

The Honorable Lauren King

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PREMERA BLUE CROSS,

Plaintiff,

v.

GS LABS, LLC, a Delaware limited liability
company,

Defendant.

Case No. 2:21-cv-01399-LK

**DECLARATION OF KIRK THOMPSON
IN SUPPORT OF DEFENDANT GS
LABS, LLC'S OPPOSITION TO
PLAINTIFF PREMERA BLUE CROSS'S
MOTION FOR ORDER TO PRESERVE
EVIDENCE**

**NOTE ON MOTION CALENDAR:
OCTOBER 28, 2022**

ORAL ARGUMENT REQUESTED

DECLARATION OF KIRK THOMPSON

I, Kirk Thompson, declare as follows:

1. I am the Operating Partner at City+Ventures for Defendant GS Labs, LLC (“GS Labs”). In connection with my duties as the Operating Partner for GS Labs, I help to oversee operational and asset management. This declaration is based on personal knowledge, except where stated on information and belief. If called, I could testify competently as follows.

2. Contrary to Premera’s fears, GS Labs has preserved *all testing equipment* from Washington testing sites, including Accula, Indicaid, Status and Hardy Diagnostic COVID-19 and panel tests, timers, baskets, nitrile gloves and specimen collection kits.

3. Between September 2022 and the present, GS Labs began winding down its COVID-19 testing site operations across the country. This decision was largely a financial one, which was further exacerbated by the diminishing demand for laboratory COVID-19 testing at this stage in the pandemic, as well as the lack of payment from major insurers such as Premera.

4. On September 29, 2022, the day Premera first raised a request that GS Labs confirm that it was complying with its preservation obligations in winding down operations in Washington state, GS Labs confirmed internally its knowledge of and compliance with its preservation obligations.

5. The testing equipment from each Washington testing site was shipped under the direct supervision of GS Labs’ Quality Assurance Officer from the testing sites to a secure warehouse leased by GS Labs in Nebraska where GS Labs has been soliciting offers for the sale of its testing equipment.

6. Aside from an onsite inspection, GS Labs retains detailed first- and third-party records of the quality of the conditions at both its testing sites and in its laboratory in Nebraska. Among other things, GS Labs maintained regular quality assurance reports, which included inspection surveys documenting physical set up of advertisements, signage, set-up, departmental compliance review, operational review for all core test site roles, and documentary photographs of each of its Washington

1 testing sites. Third party inspections of the sites were often conducted, including for the formal federal
2 certification requirement known as “CLIA certification” which is mandated by the Centers for Medicare
3 & Medicaid Services and overseen by both state and federal regulatory agencies.

4 7. As to the premises, though the leases are now expired for all Washington state testing
5 sites except for the Northgate and Vancouver locations, which are soon expiring, GS Labs is in contact
6 with the landlords for those properties and will work in good faith with Premera to arrange for an
7 opportunity for Premera to inspect the former premises upon Premera’s identification of which premises
8 it seeks to inspect and when it is available for those inspections.

10 8. Premera’s demand that GS Labs be ordered to “cease further dismantling and removing
11 the contents of its testing sites locating in Washington” would indefinitely impose a material and
12 untenable financial burden on GS Labs. Among other things, it forces GS Labs to again assume the risk
13 of diminution in value in the future sale of testing equipment, which is weakening due to both advances
14 in technology, diminishing demand, and insurers non-payment.

16 9. To the extent this Court is inclined to consider issuance of any such order, GS Labs
17 requests that Premera be ordered to post a bond of \$3,000,000, which reflects the potential loss to GS
18 Labs of the value of the equipment, as well as cost shifting for the costs of maintaining the leases of
19 each facility in Washington state until Premera completes its inspection(s).

20 I declare under penalty of perjury under the laws of the United States of America that the
21 foregoing is true and correct.

22 Executed this 26th day of October, 2022, at Omaha, Nebraska.

24 
25 _____
26 Kirk Thompson