

You may exclude from this response documents that relate solely to GSL facilities located outside of the following zip codes: 15237; 43240; 44116; 46032; 55123; 55379; 63044; 64081; 65201; 66219; 68118; 68130; 76501; 97503; 98003; 98004; 98036.

RESPONSE:

GS Labs objects to this Request as overly broad, unduly burdensome, and seeking information and documents that are not relevant to and are not likely to lead to the discovery of admissible evidence, including documents that may relate to another pending litigation matter. Related to this objection, GS Labs has testing facilities across the United States and this Request is not limited to the testing facilities at issue in this case. GS Labs further objects to this Request to the extent it seeks information protected under HIPAA, and such information will not be produced unless adequate steps are taken to safeguard such information, including a HIPAA-compliant protective order. GS Labs objects to this request to the extent that such information is subject to attorney-client privilege or work product protections.

Subject to these objections, GS Labs states that it is in the process of gathering and reviewing documents for potential responsiveness to this Request, and will supplement its production as necessary.

21. All documents in which GSL admits or acknowledges any of its COVID-19 testing may not have been safe, accurate, or reliable. An example of one type of responsive document is identified below for purposes of illustration:

February 15, 2021

Testing performed at GS Labs between 7/1/2020 and 10/31/2020 may be inaccurate due to incomplete equipment validation studies and quality control records. While the lab results were used as a guide, prescribed therapy was based on symptom relief. I have reviewed the test results and treatment protocol and I do not recommend any changes to therapy based on the lab results from GS Labs.

DocuSigned by:
DARIN JACKSON
04ECE035521946E1...

Darin Jackson, MD
Medical Director/Lab director
GS Labs

RESPONSE:

GS Labs objects to entire premise of this Request. GS Labs objects to the terms "admits" or "acknowledges" as argumentative. This letter has nothing to do with COVID-19 testing. The testing facility for Lenexa, Kansas did not open until November 24, 2020 and the Lee's Summit, Missouri facility did not open until December 1, 2020. The testing described in this letter relates to testing long before GS Labs was providing COVID-19 testing at these facilities. Regarding any testing facilities, GS Labs only started providing COVID-19 testing in the middle of October. Moreover, the wording of this letter clearly reveals that the testing referenced was not COVID-19 testing.

22. All documents from government officials or entities warning, sanctioning, reprimanding, or punishing GSL and GSL's responses to the same.

RESPONSE:

GS Labs objects to this Request as vague and ambiguous regarding the phrase "government officials or entities," and as such, GS Labs is not clear which agencies or individuals this Request is referencing. GS Labs objects to this Request as overly broad,

unduly burdensome, and seeks information and documents that are not relevant to and are not likely to lead to the discovery of admissible evidence. Subject to these objections, GS Labs will produce a copy of the letter from the State of Kansas, Office of Attorney General dated December 22, 2020.

23. All documents from government officials or entities ordering GSL to cease or limit any of its operations or threatening that GSL's operations may need to be limited in the future and GSL's responses to the same.

RESPONSE:

GS Labs objects to this Request as vague and ambiguous regarding the phrase "government officials or entities," and as such, GS Labs is not clear which agencies or individuals this Request is referencing. GS Labs objects to this Request as overly broad, unduly burdensome, and seeks information and documents that are not relevant to and are not likely to lead to the discovery of admissible evidence. Subject to these objections, GS Labs will produce a copy of the letter from the State of Kansas, Office of Attorney General dated December 22, 2020.

24. Documents sufficient to identify by name and last known address and telephone number, the former employee or contractor of GSL making the complaint identified in the following public record excerpt:

Printed: 06/04/2021
Due Date:
Priority: Non-IJ (Admin Review/Offsite Investigation)

INTAKE INFORMATION

Intake Number: MO00179928
Facility ID: MO22028198
Provider Number: 26D2205929
State Region: 03

FACILITY INFORMATION:

Name: GS LABS
Address: 1103 SW OLDHAM PKWY
City/State/Zip/County: LEES SUMMIT, MO, 64081, JACKSON
Telephone: (402) 681-4030
License #:
Type: LAB-WAIV
Administrator:

INTAKE INFORMATION:

Intake Number: MO00179928
Taken by - Staff: (b)(6) & (b)(7)(c)
Location Received: BDS - OFFICE STAFF
Intake Type: Complaint
Intake Subtype: Federal COPs, CFCs, RFPs, EMTALA, CLIA
CBER #:
SA Contact:
RO Contact: (b)(6) & (b)(7)(c)
Responsible Team: BDS - CLIA/RHC/FQHC SURVEY STAFF
Source: Former Staff

Received Start: 12/31/2020 At 17:08
Received End: 12/31/2020 At 17:08
Received by: E-Mail
State Complaint ID:
CIS Number:
External Control #:
Certificate at Time of Alleged Event: Waiver

COMPLAINANTS:

Name	Address	Phone	EMail
(b)(6), (b)(7)(c) & (b)(7)(d)			

Link to: (b)(6), (b)(7)(c) & (b)(7)(d)
Confidentiality Requested : Y

INTAKE DETAIL:

Date of Alleged Event: 12/22/2020 Time: Shift:

Standard Notes: Former employee for this lab made multiple allegations to the MO SA on 12/30/20. See below and attached. As this is a Waived Lab, it is referred to the CMS KC RO for any appropriate action or referral. (b)(6) & (b)(7)(c)

To: CLIA, DHSS <CLIA@health.mo.gov <mailto:CLIA@health.mo.gov>>
Subject: Attn: (b)(6) & (b)(7)(c) Complaint re GS Labs in Lees Summit MO, Colombia, MO, St Louis MO

Hi am writing to you to submit a formal complaint against GS LABS out of Omaha Ne who has set up pop up Covid testing sites in Missouri, as well as other states. I am writing to let you know that they are in violation of several state laws, regulations, and codes. I worked there as a (b)(6) & (b)(7)(c) and was hire as a contract 1099 worker/ee to manage the site. I quit on Dec. 22 due to not being able to work under their conditions and refused to be a part of their non compliance and violations of Mo health and sanitation - they never were inspected, fire safety violations and no inspections - I also filed complaint and turned them into the Mo health and sanitation department for not being inspected to run a lab in MO or pass an inspection. They are also performing testing on patients via RN's that are complaining of work environment and work conditions that aren't sterile or up to code and people are getting covid tested and their results being determined in a rapid testing make shift lab that is in an RV and now being moved inside the old pizza hut building - which hasnt been inspected. Patients aren't getting their results rapidly and taking days and people are literally walking around positive for Covid and don't know it and also the LAB is sending out wrong results to people and some people are receiving negative results but actually positive. This is an ongoing problem and why I quit working there. The owners of the company, (b)(6) & (b)(7)(c) (all owners of GS LABS Nebraska, 88 Med, and City + Ventures) all affiliated with running these pop up sites in MO. I personally filed a complaint with the Missouri Atty General who is now working on opening an investigation into this company. I filed a complaint with the Jackson County Health department stating this facility hasn't been inspected and violating hundreds of codes and regulations and sanitation and bio waste management violations, etc. etc. I filed a complaint with the Mo Insurance Commission as well due to the insurance fraud they are committing by price gouging for tests and submitting through insurance companies - insurance companies are denying the claims due to over reasonable and customary and then GS LABS bills patients.

Lenexa Kansas site is currently being investigated by the Kansas Atty General , Kansas Insurance commissioner and health departments as well due to the same issues. They closed them down and said to stop administering testing until the investigation is completed. I believe the site is still operating though and providing covid rapid antigen tests even though they were told not to.

RESPONSE:

GS Labs objects to this request for a fishing expedition regarding a former, disgruntled employee who made numerous complaints – all of which were unsubstantiated. Subject to this objection, GS Labs will produce a copy of the complaint submitted by the former GS Labs employee along with a copy of the email from the Missouri Attorney General's office closing out the complaint.

Respectfully submitted,
HUSCH BLACKWELL LLP

/s/Christina B. Moore
Jeffrey B. Jensen, #46745
Tim Garrison, #51033
Matthew Diehr, #61999
Christina B. Moore, #53917
HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
314.480.1500
jeff.jensen@huschblackwell.com
tim.garrison@huschblackwell.com
matthew.diehr@huschblackwell.com

Attorneys for GS Labs, LLC

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2021, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all attorneys of record.

/s/ Christina B. Moore

CHRISTINA B. MOORE

Exhibit A4

GS Labs, LLC's Claims Summaries

Confidential – Filed Under Seal

Exhibit A5

GS Labs, LLC's Claims Summaries

Confidential – Filed Under Seal

Exhibit A6

Patient S.C. Records

Confidential – Filed Under Seal

Exhibit A7

Patient R.F. Records

Confidential – Filed Under Seal

Exhibit A8

Patient E.H. Records

Confidential – Filed Under Seal

Exhibit A9

Patient A.H. Records

Confidential – Filed Under Seal

Exhibit A10

Patient Q.O. Records

Confidential – Filed Under Seal

Exhibit A11

Patient T.S. Records

Confidential – Filed Under Seal

Exhibit A12

Confidential – Filed Under Seal

Exhibit A13

Patient S.C. Records

Confidential – Filed Under Seal

Exhibit A14

Confidential – Filed Under Seal

Exhibit A15

Patient E.H. Records

Confidential – Filed Under Seal

Exhibit A16

Patient A.H. Records

Confidential – Filed Under Seal

Exhibit A17

Patient Q.O. Records

Confidential – Filed Under Seal

Exhibit A18

Patient T.S. Records

Confidential – Filed Under Seal

Exhibit A19

Patient T.Z. Records

Confidential – Filed Under Seal

Exhibit A20

Patient E.Z. Records

Confidential – Filed Under Seal

Exhibit A21

Patient C.Z. Records

Confidential – Filed Under Seal

Exhibit A22

Patient T.Z. Records

Confidential – Filed Under Seal

Exhibit A23

Patient E.Z. Record

Confidential – Filed Under Seal

Exhibit A24

Patient C.Z. Records

Confidential – Filed Under Seal

Exhibit A25

Confidential – Filed Under Seal

Exhibit A26

Patient S.C. Records

Confidential – Filed Under Seal

Exhibit A27

Blue KC's Comparisons to GS Labs, LLC's Claims Summaries

Confidential – Filed Under Seal

Exhibit A27.1

Blue KC's Comparisons to GS Labs, LLC's Claims Summaries

Confidential – Filed Under Seal

Exhibit A27.2

Blue KC's Comparisons to GS Labs, LLC's Claims Summaries

Confidential – Filed Under Seal

Exhibit A27.3

Blue KC's Comparisons to GS Labs, LLC's Claims Summaries

Confidential – Filed Under Seal

DECLARATION OF KT THIESSEN

I, KT Thiessen, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I was retained to work at GS Labs as an assistant site manager for its COVID-19 testing operation in Lee's Summit, Missouri.
2. I worked for GS Labs in Lee's Summit as an independent contractor approximately from early December of 2020 to January of 2021.
3. At least well into January 2021 the facility was constantly short staffed. On one occasion Gabe Sullivan, an owner of GS Labs, told me to hire anyone who showed up and to pay them $23 per hour irrespective of their qualifications. He instructed me not to perform any background checks on these hires. Many of these people went on to be hired and then fired. I understand many of these people did not get paid even though they worked for over a week.
4. During my time working at GS Labs, PCR, antigen, and antibody testing was administered. At some point, I believe it was December 23, 2020, we stopped doing PCR testing and only did antibody and antigen testing.
5. For insured customers, GS Labs management instructed me and other staff that company policy was to collect samples for all available tests unless the person being tested refused. Nurses were given scripts to use with customers and told to read the script without stopping to ask for questions or consent and then immediately perform all testing available.

EXHIBIT B

6. On one occasion management from Omaha emailed us a spreadsheet showing a number of insured customers that got antigen but not antibody tests. They said that this was "unacceptable" and made it clear that we had to administer all tests available to insured people.
7. When GS Labs was accepting out of pocket customers, GS Labs management instructed me that the company's policy was to administer only one test for out of pocket customers, almost always an antigen test, unless the customer affirmatively asked for several tests.
8. I observed many serious problems with the administration of COVID-19 tests and delivery of results at GS Labs.
9. For instance, for a time the antigen and antibody testing on samples was done in the RV next to the main building. On several occasions (my best recollection is between five and ten times) tests were performed when the RV was very cold – below room temperature. After the lab was moved out of the RV and into the former Pizza Hut building, on at least one occasion the room where the samples were tested became very hot – above normal room temperature.
10. I observed many instances – at least weekly and potentially more – where one person's results were mixed up with another person's results. On many occasions one person's results were mixed up and placed in the wrong person's file. Other times, incorrect results were accidently marked on the records. Customers called frequently about results not being sent on all three types of tests or the wrong person's results being delivered.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on December ____, 2021

KT Thiessen

DECLARATION OF STACY JOHNSON-SWEANY

I, Stacy Johnson-Sweany, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I was retained to work at GS Labs as a site manager for its COVID-19 testing operation in Lee's Summit, Missouri.

2. I worked for GS Labs in Lee's Summit as an independent contractor for approximately three weeks in December of 2020.

3. GS Labs gave me very little training before I was asked to manage the Lee's Summit site and I had no prior background running a medical facility or laboratory.

4. When I first began working at GS Labs, it refused to accept customers that wanted to pay out of pocket for COVID testing.

5. GS Labs then began accepting out of pocket customers. I believe this occurred a few weeks after I began working there. My understanding was that payments were made by credit card only.

6. I never saw or heard of a person paying $380 out of pocket for a COVID-19 test at GS Labs. When I observed records showing cash payments, each person paid a little over $100 per test.

7. For insured customers, GS Labs management instructed me that company policy was to collect samples for all three tests (antibody, antigen, PCR) unless the person being tested refused. During my time working at GS Labs we stopped doing PCR testing and only took antibody and antigen samples. We were given written scripts to use with customers and told to read the script without stopping to ask for questions or consent and then immediately perform all testing available. Owners and management of GS Labs from Nebraska, including Kirk Thompson, Chris Brammer,

EXHIBIT C

and Gabe Sullivan, instructed staff not to give the people being tested an option, and to take samples for all tests unless the person refused.

8. After GS Labs began accepting out of pocket customers, GS Labs management instructed me that the company's policy was to administer only one test for uninsured people, almost always an antigen test, unless the customer asked for several tests.

9. I observed many serious problems with the administration of COVID-19 tests and delivery of results at GS Labs. As an example, on many occasions one person's results were mixed up and placed in the wrong person's file. Other times, incorrect results were accidently marked on the records. Customers called frequently about results not being sent on all three types of tests or the wrong person's results being delivered. On occasion PCR test swabs from Lee's Summit were not timely delivered to Omaha, Nebraska for testing resulting in questionable reliability. I also overheard that PCR testing was not timely completed once the test swabs arrived in Omaha. Sometimes when the facility was busy or we were short-staffed, antigen and antibody test samples were ***not*** tested immediately and would pile up for processing. Also, the temperature in the RV where the antibody and antigen tests were conducted was below room temperature in the mornings.

10. I observed problems with testing like those described above approximately 10 times per day and believe they may have impacted many more tests.

11. One time, we were notified that a shipment of antigen tests was not producing reliable results. I understand several GS Labs locations received tests from the lot that was thought to be inaccurate. A manager from Nebraska ordered us to use the tests anyway and not readminister the testing that had already been done. An incident form was completed by the head lab tech in Lee's Summit and was submitted to GS Labs management in Nebraska. I don't know how many tests were impacted but would estimate that it was many hundreds.

12. GS Labs owners and management did not provide sufficient PPE (personal protective equipment) to safely operate the facility. The facility lacked sufficient gloves, N-95 masks, and gowns.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on December 8, 2021

Stacy Johnson-Sweany

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

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

DECLARATION OF AARON E. SCHWARTZ

I, Aaron Schwartz, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am an attorney licensed and in good standing to practice law in the State of Missouri. I am counsel of record for Blue Cross and Blue Shield of Kansas City ("Blue KC") in the above referenced litigation. I have personal knowledge of the matters set forth below and am competent to testify thereto.

2. Attached as Exhibit A1 is a true and accurate copy of GSL's Rule 26(a) disclosures, served on Blue KC on September 15, 2021.

3. Blue KC propounded requests for production on GSL on or about August 30, 2021. A true and accurate copy of the requests for production is attached and marked as Exhibit A2.

4. GSL responded to the requests for production (Exhibit A2) on or about September 30, 2021. A true and accurate copy of GSL's responses is attached and marked as Exhibit A3.

5. On or about December 29, 2021, GSL produced a document labeled GS LABS 00000002-A. This document includes a column for "Primary Diagnosis Code" – over 99% of the

EXHIBIT
A

codes supplied on GS LABS 00000002-A are Z20.822 or Z20.828. A true and accurate copy of GS LABS 00000002-A is attached and marked as Exhibit A4.

6. On or about February 4, 2022, GSL produced a document titled GS LABS 00000002-B. GS LABS 00000002-B omits a column for "Primary Diagnosis Code." A true and accurate copy of GS LABS 00000002-B is attached and marked as Exhibit A5.

7. In this litigation GSL has produced claim forms ("Form 1500s") that include claim information such as patient name, date of purported service, and diagnostic code. True and accurate examples of Form 1500s produced by GSL are attached and marked as Exhibits A6, A7, A8, A9, A10, A11.

8. A redacted copy of R. Garrison Harvey's report served on GSL on March 1, 2022, is attached and marked as Exhibit A12.

9. Over the course of this litigation GSL has produced certain patient consent and intake forms to Blue KC. Examples of patient consent and intake forms GSL produced to Blue KC in this litigation are attached and marked as Exhibits A13, A14, A15, A16, A17, A18.

10. GSL produced Form 1500s in this litigation which do not appear on Exhibit A4. Examples of such Form 1500s are attached and marked as Exhibit A19, A20, A21.

11. The intake and consent forms associated with each of these Form 1500s are attached and marked as Exhibit A22, A23, A24.

12. A redacted copy of Eric Rubenstein's report served on GSL on March 1, 2022, is attached and marked as Exhibit A25.

13. An example of a patient's test results that GSL produced in this litigation is attached as Exhibit A26.

14. GSL has not produced consent and intake forms or test results for the large majority of the testing for which it seeks relief.

15. Blue KC created Exhibit A27 for purposes of this litigation by attempting to match each consent and intake form and test results that GSL produced in this litigation with the claim data included on GS LABS 00000002-B. This matching process resulted in the vast majority of claims identified on GS LABS 00000002-B having no corresponding consent and intake forms or test results.[1]

16. Of the claims for tests identified in GS LABS 00000002-B, Blue KC estimates that GSL has produced only approximately 13% of the corresponding consent and intake forms and test results. This estimate was calculated by comparing the total number of rows on GS LABS 00000002-B minus the number of rows that represent $50 collection fees with the number of consent and intake forms and test results that were matched with the claims described on GS LABS 00000002-B.

17. Exhibit A27.1 contains the same data as Exhibit A27 but excludes all rows identifying a $50 collection fee.

18. Exhibit A27.2 contains the same data as Exhibit A27, but is organized by date of purported service.

19. Exhibit A27.3 contains the same data as Exhibit A27, but only shows rows where test results or consent forms have been produced.

20. On March 1, 2022, GSL produced to Blue KC its production No. 19. Production No. 19 contains approximately 1,892 documents, largely consent and intake forms and test results. However, few if any of the consent and intake forms and test results produced in Production 19 match the claim data on GSL 00000002-B.

21. Fact discovery in this case is scheduled to close on May 15, 2022. *See* Doc. No. 116.

[1] A27 omits certain columns included on GS LABS 00000002-B such as Insurance Name, Insurance Phone #, Patient MRN, Patient DOB, Guarantor Name, Guarantor DOB, Claim #, and Line Item.

22. GSL has not agreed to make a full and complete production of the consent and intake forms and test results before May 15, 2022.

Executed on March 10, 2022

Aaron E. Schwartz

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

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

DECLARATION OF AARON E. SCHWARTZ

I, Aaron Schwartz, declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am an attorney licensed and in good standing to practice law in the State of Missouri. I am counsel of record for Blue Cross and Blue Shield of Kansas City ("Blue KC") in the above referenced litigation. I have personal knowledge of the matters set forth below and am competent to testify thereto.

2. Attached as Exhibit A1 is a true and accurate copy of GSL's Rule 26(a) disclosures, served on Blue KC on September 15, 2021.

3. Blue KC propounded requests for production on GSL on or about August 30, 2021. A true and accurate copy of the requests for production is attached and marked as Exhibit A2.

4. GSL responded to the requests for production (Exhibit A2) on or about September 30, 2021. A true and accurate copy of GSL's responses is attached and marked as Exhibit A3.

5. On or about December 29, 2021, GSL produced a document labeled GS LABS 00000002-A. This document includes a column for "Primary Diagnosis Code" – over 99% of the

EXHIBIT
A

codes supplied on GS LABS 00000002-A are Z20.822 or Z20.828. A true and accurate copy of GS LABS 00000002-A is attached and marked as Exhibit A4.

6. On or about February 4, 2022, GSL produced a document titled GS LABS 00000002-B. GS LABS 00000002-B omits a column for "Primary Diagnosis Code." A true and accurate copy of GS LABS 00000002-B is attached and marked as Exhibit A5.

7. In this litigation GSL has produced claim forms ("Form 1500s") that include claim information such as patient name, date of purported service, and diagnostic code. True and accurate examples of Form 1500s produced by GSL are attached and marked as Exhibits A6, A7, A8, A9, A10, A11.

8. A redacted copy of R. Garrison Harvey's report served on GSL on March 1, 2022, is attached and marked as Exhibit A12.

9. Over the course of this litigation GSL has produced certain patient consent and intake forms to Blue KC. Examples of patient consent and intake forms GSL produced to Blue KC in this litigation are attached and marked as Exhibits A13, A14, A15, A16, A17, A18.

10. GSL produced Form 1500s in this litigation which do not appear on Exhibit A4. Examples of such Form 1500s are attached and marked as Exhibit A19, A20, A21.

11. The intake and consent forms associated with each of these Form 1500s are attached and marked as Exhibit A22, A23, A24.

12. A redacted copy of Eric Rubenstein's report served on GSL on March 1, 2022, is attached and marked as Exhibit A25.

13. An example of a patient's test results that GSL produced in this litigation is attached as Exhibit A26.

14. GSL has not produced consent and intake forms or test results for the large majority of the testing for which it seeks relief.

15. Blue KC created Exhibit A27 for purposes of this litigation by attempting to match each consent and intake form and test results that GSL produced in this litigation with the claim data included on GS LABS 00000002-B. This matching process resulted in the vast majority of claims identified on GS LABS 00000002-B having no corresponding consent and intake forms or test results.[1]

16. Of the claims for tests identified in GS LABS 00000002-B, Blue KC estimates that GSL has produced only approximately 13% of the corresponding consent and intake forms and test results. This estimate was calculated by comparing the total number of rows on GS LABS 00000002-B minus the number of rows that represent $50 collection fees with the number of consent and intake forms and test results that were matched with the claims described on GS LABS 00000002-B.

17. Exhibit A27.1 contains the same data as Exhibit A27 but excludes all rows identifying a $50 collection fee.

18. Exhibit A27.2 contains the same data as Exhibit A27, but is organized by date of purported service.

19. Exhibit A27.3 contains the same data as Exhibit A27, but only shows rows where test results or consent forms have been produced.

20. On March 1, 2022, GSL produced to Blue KC its production No. 19. Production No. 19 contains approximately 1,892 documents, largely consent and intake forms and test results. However, few if any of the consent and intake forms and test results produced in Production 19 match the claim data on GSL 00000002-B.

21. Fact discovery in this case is scheduled to close on May 15, 2022. *See* Doc. No. 116.

[1] A27 omits certain columns included on GS LABS 00000002-B such as Insurance Name, Insurance Phone #, Patient MRN, Patient DOB, Guarantor Name, Guarantor DOB, Claim #, and Line Item.

22. GSL has not agreed to make a full and complete production of the consent and intake forms and test results before May 15, 2022.

Executed on March 10, 2022

Aaron E. Schwartz