

THE HONORABLE LAUREN KING

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

PREMERA BLUE CROSS,

Plaintiff,

v.

GS LABS, LLC,

Defendant.

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

**PREMERA BLUE CROSS’S REPLY IN
SUPPORT OF MOTION FOR AN ORDER TO
PRESERVE EVIDENCE**

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

GS Labs has mooted Premera’s motion by destroying the evidence Premera sought to preserve. Premera asked the Court to enter an order requiring GS Labs to cease dismantling and destroying its testing sites in Washington. GS Labs reveals in its opposition that it has already dismantled and destroyed every single testing site it previously maintained in Washington. *See* Opp. At 1-2. Premera further asked the Court to order GS Labs not to remove its testing equipment from Washington pending Premera’s inspection. GS Labs reveals in its opposition brief that it has already shipped the testing equipment it removed from its Washington testing sites roughly 1,500 miles to a warehouse in Nebraska, where that equipment is being prepped for sale. *See* Decl. of Kirk Thompson, ¶ 4. GS Labs’ brief is conspicuously silent as to *when* it dismantled its testing sites and removed its equipment from the state—for example, whether it did so after receiving Premera’s preservation letter, or after Premera filed the instant motion. But whatever the answer, it is clear the relief Premera requested with its motion is no longer available.

1 What is *not* clear is why Premera learned all of this for the first time from GS Labs’ brief.
2 Premera spent weeks repeatedly asking GS Labs to confirm the status of its testing sites and
3 equipment, and GS Labs refused to answer. *See* Gokey Decl., Exs. B, C. When Premera finally
4 stated that if GS Labs would not provide an answer, Premera would be forced to seek relief from
5 the Court, GS Labs ignored Premera’s email and did not respond, even as Premera waited nearly
6 a week beyond the deadline it gave GS Labs before filing its motion. *See id.* ¶ 7, Ex. C at 2. And
7 after Premera filed its motion, rather than simply tell Premera that it had already destroyed the
8 evidence Premera sought to preserve, GS Labs filed a 12-page brief arguing that the Court should
9 decline to grant relief that is very plainly no longer available. At every step, GS Labs has
10 needlessly and inexplicably wasted the resources of the parties and the Court.

11 Premera intends to take discovery into this issue, and if warranted, will raise it again in
12 the future. But because GS Labs has already dismantled all of its Washington testing sites and
13 shipped the equipment from those sites out of Washington, Premera’s motion is moot. Premera
14 therefore withdraws the motion while expressly reserving the right to raise and address GS Labs’
15 destruction of its Washington testing facilities in future motions.

1 Dated: October 28, 2022

Respectfully submitted,

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15 *Counsel for Plaintiff Premera Blue Cross*

CERTIFICATE OF SERVICE

I certify that on the date indicated below I caused a copy of the foregoing document, PREMERA BLUE CROSS'S REPLY IN SUPPORT OF MOTION FOR AN ORDER TO PRESERVE EVIDENCE to be filed with the Clerk of the Court via the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following attorneys of record:

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DATED this 28th day of October, 2021.

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