

# **EXHIBIT A**



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September 21, 2022

***Via Electronic Mail***

Charles C. Gokey  
Robins Kaplan LLP  
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E-mail: cgokey@robinskaplan.com

Re: *Premera Blue Cross v. GS Labs, LLC*, Case No. 2:21-cv-01399-LK, W.D. Wash.  
Summary and Follow Up re Meet and Confer re Premera's Discovery Responses

Dear Charlie:

We write to summarize and follow up on the matters on which we conferred on August 24, August 31, and September 2 regarding the deficiencies in Premera Blue Cross's ("Premera") responses to GS Labs, LLC ("GS Labs") Requests for Production ("RFPs"), Requests for Admission ("RFAs"), and Special Interrogatories ("Rogs") propounded on March 22, 2022, and to request Premera's final positions regarding amendment and supplementation of the below discovery following our conferral. As we discussed, we are hopeful that Premera will commit to supplementing its responses to provide Code-compliant answers as well as non-privileged documents responsive to GS Labs' well-founded requests. To help expedite our production schedule, we request that you provide your availability to discuss search terms and agreed-upon custodians pursuant to the parties' respective ESI protocols during the week of September 26.

We look forward to Premera's response to this letter and request that Premera state its final positions with regard to the supplementation discussed during our conferrals no later than **September 29, 2022**.

**I. REQUESTS FOR PRODUCTION**

**A. Request for Supplementation of Responses Unilaterally Reserving Production of "Reasonable and Proportionate" Documents**

In its opening letter, GS Labs demonstrated that Premera's responses to RFP Nos. 1, 2–3, 7–17, 19–20, 25–26, 29–33, 35–38, 40–41, 43, 46, 48, 53, 54, 57, 58, 61, 62, 64–65, 68, 70, 71, 72, 73, and 74—are facially deficient and fail to comply with the threshold requirements of the

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Federal Rules of Civil Procedure; the requests unilaterally limited the responses to what Premera believes to be “reasonable and proportionate” to the needs of the case, while also maintaining objections on the basis of burden and relevance. (*See* Aug. 5, 2022 Ltr. at 2–3 (citing *Athridge v. Aetna Cas. And Sur. Co.*, 184 F.R.D. 181, 190 (D. D.C. 1998) (finding such answers “hide[] the ball” by “leav[ing] the [opposing party]...wondering what documents are being withheld”)); *Sentis Group, Inc. v. Shell Oil Co.*, 763 F.3d 919, 925, 89 Fed. R. Serv. 3d 831 (8th Cir. 2014) (parties do not “possess the unilateral ability to dictate the scope of discovery based on their own view of the parties’ respective theories of the case” and “cannot, by their sole insistence, declare evidence undiscoverable and irrelevant”).)

During our conferral, Premera indicated that it believed its responses were compliant but that it would consider supplementation. Please advise whether Premera will supplement its responses to state that it will produce non-privileged documents responsive to Request Nos. 1, 2–3, 7–17, 19–20, 25–26, 29–33, 35–38, 40–41, 43, 46, 48, 53, 54, 57, 58, 61, 62, 64–65, 68, 70, 71, 72, 73, and 74 on the terms suggested above.

**B. Request for Premera’s Supplementation of Answers to Which It Previously Refused to Respond.**

The second category of Premera’s RFP responses we discussed during our conferral concerned RFP Nos. 4–6, 22–23, 27, 28, 39, 44, 67, 69—requests to which Premera either refused to produce responses or improperly referred to other RFP responses to satisfy its obligations.

RFP Nos. 4, 5, and 6 seek information regarding Premera’s decision to file suit against GS Labs (RFP No. 4), Premera’s communications with other Blue Cross Blue Shield Association members, plans or other insurance companies regarding reimbursement rates (RFP No. 5), and all documents and communications regarding the funding of this litigation (RFP No. 6). As to RFP No. 4, Premera contends that these communications are subject to attorney-client privilege and work product objections, as well as relevance objections, and specifically invokes the rule that Plaintiff’s motive for filing suit is generally not discoverable. (Aug. 19, 2022 Letter, citing *Parsons v. Jefferson-Pilot Corp.*, 141 F.R.D. 408, 415 (M.D.N.C. 1992).) During our conferral we discussed whether GS Labs would provide supplemental authority in support of its position that such information is discoverable.

GS Labs directs Premera to *Parsons v. Jefferson-Pilot Corp.*, 141 F.R.D. 408, 415 (M.D.N.C. 1992)—the very case cited in Premera’s letter—which, in fact, held that the plaintiff’s motive in bringing suit was relevant where it bore on equitable defenses (there, unclean hands and rescission) at issue. In *Parsons*, the court explained that “in ordinary litigation, not involving the clean hands defense, the plaintiff’s motive in bringing suit is not relevant to the subject matter of the litigation and is not a matter for discovery,” but went on to hold that where, as here, equitable defenses (including unclean hands) are at issue and the Court

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is sitting in equity to hear those claims, then a plaintiff's motivation in bringing a suit may be both relevant and discoverable. Specifically, the Court found that whether a plaintiff's motive for litigating is discoverable is determined by the inquiry: "does the motive of plaintiff have an immediate and necessary relationship to the transaction placed in issue by plaintiff's request for equitable relief?"

Here, Premera's motive has an immediate and necessary relationship to the transactions placed at issue in Premera's request for equitable relief declaring those claims void and unrecoverable. Premera thus put those motivations squarely at issue because the objective of this litigation appears to be to avoid coverage for those claims for COVID-19 testing conducted by GS Labs through a variety of means, including potentially anticompetitive conduct and litigation. Because Premera has put the propriety of these efforts at issue, *Parsons* recognizes that such discovery is, in fact, proper. As to RFP Nos. 5 and 6, both requests similarly bear on GS Labs' defenses, as well as Premera's efforts to organize and consolidate opposition to GS Labs' claims by insurers so as to pressure GS Labs into settlement in this case, which may give rise to antitrust and unfair competition claims. To the extent that Premera has obtained funding from unnamed interested parties with whom Premera may have strategized or otherwise colluded to avoid liability for GS Labs' claims, those documents and communications are relevant and discoverable—and certainly not privileged. *E.g., Cobra International, Inc. v. BCNY International, Inc.*, No. 05-61225-CIV, 2013 WL 11311345, at \*3 (S.D. Fla., Nov. 4, 2013) (finding litigation funding agreement relevant and not privileged and ordering production).

As to RFP Nos. 22–23, these requests seek information related to the volume of claims for COVID-19 tests submitted to Premera for reimbursement or payment to again determine whether Premera has unlawfully withheld payment from GS Labs and/or any other provider to unfairly leverage pricing concessions and/or engage in other forms of unfair competition and anti-competitive behavior. Based on our conferral, we understand that Premera maintains that all responsive information will be included in the claims summary data it will be producing. GS Labs is willing to review that information but reserves its right to further move to compel to the extent the information contained in the claims summary document is not sufficient to address the scope of these Requests.

RFP No. 27 seeks information relating to programs and communications by Premera to offer pandemic relief to members, employers, and providers of COVID-19 testing, including the financial value of those programs. During our conferral, GS Labs asked about documents and communications related to pandemic relief offered to members/employers/providers of Premera. You advised that Premera intends to stand on its objections and that Premera's position that it is a payor is different than GS Labs' role as a provider. GS Labs believes Premera put this subject at issue by criticizing GS Labs' hardship program and further requested that Premera commit to production and supplementation of responsive non-privileged documents. Please

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advise whether Premera will supplement its response in light of the positions discussed at our conferral and set forth above.

RFP No. 28 seeks information regarding Premera's profit margins, executive compensation, and business reserves, which bear directly on Premera's unilateral, subjective assessment that GS Labs engaged in "price gouging" in posting certain amounts as its cash price pursuant to Section 3202(a) of the CARES Act, and whether the prices sought from Premera were in fact "unreasonable" as alleged. During our conferral, Premera disagreed about whether information/documents about its profit margins from 2018-20 are relevant, but agreed to produce a summary of claims data regarding its payments for COVID testing. GS Labs maintains that Premera's ability to pay directly bears on the reasonableness of the prices GS Labs has charged and Premera's unwillingness to pay for this testing. Please advise whether Premera will supplement its response consistent with our conferral and in light of the positions described above.

RFP No. 39 seeks "All Documents and Communications with the state regulator referenced in Paragraph 55 of your Complaint." GS Labs reiterated its request for documents and communications with a state regulator Premera referenced in its complaint. Premera further agreed to produce the court filing from another case referencing this statement. Lastly, Premera agreed to produce documents and communications with all state regulators regarding GS Labs. Please confirm whether Premera will supplement its response consistent with the terms set forth above.

RFP No. 44 seeks all communications that Premera has received regarding whether any other lab or provider was cited for not meeting CLIA standards because Premera appears to assert this as one basis for refusing to pay GS Labs' claims. During our conferral, GS Labs reiterated its request specifically for communications Premera received from any other labs/providers regarding not meeting CLIA standards since March 11, 2020. Premera agreed to produce these documents identified through use of agreed search terms and custodians. Please confirm whether Premera will supplement its response consistent with the terms set forth above.

RFP No. 67 seeks "Documents regarding and including standing orders from laboratories to which Premera has paid any claims for COVID-19 testing." This is directly relevant because Premera cites GS Labs' standing orders as one of the bases on which it challenges GS Labs' claims. However, Premera states that it "generally does not possess standing orders from providers of COVID-19 testing or documents reflecting those standing orders." However, Premera asserts its ERISA, declaratory relief, and CPA claims based, in part, on challenging GS Labs' standing orders, including as a basis to attack both physician authorization and medical necessity. E.g., Compl. at ¶¶ 64–68; 102(a), (b); 116(b), (d), 134, 142–144. During the conferral, Premera acknowledged the relevance of these standing orders for other COVID-19 testing providers and their communications with those providers. Please advise whether Premera will supplement its response to produce all responsive non-privileged documents to this Request.

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RFP No. 69 seeks “all communications between Premera and the testing sites identified in response to Interrogatory No. 16.” In turn, Interrogatory No. 16 sought information identifying the other testing sites near GS Labs that provided similar or the same services. During our conferral, GS Labs requested copies of communications between Premera and other local COVID-19 testing sites in Washington. Premera requested to narrow the scope of this Request to communications concerning pricing. GS Labs responded that medical necessity and test delay/quality issues would also be a necessary subject. Please advise as to whether Premera is willing to produce in a supplemental response all communications between Premera and the testing sites identified in response to Interrogatory No. 16 regarding (a) coverage; (b) pricing; and/or (c) the medical necessity of claims submitted to Premera for COVID-19 testing services.

### **C. Improper Narrowing of Scope of Responses**

The last category of deficient responses on which we met and conferred pertain to RFPs where Premera improperly narrowed the scope of the Request unilaterally in its responses—namely, RFP Nos. 18, 24, 34, 47, 49, 50, 51, 55, 56, 58, 60.

RFP No. 18 seeks “All Explanation of Benefits (EOBs) that [Premera] sent in response to any and all claims submitted by GS Labs for COVID-19 testing.” These EOBs are directly relevant to GS Labs’ anticipated claims and affirmative defenses, as they are expected to demonstrate Premera’s wrongful conduct in violation of the CARES Act, its unclean hands, and the unjust circumstances under which it retains monies owed to GS Labs. During our conferral, we discussed whether Premera would be willing to produce all EOBs. You indicated Premera may be willing to produce a sampling of the EOBs but advised that you did not believe that the EOBs would contain information different from information contained in summary claims data. GS Labs maintains that the original EOBs are directly relevant to this litigation and that summary claims data is not acceptable, particularly to the extent EOBs purport to impose member liability for COVID-19 testing. Please advise as to whether Premera will produce any EOBs—a sampling or otherwise.

RFP No. 24 seeks documents and communications reflecting the total number, total value, and specific basis of denial for all claims submitted for COVID-19 tests, which again bears on whether Premera has unlawfully withheld payment from GS Labs to unfairly leverage pricing concessions and/or engage in other forms of violations of the CPA, unfair competition, and anti-competitive behavior. During our conferral, you advised that the information sought in this Request likely would be satisfied by Premera’s production of summary claims data. Please advise as to whether Premera will withdraw its objections and supplement to this effect. GS Labs reserves all rights to further move to compel upon review of the summary claims data.

RFP No. 34 seeks “All Documents supporting your contention that antibody testing is not diagnostic and not covered by either the FFCRA or the CARES Act as ‘diagnostic’ in nature.” During our conferral, you indicated Premera would produce its relevant policies as to when it

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believes antibody testing is reimbursable under the CARES Act. Please advise as to whether Premera will supplement its Response to this effect.

RFP Nos. 47, 49, 50, 51, 55, 56 seek information related to other contracts and the rates paid by Premera for diagnostic COVID-19 testing without pre-negotiated rates (and those with pre-negotiated rates), which concern identifying additional witnesses in this litigation and the reasonableness of Premera's challenge to the pricing of GS Labs' current rates. During our conferral, you indicated that Premera believes the documents/information for these Requests are generally related to contracts and rates paid by Premera for COVID testing. I indicated GS Labs disagreed and construes the requests related to ASOs to encompass a broad universe of contracts. As to RFP No. 47, you indicated that Premera may be willing to produce a sample of ASO contracts and further stated that pulling all ASO contracts is overly burdensome. You further advised that Premera represents that it uses similar language in these ASO contracts and that Premera will assess the number of ASOs that are at issue to which GS Labs has submitted claims. Please advise as to whether Premera is willing to supplement on any of the terms we discussed during our conferral. For the other Requests, GS Labs will await production of summary claims information and reserves the right to discuss whether there is any missing or additional information needed.

RFP Nos. 58, 60, and 66 seek information regarding the availability of, pricing for, and administration of COVID-19 testing, including the availability of Bio-Fire PCR or GenMarkPlex Respiratory Pathogen 2 Panel testing. Premera again improperly narrows the scope of the response to "reasonable and proportionate documents" in Premera's unilateral judgment and further limits the scope to documents "reflecting demand and availability of PCR testing" (RFP No. 58) and information regarding "summary claims" for pricing (RFP No. 60). GS Labs is entitled to a response stating whether Premera will comply with RFP No. 58 as written, including in reference to panel testing. As to RFP No. 58, Premera indicated that it would produce non-privileged responsive documents consistent with the parties' ESI protocol and that it did not believe there is a dispute as to production for this request. As to RFP Nos. 60, 66, GS Labs will await production of summary claims information and reserves the right to move to compel pending review of that information.

RFP No. 62 seeks "Documents sufficient to identify any obligation of GS Labs to accept Medicare." During our conferral, you acknowledged that there is no legal authority requiring GS Labs to accept Medicare pricing for COVID-9 testing. Per our conferral, to the extent that is Premera's position, GS Labs requests that Premera supplement its response to state that no responsive documents exist.

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## II. INTERROGATORIES

### 1. Improper Rule 33(d) Responses

During the conferral we discussed GS Labs' objection to the fact that Premera has improperly invoked Rule 33(d) to avoid responding to the vast majority of GS Labs' interrogatories—namely, Interrogatory Nos. 1, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, 24, and 25—because the responses were made without a corresponding production and fail to address, among other things, where in the records the relevant responses can be found. *Rainbow Pioneer No. 44-18-04A v. Hawaii-Nevada Inv. Corp.*, 711 F.2d 902, 906 (9th Cir.1983) (citing former Rule 33(c), which is the same as current Rule 33(d), as set forth in Fed. R. Civ. P. 33, Advisory Committee Notes to 1993 Revisions and explaining that a party that elects to avail itself of this option, however, must “*specify where in the records the answers [can] be found.*”) (emphasis added).

During our conferral, you indicated that Premera agreed to serve amended answers to the Interrogatories after it produces documents and provides summary information but would not supplement before then. GS Labs requests that Premera agree, at a minimum, to serve amended responses at the same time it produces the documents and that such documents be produced within 14 days of this letter, given that these requests were propounded in May. Please advise as to Premera's position.

### 2. Conferral Requests to Proper Interrogatories

During our conferral, GS Labs demonstrated that Interrogatory Nos. 2–3 seek information about how Premera understands the phrase “Member Responsibility” and “Member Other Liability” in the context of its communications with consumers in EOBs. You indicated that Premera can provide answers in the context of how the identified phrases are used in EOBs for COVID-19 testing. GS Labs finds this proposed construction acceptable for Interrogatory Nos. 2–3. Please confirm that Premera will provide these supplemental responses.

Further, as to Interrogatory No. 3, Premera indicated that it believed that information regarding member liability will be included in its summary of claims information, but that it would consider supplementation to provide a narrative response explaining when and why it applied member liability for testing. Please advise whether Premera will supplement.



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**3. Failure to Exercise Reasonable Diligence or Outright Refusal to Provide Code-Compliant Response**

During our conferral we also discussed Premera's responses to Interrogatory Nos. 13, 19–21, and 22, which GS Labs advised were deficient because of Premera's failure to exercise reasonable diligence or otherwise outright refusal to answer the Interrogatories at issue.

As to Interrogatory No. 13, we understand that you have taken the position that Premera has conducted no investigation or work to determine whether any member who received an EOB at issue later contracted COVID-19. We requested that Premera provide this response in a verified answer. Please advise whether Premera will supplement such a response.

As to Interrogatory No. 19, you clarified that Premera has no information regarding the comment referenced in the Blue KC complaint. Please advise whether Premera will supplement such a response to this effect.

As to Interrogatory Nos. 20–21, you confirmed that Premera will consider supplementation of these answers. Please advise whether Premera will supplement such a response.

As to Interrogatory No. 22, you indicated that Premera believes this interrogatory will be satisfied as GS Labs has proposed to narrow it through the production of summary claims data showing payments for COVID-19 testing above Medicare rates. GS Labs requested that Premera provide a supplemental answer stating this and referencing the production of documents pursuant to FRCP 33(d). Please advise whether Premera will supplement such a response.

**III. REQUESTS FOR ADMISSIONS**

During our conferral regarding RFA Nos. 7 and 8, you indicated that the only time Premera would have informed consumers or members that it would not cover COVID-19 testing performed by GS Labs would have been through EOBs. Per our conferral, please advise as to whether Premera is willing to supplement these responses to provide clear admissions or denials to the RFAs as propounded.

\* \* \*

We continue to appreciate Premera's willingness to work together on these disputes in a prompt and professional manner. We look forward to your response to this correspondence and to resolving and/or narrowing these disputes as discussed above.

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Best regards

Davis Wright Tremain LLP

A handwritten signature in blue ink, appearing to read "JD Allen", with a stylized flourish at the end.

Jaime Drozd Allen

# **EXHIBIT B**

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September 29, 2022

Jaime Drozd Allen  
Nicole Phillis  
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*Re:* Response to September 21, 2022 Letter concerning Premera's Discovery Responses

Counsel:

We write in response to your letter titled "Summary and Follow Up re Meet and Confer re Premera's Discovery Responses," dated September 21, 2022. Because you provided this letter at the time the parties had agreed to mutually exchange positions on discovery issues, we did not have an opportunity to address it in our prior correspondence.

Having reviewed the letter, Premera's position on most of GS Labs' discovery requests remains unchanged. We address below the items warranting a further response.

**RFP No. 18** seeks "All Explanation of Benefits (EOBs) that [Premera] sent in response to any and all claims submitted by GS Labs for COVID-19 testing." Premera offered to produce summary data reflecting the contents of these EOBs drawn from its database, as that approach would be far more practical (for both parties) than using the same information to generate terabytes of individual PDFs. We had understood that GS Labs would accept this approach, subject to its review of the EOB data, and would reserve the right to request that Premera produce the EOBs in a different format if it determined the data to be inadequate. In your follow-up letter, you ask that Premera "advise as to whether Premera will produce any EOBs—a sampling or otherwise." If GS Labs desires, Premera is willing to produce a sample of EOBs formatted as Premera members would have received them. For the sake of clarity, and as we explained during the conferral process, these EOBs will be PDFs generated using the data Premera has agreed to produce. Premera suggests that the parties begin with a random sample of 50 EOBs, and if GS Labs believes that it needs more following its review, the parties can revisit the issue.

**RFP 47** seeks "[a]ll contracts with any entity for whom Premera is an ASO." As you note in your letter, we discussed a sampling procedure during the conferral process. For context, GS Labs has submitted claims to more than 340 ASO plans administered by

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Premera. The period at issue stretches three years, from 2020 to 2022, meaning that to produce documents in response to this request, Premera would have to pull contracts and plan documents for each of the 340+ ASO plans for each of three years. The burden of doing so would be very high, and the benefit very low given that much of the relevant language will be identical or materially identical from plan-to-plan and from year-to-year.

We therefore propose a sampling process. We are willing to confer with GS Labs on a methodology. Our two suggested approaches would be to either (1) stratify the ASO plans by size into national, state, and group plans and choose 10 of each strata at random; or (2) simply select the top 20-30 ASO plans ranked by the amount GS Labs has billed that ASO plan. Premera would produce plan documents and ASO contracts for each plan for each of the three years at issue in this case. Once GS Labs has reviewed the sample, if it believes there is some reason it needs discovery regarding additional plans, the parties can confer further.

**RFP No. 69** seeks “all communications between Premera and the testing sites identified in response to Interrogatory No. 16.” As we noted in our prior correspondence, GS Labs had suggested it might be willing to narrow this request during the conferral process, but it had not confirmed as much as of the time the parties agreed to exchange their final positions, and that Premera would thus stand on its objections. In your follow-up letter, GS Labs agrees to narrow this request to communications regarding “(a) coverage; (b) pricing; and/or (c) the medical necessity of claims submitted to Premera for COVID-19 testing services.” As narrowed, Premera will agree to run reasonable search terms through the files of its custodians and produce documents responsive to this request.

As to the interrogatories to which Premera responded utilizing Federal Rule of Civil Procedure 33(d), Premera previously agreed to supplement its interrogatory responses the same day it produced relevant documents—provided GS Labs would do the same—which was the request GS Labs raised during the conferral process. In its follow-up letter, GS Labs makes the additional demand that Premera produce these documents within 14 days of its receipt of GS Labs’ letter. This is not practicable, nor is it consistent with the parties’ agreed ESI protocol. And given that GS Labs has itself utilized Rule 33(d) in responding to Premera’s interrogatories without having produced a single document, it is unclear what basis (legal or otherwise) GS Labs has for this unilateral demand.

In any event, Premera shares GS Labs’ interest in ensuring that, now that the parties have worked to resolve their discovery disputes to the extent they are able to do so amicably, the document production process move quickly. Premera proposes that (1) the parties mutually exchange proposed search terms and hit counts per the agreed ESI protocol at 5 pm Central on Monday (10/3); (2) the parties agree to make the first of their respective rolling document productions within 30 days of this letter (10/29), to include as many documents referenced in their Rule 33(d) interrogatory responses as can be readily identified at that time; and (3) the parties agree to substantially complete their document production in response to opposing parties’ first document requests no later than December 16, 2022. Please let us know if you’re amenable to this proposal.

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Finally, we understand that GS Labs has now ceased its testing operations in Washington and elsewhere. To the extent there is evidence relevant to this dispute present at the now-defunct testing sites, please confirm that GS Labs is making diligent efforts to preserve it. Please also advise as to the status of GS Labs' physical facilities in Washington, and whether GS Labs has taken steps to preserve them for inspection related to this litigation.

Sincerely,

Charlie C. Gokey

# **EXHIBIT C**

**Gokey, Charles C.**

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**From:** Gokey, Charles C.  
**Sent:** Thursday, October 13, 2022 3:32 PM  
**To:** 'Phillis, Nicole'; Pearmain, Lina; Chen, Stephanie A.; Gleason, Jeffrey S.  
**Cc:** Allen, Jaime Drozd; Siler, Ross  
**Subject:** RE: Premera Blue Cross v. GS Labs, LLC, Case No. 21-cv-01399-LK

Nicole,

We do not understand your position, or your claim that GS Labs is “a pawn in a set up.” We have simply asked whether any of GS Labs’ Washington testing sites remain fully or partially intact after their closure or if GS Labs has dismantled and emptied them all. You have refused to respond and have taken the position that GS Labs will not tell Premera if there is anything left to preserve unless we explain specifically what GS Labs should preserve (or should have preserved). Again, the burden is on GS Labs to identify and preserve potentially relevant evidence. But for the sake of clarity, and as a show of good faith, we explain why GS Labs’ testing sites are relevant and what Premera intends to inspect below.

*Premera’s allegations regarding botched and unreliable testing.* Premera has alleged that “GS Labs . . . frequently fails to maintain acceptable quality levels in its testing and reporting of results.” Compl. ¶ 3; *see also id.* ¶¶ 69-75. It has explained that “Premera does not reimburse providers for testing that fails to meet applicable standards for quality and reliability.” *Id.* ¶ 75. Premera has further alleged that GS Labs has charged unreasonably high prices, which far exceed the value of the services rendered, particularly given GS Labs’ “endemic quality problems” in its testing operations. *Id.* ¶¶ 39, 76. Premera seeks a declaratory judgment that it need not pay for testing that GS Labs tainted with deviations “from applicable laboratory standards for testing facilities” that may have impacted patient results. *Id.* ¶ 144.

GS Labs’ testing sites are squarely relevant to these allegations and to this claim. To prove up these allegations, Premera is entitled to inspect conditions at GS Labs’ testing sites (in the manner detailed further below) to determine whether GS Labs deviated “from applicable laboratory standards for testing facilities” that may have impacted patient results. *Id.* ¶ 144. This includes deviations from acceptable standards in the maintenance of GS Labs’ testing equipment and facilities, sample storage area, and equipment used for analyzing and reporting results.

*GS Labs’ Contemplated Antitrust Counterclaim.* “The duty to preserve . . . extends to the period before litigation when a party should reasonably know that evidence may be relevant to anticipated litigation.” *Small v. Univ. Med. Ctr.*, No. 2:13-cv-0298, 2018 U.S. Dist. LEXIS 134716, at \*200 (D. Nev. July 31, 2018). GS Labs has repeatedly stated that it anticipates filing antitrust counterclaims against Premera if this case proceeds past a motion to dismiss. *See, e.g.*, Mot. to Dismiss (Dkt. 22) at 6. In discovery correspondence, GS Labs has confirmed that it is seeking discovery on its antitrust claims even now, before GS Labs has filed them.

GS Labs has already filed antitrust counterclaims against Blue Cross and Blue Shield of Kansas City premised on GS Labs offering “higher quality and higher performing testing sites” than its competitors. Proposed Am. Counterclaims (Dkt. 104-1) ¶ 147, *Blue Cross and Blue Shield of Kansas City v. GS Labs, LLC*, No. 4:21-cv-00525 (W.D. Mo. Jan. 18, 2022); *see also, e.g., id.* ¶¶ 146-151, 154-155, 169-170. GS Labs likewise filed antitrust counterclaims against Blue Cross and Blue Shield of Minnesota based on GS Labs being a “distinctly high-quality COVID-19 diagnostic testing operation,” and specifically touted “premium space and equipment.” Am. Counterclaims (Dkt. 22) ¶¶ 21, 251, *BCBSM, Inc. v. GS Labs, Inc.*, No. 0:22-cv-00513 (D. Minn. June 28, 2022); *see also, e.g., id.* ¶¶ 19-23, 58, 113, 120-127, 172-173, 229-233.

In those cases, as in this one, GS Labs is represented by your firm, and the counterclaims it filed in both are materially identical. In correspondence in the BCBSM case, your firm has already accused Premera of being a co-conspirator in the antitrust conspiracy it has alleged against BCBSM. It seems clear that the counterclaims GS Labs anticipates filing against Premera are based on the same allegations it has made against Blue KC and BCBSM.



If you can represent to us that GS Labs anticipates filing completely different counterclaims against Premera, that it is not going to argue that Premera is a coconspirator in the antitrust conspiracy it has alleged against Blue KC and BCBSM, and if you can commit to us in writing now that GS Labs will not allege any counterclaim based on its status as a distinctly high-quality testing operation, that may change the analysis of this issue. But if you cannot make that commitment, and if GS Labs does anticipate lodging antitrust counterclaims based on the quality of its testing operations, then the relevance of GS Labs' testing sites is plain. Premera is entitled to inspect them, in the condition in which GS Labs maintained them while in operation, to determine whether GS Labs was in fact a "distinctly high-quality COVID-19 diagnostic testing operation" with "premium space and equipment." That is a central and potentially dispositive issue for those claims.

*What Premera will inspect.* In connection with both of the above issues, Premera is entitled to inspect the premises and testing equipment of GS Labs' Washington testing sites, in the condition in which GS Labs maintained them while the sites were operational. This includes equipment used to perform testing, store samples, analyze results, and any other equipment GS Labs utilized in the ordinary course of its business. This also includes the physical space(s) where GS Labs tested and stored samples at these sites. Premera is entitled to determine whether, for example, GS Labs maintained its facilities in appropriate sanitary condition to minimize risk of contamination, whether GS Labs correctly maintained its equipment, and whether GS Labs had adequate climate control for testing and storing samples. Premera is entitled to photograph the conditions at these sites and show those pictures to a jury to inform deliberations about whether GS Labs ran a distinctly high-quality testing operation. Premera is entitled to gather evidence to support potential expert testimony regarding whether GS Labs maintained its testing sites in a manner that would adversely impact the reliability of its testing and reporting of results.

This is not merely speculation as to the types of evidence Premera expects to find. Former GS Labs nurses have filed sworn declarations in parallel litigation stating that they "observed many serious problems with the administration of COVID-19 tests and delivery of results" at GS Labs' testing sites, including a lack of appropriate climate control for testing and storing samples. Similarly, according to a report from American Public Media, "[h]ealth officials from three states said that GS Labs' work was frequently slower and less reliable than other labs," including one who said "no other company came close," and patients reported that GS Labs' testing sites "looked really busted down . . . and not in good condition at all." Tom Scheck, et al., *Testing the Limits: How a Covid-19 testing company accused of sloppiness, fraud and profiteering kept expanding*, APM Reports (July 28, 2022), <https://tinyurl.com/4adkjbjk>. This report also noted that the federal government declared a laboratory GS Labs maintained in Nebraska to be "in a state of 'immediate jeopardy,'" meaning the "lab has caused or is likely to cause serious injury, harm or death to the general public or to those served by the laboratory," and its results are not to be trusted. *Id.*

We have tried above to be as clear and comprehensive as possible in a show of good faith. But to be clear, GS Labs' preservation obligations do not depend on its evaluation of the merits of our arguments or claims. It is GS Labs' burden to identify and preserve evidence that may be relevant to pending or contemplated litigation, and relevance under the Federal Rules is a very broad standard. It is difficult to see how GS Labs can contend the testing sites where it performed the testing at issue in this litigation do not fall within that standard.

Having provided the foregoing information, we ask you a final time: (1) Has GS Labs already dismantled and emptied all its Washington testing sites? (2) If there remain any testing sites in Washington that remain fully or partially intact, will GS Labs preserve them for a reasonable time to facilitate Premera's inspection of those sites, both the physical premises and equipment, in the manner discussed above? Please do not respond by just disputing the points above. We have been patient and have tried to work with you in good faith, but cannot continue to go back and forth on this given that GS Labs has at least begun the process of dismantling its testing sites.

**Please let us know today before the close of business.** If you cannot give us straightforward yes or no answers before then, we will understand that we need to bring this issue to the Court's attention and reserve the right to seek an order requiring GS Labs to preserve any remaining testing sites. In doing so, we will explain that GS Labs has refused to tell

Premera whether there are any testing sites in Washington that it has not destroyed, and if so, whether it will preserve those sites for inspection.

Charlie Gokey

**ROBINS KAPLAN**

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**From:** Phillis, Nicole <NicolePhillis@dwt.com>

**Sent:** Wednesday, October 12, 2022 7:05 PM

**To:** Gokey, Charles C. <CGokey@RobinsKaplan.com>; Pearmain, Lina <LinaPearmain@dwt.com>; Chen, Stephanie A. <SChen@RobinsKaplan.com>; Gleason, Jeffrey S. <JGleason@RobinsKaplan.com>

**Cc:** Allen, Jaime Drozd <JaimeDrozdAllen@dwt.com>; Siler, Ross <Ross.Siler@dwt.com>

**Subject:** [EXTERNAL] RE: Premera Blue Cross v. GS Labs, LLC, Case No. 21-cv-01399-LK

Charlie,

We reviewed *Small v. Univ. Med. Ctr.*, No. 2:13-CV-0298-APG-PAL, 2018 WL 3795238, at \*14 (D. Nev. Aug. 9, 2018), but disagree with your characterization of the case and do not understand its applicability to this issue. There, a special master had been appointed to investigate the alleged failure to preserve information after 9 judicial hearings on Plaintiffs' motion to compel and multiple court orders on discovery, which were subsequently violated. Here, there is no such track record or any indication that GS Labs is not preserving information. More importantly, Premera is avoiding answering what exactly (if anything) it seeks to inspect, which raises concerns to us that this entire exchange may be used to manufacture a spoliation dispute where none currently exists or for Premera to hold out to use against GS Labs if it later identifies some piece of information that it alleges could be tied to the testing sites. GS Labs takes its document preservation obligations seriously and declines to be a pawn in a set up for a potential future spoliation motion on a yet-to-be-determined facts and theory.

To that end, I repeat our original question: What, specifically, does your client need to examine at these testing sites? And what is the relevance of said information to the allegations made in the pending complaint?

If Premera cannot articulate any information that needs to be preserved or examined at the testing sites (and identify the specific allegation or claim in the Complaint to which any information would pertain), then Premera will forego any right to later complain that this information has not been preserved.

Thanks,  
Nicole

**Nicole S. Phillis (she/her/hers) | Davis Wright Tremaine LLP**

865 S Figueroa Street, Suite 2400 | Los Angeles, CA 90017

Tel: (213) 633-8657 | Fax: (213) 633-6899

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Anchorage | Bellevue | **Los Angeles** | New York | Portland | San Francisco | Seattle | Washington, D.C.

---

**From:** Gokey, Charles C. <CGokey@RobinsKaplan.com>

**Sent:** Wednesday, October 12, 2022 2:51 PM

**To:** Phillis, Nicole <NicolePhillis@dwt.com>; Pearmain, Lina <LinaPearmain@dwt.com>; Chen, Stephanie A. <SChen@RobinsKaplan.com>; Gleason, Jeffrey S. <JGleason@RobinsKaplan.com>

**Cc:** Allen, Jaime Drozd <JaimeDrozdAllen@dwt.com>; Siler, Ross <Ross.Siler@dwt.com>

**Subject:** RE: Premera Blue Cross v. GS Labs, LLC, Case No. 21-cv-01399-LK

[EXTERNAL]

Nicole,

We're writing to follow up on the below. Please let us know if GS Labs has already dismantled and removed the contents of all of its Washington testing sites. If there are any testing sites that remain fully or partially intact from the time when they were operational, please also let us know if GS Labs will preserve them for a reasonable time to permit Premera to inspect them in connection with this litigation—meaning inspect the physical premises and the equipment GS Labs utilized in its testing operations. You can reserve the right to dispute the relevance of these testing sites or Premera's right to inspect them, but before we can have that discussion, we need to know whether there is anything left to inspect. If we cannot get clarity on this, we may need to involve the Court in relatively short order, and would appreciate confirmation no later than close of business tomorrow.

Separately, in the attached letter, we proposed a mutual commitment regarding when the parties will begin and substantially complete producing documents. Please let us know if GS Labs will agree to our proposal, or if it has a counterproposal for these deadlines.

Thank you.

Charlie Gokey

**ROBINS KAPLAN**

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**From:** Gokey, Charles C.

**Sent:** Tuesday, October 11, 2022 5:13 PM

**To:** Phillis, Nicole [NicolePhillis@dwt.com](mailto:NicolePhillis@dwt.com); Pearmain, Lina [LinaPearmain@dwt.com](mailto:LinaPearmain@dwt.com); Chen, Stephanie A. [SChen@RobinsKaplan.com](mailto:SChen@RobinsKaplan.com); Gleason, Jeffrey S. [JGleason@RobinsKaplan.com](mailto:JGleason@RobinsKaplan.com)

**Cc:** Allen, Jaime Drozd [JaimeDrozdAllen@dwt.com](mailto:JaimeDrozdAllen@dwt.com); Siler, Ross [Ross.Siler@dwt.com](mailto:Ross.Siler@dwt.com)

**Subject:** RE: Premera Blue Cross v. GS Labs, LLC, Case No. 21-cv-01399-LK

Nicole,

Thank you for getting back to us. It falls to the preserving party to identify and preserve potentially relevant evidence, not the other way around. *See, e.g., Small v. Univ. Med. Ctr.*, No. 2:13-cv-0298, 2018 U.S. Dist. LEXIS 134716, at \*203 (D. Nev. July 31, 2018). Regardless, you have not answered my question. We can talk about what specifically Premera believes GS Labs must preserve, but first please confirm to us whether there are any GS Labs testing sites that remain intact in Washington. This discussion only makes sense if you can confirm that there is in fact something left to preserve. We view this confirmation as time sensitive in light of our recent finding that GS Labs has dismantled at least some of its facilities in the state.

Charlie Gokey

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**From:** Phillis, Nicole <[NicolePhillis@dwt.com](mailto:NicolePhillis@dwt.com)>

**Sent:** Tuesday, October 11, 2022 5:02 PM

**To:** Gokey, Charles C. <[CGokey@RobinsKaplan.com](mailto:CGokey@RobinsKaplan.com)>; Pearmain, Lina <[LinaPearmain@dwt.com](mailto:LinaPearmain@dwt.com)>; Chen, Stephanie A. <[SChen@RobinsKaplan.com](mailto:SChen@RobinsKaplan.com)>; Gleason, Jeffrey S. <[JGleason@RobinsKaplan.com](mailto:JGleason@RobinsKaplan.com)>

**Cc:** Allen, Jaime Drozd <[JaimeDrozdAllen@dwt.com](mailto:JaimeDrozdAllen@dwt.com)>; Siler, Ross <[Ross.Siler@dwt.com](mailto:Ross.Siler@dwt.com)>

**Subject:** [EXTERNAL] RE: Premera Blue Cross v. GS Labs, LLC, Case No. 21-cv-01399-LK

Charlie,

We disagree with your characterizations below, most of which appear to conflate this action with the Minnesota action.

More importantly, you still have not provided us with the list of information regarding what Premera contends needs to be preserved from the test sites; nor have you stated how closing of those sites impacts Premera's claims in this case, or how or why GS Labs could have any obligation to keep those sites open. Premera concedes that it does not have any inspection demand outstanding but nonetheless has reiterated a vague concern about the preservation of certain unspecified information. GS Labs takes its obligations to preserve information seriously and is unwilling to guess at what it must preserve, only to have Premera contend at a later date that it has guessed incorrectly. **If Premera contends that there is a basis to preserve information from GS Labs's closed test sites, it must identify exactly, with specificity, what information it contends needs to be preserved for this case (including, but not limited to, any specific documents, evidence, or information) and what allegation or claim in Premera's complaint warrants each such request for preservation.**

Thanks  
Nicole

**Nicole S. Phillis (she/her/hers) | Davis Wright Tremaine LLP**

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**From:** Gokey, Charles C. <[CGokey@RobinsKaplan.com](mailto:CGokey@RobinsKaplan.com)>

**Sent:** Monday, October 10, 2022 5:24 PM

**To:** Phillis, Nicole <[NicolePhillis@dwt.com](mailto:NicolePhillis@dwt.com)>; Pearmain, Lina <[LinaPearmain@dwt.com](mailto:LinaPearmain@dwt.com)>; Chen, Stephanie A. <[SChen@RobinsKaplan.com](mailto:SChen@RobinsKaplan.com)>; Gleason, Jeffrey S. <[JGleason@RobinsKaplan.com](mailto:JGleason@RobinsKaplan.com)>

**Cc:** Allen, Jaime Drozd <[JaimeDrozdAllen@dwt.com](mailto:JaimeDrozdAllen@dwt.com)>; Siler, Ross <[Ross.Siler@dwt.com](mailto:Ross.Siler@dwt.com)>

**Subject:** RE: Premera Blue Cross v. GS Labs, LLC, Case No. 21-cv-01399-LK

**[EXTERNAL]**

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Nicole,

Thank you for getting back to us. Premera filed suit based in part on GS Labs' substandard testing operations. For its part, GS Labs has threatened antitrust counterclaims against Premera. Presumably, these are the same antitrust counterclaims GS Labs filed against Blue Cross and Blue Shield of Minnesota, which are based on GS Labs' status as a "distinctly high-quality COVID-19 diagnostic testing operation" with "premium space and equipment." GS Labs' testing facilities—the physical premises and the equipment stored in them—are relevant to both Premera's claims and GS Labs' threatened counterclaims. The obligation to preserve evidence arises when a party is or should be aware that the evidence is or may be relevant to pending or contemplated litigation, without regard to whether the opposing party has served a discovery request directed at that evidence.

That said, we have just learned that at least some of GS Labs' Washington testing sites have already been dismantled and destroyed. GS Labs' counsel in parallel litigation informed us at the end of last week that GS Labs has already dismantled and destroyed *all* of its Minnesota testing facilities. Please let us know whether there are any remaining testing sites in Washington that GS Labs has left intact. If there are not, there's nothing left to inspect, and questions about what specifically Premera wants to inspect are moot.

Thank you.

Charlie Gokey

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**From:** Phillis, Nicole <[NicolePhillis@dwt.com](mailto:NicolePhillis@dwt.com)>

**Sent:** Monday, October 10, 2022 5:18 PM

**To:** Gokey, Charles C. <[CGokey@RobinsKaplan.com](mailto:CGokey@RobinsKaplan.com)>; Pearmain, Lina <[LinaPearmain@dwt.com](mailto:LinaPearmain@dwt.com)>; Chen, Stephanie A. <[SChen@RobinsKaplan.com](mailto:SChen@RobinsKaplan.com)>; Gleason, Jeffrey S. <[JGleason@RobinsKaplan.com](mailto:JGleason@RobinsKaplan.com)>

**Cc:** Allen, Jaime Drozd <[JaimeDrozdAllen@dwt.com](mailto:JaimeDrozdAllen@dwt.com)>; Siler, Ross <[Ross.Siler@dwt.com](mailto:Ross.Siler@dwt.com)>

**Subject:** [EXTERNAL] RE: Premera Blue Cross v. GS Labs, LLC, Case No. 21-cv-01399-LK

Dear Charlie,

Can you please help me understand what, specifically, Premera contends needs to be preserved from the Washington test sites? Given that there is no pending inspection demand, I would like to better understand what you think GS Labs is obligated to preserve and its relevance to the pending action.

Thanks,  
Nicole

**Nicole S. Phillis (she/her/hers) | Davis Wright Tremaine LLP**

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**From:** Gokey, Charles C. <[CGokey@RobinsKaplan.com](mailto:CGokey@RobinsKaplan.com)>

**Sent:** Tuesday, October 4, 2022 8:21 AM

**To:** Phillis, Nicole <[NicolePhillis@dwt.com](mailto:NicolePhillis@dwt.com)>; Pearmain, Lina <[LinaPearmain@dwt.com](mailto:LinaPearmain@dwt.com)>; Chen, Stephanie A. <[SChen@RobinsKaplan.com](mailto:SChen@RobinsKaplan.com)>; Gleason, Jeffrey S. <[JGleason@RobinsKaplan.com](mailto:JGleason@RobinsKaplan.com)>

**Cc:** Allen, Jaime Drozd <[JaimeDrozdAllen@dwt.com](mailto:JaimeDrozdAllen@dwt.com)>; Siler, Ross <[Ross.Siler@dwt.com](mailto:Ross.Siler@dwt.com)>

**Subject:** RE: Premera Blue Cross v. GS Labs, LLC, Case No. 21-cv-01399-LK

[EXTERNAL]

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Nicole,

Thank you for getting back to us. We agree to push back the exchange to the requested date. Please let us know if you're amenable to the balance of our proposal concerning mutual production deadlines. Also, as requested in our letter of last week, we ask that you please confirm that GS Labs is preserving any evidence stored at its Washington test sites as it winds down its testing operations, and that the facilities will remain available for inspection in connection with this litigation.

Charlie Gokey

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**From:** Phillis, Nicole <[NicolePhillis@dwt.com](mailto:NicolePhillis@dwt.com)>

**Sent:** Monday, October 3, 2022 6:36 PM

**To:** Gokey, Charles C. <[CGokey@RobinsKaplan.com](mailto:CGokey@RobinsKaplan.com)>; Pearmain, Lina <[LinaPearmain@dwt.com](mailto:LinaPearmain@dwt.com)>; Chen, Stephanie A. <[SChen@RobinsKaplan.com](mailto:SChen@RobinsKaplan.com)>; Gleason, Jeffrey S. <[JGleason@RobinsKaplan.com](mailto:JGleason@RobinsKaplan.com)>

Cc: Allen, Jaime Drozd <[JaimeDrozdAllen@dwt.com](mailto:JaimeDrozdAllen@dwt.com)>; Siler, Ross <[Ross.Siler@dwt.com](mailto:Ross.Siler@dwt.com)>

Subject: [EXTERNAL] RE: Premera Blue Cross v. GS Labs, LLC, Case No. 21-cv-01399-LK

Charlie,

We propose that we set a time to exchange search terms next Friday October 14, 2022 at 2 PM PT. Please let us know if that would work for you.

Thanks,  
Nicole

**Nicole S. Phillis (she/her/hers)** | Davis Wright Tremaine LLP

865 S Figueroa Street, Suite 2400 | Los Angeles, CA 90017

Tel: (213) 633-8657 | Fax: (213) 633-6899

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**From:** Gokey, Charles C. <[CGokey@RobinsKaplan.com](mailto:CGokey@RobinsKaplan.com)>

**Sent:** Monday, October 3, 2022 8:33 AM

**To:** Pearmain, Lina <[LinaPearmain@dwt.com](mailto:LinaPearmain@dwt.com)>; Chen, Stephanie A. <[SChen@RobinsKaplan.com](mailto:SChen@RobinsKaplan.com)>; Gleason, Jeffrey S. <[JGleason@RobinsKaplan.com](mailto:JGleason@RobinsKaplan.com)>

**Cc:** Allen, Jaime Drozd <[JaimeDrozdAllen@dwt.com](mailto:JaimeDrozdAllen@dwt.com)>; Siler, Ross <[Ross.Siler@dwt.com](mailto:Ross.Siler@dwt.com)>; Phillis, Nicole <[NicolePhillis@dwt.com](mailto:NicolePhillis@dwt.com)>

**Subject:** RE: Premera Blue Cross v. GS Labs, LLC, Case No. 21-cv-01399-LK

[EXTERNAL]

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Counsel,

Following up on the attached letter, please let us know if you are prepared to exchange the information contemplated by the parties' ESI stipulation today, and if not, when you expect to be ready. Thank you.

Charlie Gokey

**ROBINS  KAPLAN**

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**From:** Gokey, Charles C.

**Sent:** Thursday, September 29, 2022 4:04 PM

**To:** Pearmain, Lina <[LinaPearmain@dwt.com](mailto:LinaPearmain@dwt.com)>; Chen, Stephanie A. <[SChen@RobinsKaplan.com](mailto:SChen@RobinsKaplan.com)>; Gleason, Jeffrey S. <[JGleason@RobinsKaplan.com](mailto:JGleason@RobinsKaplan.com)>

**Cc:** Allen, Jaime Drozd <[JaimeDrozdAllen@dwt.com](mailto:JaimeDrozdAllen@dwt.com)>; Siler, Ross <[Ross.Siler@dwt.com](mailto:Ross.Siler@dwt.com)>; Phillis, Nicole <[NicolePhillis@dwt.com](mailto:NicolePhillis@dwt.com)>

**Subject:** RE: Premera Blue Cross v. GS Labs, LLC, Case No. 21-cv-01399-LK

Counsel,

Following up on the below, please see the attached correspondence.

Charlie Gokey

**ROBINS  KAPLAN**

Robins Kaplan LLP | 800 LaSalle Avenue | Suite 2800 | Minneapolis, MN 55402

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**From:** Gokey, Charles C.  
**Sent:** Monday, September 26, 2022 10:01 AM  
**To:** Pearmain, Lina <[LinaPearmain@dwt.com](mailto:LinaPearmain@dwt.com)>; Chen, Stephanie A. <[SChen@RobinsKaplan.com](mailto:SChen@RobinsKaplan.com)>; Gleason, Jeffrey S. <[JGleason@RobinsKaplan.com](mailto:JGleason@RobinsKaplan.com)>  
**Cc:** Allen, Jaime Drozd <[JaimeDrozdAllen@dwt.com](mailto:JaimeDrozdAllen@dwt.com)>; Siler, Ross <[Ross.Siler@dwt.com](mailto:Ross.Siler@dwt.com)>; Phillis, Nicole <[NicolePhillis@dwt.com](mailto:NicolePhillis@dwt.com)>  
**Subject:** RE: Premera Blue Cross v. GS Labs, LLC, Case No. 21-cv-01399-LK

Counsel,

Following up on the below, we are in receipt of your letter with additional information concerning GS Labs' position on Premera's discovery responses. We of course did not have the benefit of this letter prior to our mutual exchange of discovery positions on Wednesday of last week. We are evaluating it and will respond by Thursday, as requested.

Charlie Gokey

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**From:** Pearmain, Lina <[LinaPearmain@dwt.com](mailto:LinaPearmain@dwt.com)>  
**Sent:** Wednesday, September 21, 2022 5:57 PM  
**To:** Gokey, Charles C. <[CGokey@RobinsKaplan.com](mailto:CGokey@RobinsKaplan.com)>; Chen, Stephanie A. <[SChen@RobinsKaplan.com](mailto:SChen@RobinsKaplan.com)>; Gleason, Jeffrey S. <[JGleason@RobinsKaplan.com](mailto:JGleason@RobinsKaplan.com)>  
**Cc:** Allen, Jaime Drozd <[JaimeDrozdAllen@dwt.com](mailto:JaimeDrozdAllen@dwt.com)>; Siler, Ross <[Ross.Siler@dwt.com](mailto:Ross.Siler@dwt.com)>; Phillis, Nicole <[NicolePhillis@dwt.com](mailto:NicolePhillis@dwt.com)>  
**Subject:** [EXTERNAL] Premera Blue Cross v. GS Labs, LLC, Case No. 21-cv-01399-LK

Counsel:

Please see attached on behalf of Jaime Drozd Allen.

Best regards,

**Lina Pearmain** | Davis Wright Tremaine LLP  
Executive Legal Secretary  
865 S Figueroa Street, Suite 2400 | Los Angeles, CA 90017  
Tel: (213) 633-8640 | Fax: (213) 633-6899  
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Thank you in advance for your cooperation.

Robins Kaplan LLP

<http://www.robinskaplan.com>

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# **EXHIBIT D**

**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,



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 accidentally 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.

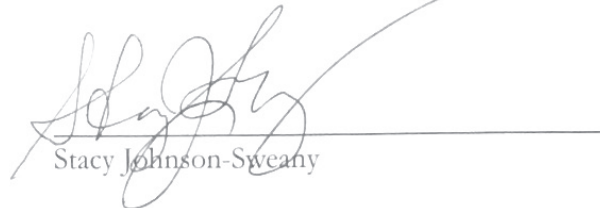
10. I observed problems with testing like those described above approximately 10 times per day and believe they may have impacted many more tests.

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

# **EXHIBIT E**

**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.



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 accidentally 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

A handwritten signature in black ink, appearing to read 'KT Thiessen', is written over a horizontal line.

KT Thiessen