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

PREMERA BLUE CROSS,

Plaintiff,

vs.

GS LABS, LLC,

Defendant.

Case No. 2:21-cv-1399

COMPLAINT JURY

DEMAND

Premera Blue Cross brings this Complaint against GS Labs, LLC, and alleges as follows.

NATURE OF THE ACTION

1. This case concerns a laboratory that has attempted to exploit the COVID-19 pandemic—and the extraordinary legislation Congress enacted to combat the pandemic—for its own financial gain.

2. GS Labs is a Nebraska-based laboratory system that provides COVID-19 testing at sites in Iowa, Minnesota, Nebraska, Oregon, and Washington. In order to increase the amounts it may bill insurers, it systematically subjects patients to expensive and medically unnecessary testing. In the words of one former employee, it “manipulates people into thinking they need all three Covid [sic] tests” that GS Labs offers, such that “[p]atients are being lied to just so th[e] company can make a profit.”

1 3. GS Labs also frequently fails to maintain acceptable quality levels in its testing and
2 reporting of results. In one incident, GS Labs failed to timely report the results of 200 tests,
3 leading one individual who ultimately tested positive to “walk[] around with COVID for a
4 week,” potentially spreading the virus.¹ GS Labs has billed Premera for hundreds of COVID-19
5 tests (if not more) that were, by its own admission, tainted by “deviat[ions] from applicable
6 laboratory standards for testing facilities” that “may have impacted [patients’] test results.”

7 4. Despite these shortcomings, GS Labs charges extraordinarily high prices ranging
8 from \$380 to \$979 per test. These prices are in some cases *ten times* higher than those charged
9 by other labs. But GS Labs maintains that insurers must pay these high prices, irrespective of
10 its illegal testing practices and the quality of its work, due to the Coronavirus Aid, Relief, and
11 Economic Security Act (CARES Act).

12 5. Congress passed the CARES Act² at the outset of the COVID-19 pandemic. The Act
13 requires that, in the absence of an agreement to other rates, health insurers must reimburse
14 laboratories for COVID-19 testing at the “cash price” they post to their respective websites.³
15 Federal regulations implementing the CARES Act define “cash price” as “the charge that
16 applies to an individual who pays in cash (or cash equivalent) for a COVID-19 diagnostic
17 test.”⁴

18 6. GS Labs has posted extremely high prices for COVID-19 testing on its website,
19 contending that they are its “cash prices” for purposes of the CARES Act. On that basis, it has
20 attempted to force insurers (including Premera) to pay these exorbitant prices, threatening to
21 sue them, and to report them to federal authorities, unless they pay in full.

22 7. But GS Labs’ “cash prices” are a sham. For individuals paying cash, GS Labs
23 charges rates that are less than *one third* of those it has posted to its website. It has attempted to

24 _____
25 ¹ Lauren Melendez, KCTV5, “*I walked around with COVID for a week, because of late*
26 *results.*” *GS Labs, subcontractor issue delays COVID info* (Dec. 19, 2020),
<https://tinyurl.com/45j9nwsv>.

27 ² Pub. L. No. 116-136, 134 Stat. 281 (2020).

³ CARES Act § 3202(a).

⁴ 85 FR 71142, 71152 (Nov. 6, 2020).

1 obscure that fact by offering every cash-pay patient a “discount” of at least 70% on its “cash
2 prices,” without noting that fact in its “cash price” disclosure. GS Labs has thus misrepresented
3 its “cash prices” in an effort to deceive Premera and other insurers into paying rates that far
4 exceed the reasonable value of its services.

5 8. Finally, in order to ensure payment, GS Labs peppers its claims with falsehoods. For
6 example, virtually every claim GS Labs has submitted to Premera has indicated that the patient
7 complained of COVID-19 symptoms or exposure. In some instances, the claims reflect unusual
8 and extremely serious diagnoses. But GS Labs does not perform individual patient assessments,
9 and includes these false diagnoses in an effort to obtain higher payments. In particular, doing so
10 conceals the fact that at least some of the testing performed by GS Labs is not subject to the
11 CARES Act’s “cash price” requirement, such as screen testing for workplace safety. Moreover,
12 in some cases, GS Labs has submitted claims to Premera for tests it did not perform at all.

13 9. Premera paid GS Labs roughly \$10,000 from health plans it fully insures or
14 administers for COVID-19 testing, some or all of which it has learned was not payable for the
15 reasons discussed herein. GS Labs has submitted additional claims to Premera for which it
16 seeks further payments totaling more than *\$26 million*. It has threatened legal action, and to
17 report Premera to state and federal authorities for purported CARES Act violations, if Premera
18 does not pay in full.

19 10. Premera is entitled to recoup the amounts it paid for medically unnecessary,
20 unauthorized, and faulty testing. Premera further disputes that it owes the amount GS Labs
21 claims. GS Labs is neither entitled to payment at the extraordinarily high rates it demands, nor
22 for its medically unnecessary, unauthorized, or faulty testing.

23 11. Premera has attempted to negotiate with GS Labs, but GS Labs will not accept
24 payment at reasonable rates. GS Labs continues to submit claims to Premera with extremely
25 high billed charges, and to demand payment in full from Premera.

1 12. Premera brings this action to recover the losses GS Labs has caused through its
2 unlawful and deceptive actions, to dispel the cloud of legal uncertainty created by GS Labs'
3 demands for excessive payment, and to enjoin GS Labs' continuing inequitable conduct.

4 **PARTIES**

5 13. Premera Blue Cross is a nonprofit corporation incorporated in Washington, with its
6 principal place of business in Mountlake Terrace, Washington. Premera offers fully insured
7 health plans and serves as an administrator for self-funded insurance plans.

8 14. Defendant GS Labs, LLC is a limited liability company formed under the laws of
9 Nebraska. In public filings with various state governments, GS Labs states that its principal
10 place of business is located in Omaha, Nebraska.

11 15. According to public records, GS Labs' members are Daniel White, Christopher
12 Erickson, and Gabriel Sullivan. These individuals are all residents of Nebraska.

13 **JURISDICTION AND VENUE**

14 16. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332
15 because there is complete diversity of citizenship between Premera and GS Labs and the
16 amount in controversy exceeds \$75,000.

17 17. This Court also has subject matter jurisdiction over this action under 28 U.S.C.
18 § 1331 because it arises under the Constitution, laws, or treaties of the United States.
19 Specifically, Premera asserts a claim under the Employee Retirement Income Security Act of
20 1974 (ERISA), 29 U.S.C. § 1001 *et seq.* Premera has standing to bring its ERISA claim as a
21 claims administrator of self-funded health plans. The Court further has subject matter
22 jurisdiction over Premera's state and common law claims under 28 U.S.C. § 1367, as those
23 claims are so related to the federal claim that they form part of the same case or controversy.

24 18. This Court has personal jurisdiction over GS Labs because this case arises out of
25 activities GS Labs conducted in, and directed to, Washington State. In particular, it arises out of
26 COVID-19 testing GS Labs performed on Washington residents at testing sites it maintains in
27

1 Washington State, and out of insurance claims GS Labs submitted to Premera in Washington
2 State related to that testing.

3 19. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of
4 the events giving rise to the claims in this action have occurred in this district. Specifically, GS
5 Labs maintains three of its Washington State testing sites in this district.

6 **BACKGROUND**

7 **Premera's Fully Funded and Self-Funded Health Plans**

8 20. Premera is a health insurance company serving Washington and Alaska.

9 21. As relevant to this litigation, Premera both offers fully funded health plans, and
10 provides administrative services for self-funded health plans.

11 22. Premera both funds and administers its fully funded plans. Premera pays claims
12 submitted to its fully funded plans out of its own assets.

13 23. Premera's self-funded plans, or Administrative Services Only ("ASO") plans, are
14 funded by contributions from their respective sponsor employers and member employees.
15 Many of Premera's ASO plans, including plans at issue in this litigation, are subject to ERISA.

16 24. Premera provides administrative services for ASO plans pursuant to Administrative
17 Services Agreements, which identify the respective rights and obligations of Premera and the
18 plan sponsors. Premera serves as a fiduciary of its ASO plans that are subject to ERISA.

19 25. Premera acts as claims administrator and has been delegated the authority to pursue
20 recovery of payments made by Premera on behalf of certain self-funded plans covered by
21 ERISA. Premera has standing to sue under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), for
22 declaratory and injunctive relief to enjoin any acts or practices that violate the provisions of the
23 plans and to obtain other appropriate relief to redress violations of and enforce plan terms.

24 26. Premera will provide further details concerning the health plans and claims at issue
25 in this litigation following the entry of a HIPAA qualified protective order.

26 27. Beyond health plans Premera insures or administers, Premera serves members of
27 other Blue Cross Blue Shield companies through the BlueCard program and National Account

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