IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

AUDRA SANCHEZ, individually and on behalf of all others similarly situated, Plaintiff, v. GENERALI U.S. BRANCH; GENERALI GLOBAL ASSISTANCE, INC. D/B/A CSA TRAVEL PROTECTION AND INSURANCE SERVICES; and CUSTOMIZED SERVICES ADMINISTRATORS, INC., Defendants.	)	Case No. 2:20-cv-02380 Honorable Daniel D. Crabtree

MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

This case concerns a travel insurance policy purchased by Plaintiff in May 2020—several months after the global outbreak of COVID-19 (and its concomitant effects on travel) became known. Plaintiff purchased the policy when she reserved a beach vacation home in Texas for a weeklong family vacation at the end of July 2020.[1] Plaintiff allegedly cancelled that trip, however, because in mid-July her daughter was exposed to a COVID-19-positive individual, and Plaintiff's family doctor recommended that the family refrain from travelling.[2] Generali properly denied coverage for Plaintiff's cancellation because such a COVID-19 related cancellation was entirely foreseeable when the policy was purchased in May 2020, and Plaintiff's cancellation was not for a reason otherwise covered by the policy.

Plaintiff's lawsuit should be dismissed with prejudice because the express terms of the policy bar her claim for at least two reasons. First, the policy only provides coverage for certain "***unforeseeable*** Covered Events," and expressly excludes coverage for "any issue or event that ***could have been reasonably foreseen or expected*** when you purchased the coverage." These limitations are consistent with the very purpose of insurance: to protect against ***unknown*** risks. When Plaintiff purchased the policy on May 10, 2020—months after COVID-19 began rapidly spreading throughout Kansas, Texas, and the rest of the United States—it was indisputably foreseeable that she might have to cancel her trip due to the ongoing COVID-19 health crisis. In

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[1] The policy is underwritten by Defendant Generali US Branch, and allegedly administered by Defendants Generali Global Assistance, Inc. and Customized Services Administrators, Inc. (collectively "Generali"). We note that Plaintiff's Complaint incorrectly sued "Generali Global Assistance, Inc.," which does not provide travel insurance or assistance services, and was not involved in any way with this policy. Additionally, "CSA Travel Protection and Insurance Services" is a d/b/a for Customized Services Administrators, Inc., not for Generali Global Assistance, Inc.

[2] Plaintiff does not allege that she or any of her family members actually contracted COVID-19, became sick, or exhibited any symptoms of COVID-19.

an environment where over 1.3 million Americans had already contracted the disease, and new cases were being reported daily in Kansas (including in Plaintiff's own county of residence), the policy's bar against covering foreseeable risks plainly applies. Indeed, the Complaint acknowledges this foreseeability in conceding that Generali had publicly announced that as of January 29, 2020, the coronavirus outbreak was a foreseeable event, meaning trip cancellation coverage would not be available for policies purchased after that date.

Second, Plaintiff cannot state a claim because she did not cancel her trip for a reason covered by the policy. None of the policy's twenty-one specified Covered Events applies to Plaintiff's cancellation due to her family member's potential exposure to COVID-19. While Plaintiff contends that her cancellation qualified because her family was "[b]eing . . . Quarantined," nothing in the Complaint plausibly alleges that Plaintiff was under enforced isolation—the condition necessary (by the policy's express terms) to trigger coverage. Instead, the Complaint's exhibits and allegations demonstrate that Plaintiff cancelled her trip based on her doctor's recommendation.

To be clear, Generali does not fault Plaintiff for choosing to cancel her trip; that was the correct and responsible decision given her family's circumstances. But the travel insurance policy Plaintiff purchased provided coverage only for expressly identified risks that were not foreseeable. Plaintiff's decision to cancel her trip was not due to one of those specified risks and was due to an issue that was entirely foreseeable when she booked her trip weeks earlier in the midst of COVID-19. As a result, Generali properly denied Plaintiff's claim, and the Complaint cannot state a claim for breach of contract as a matter of law.

BACKGROUND

A. Plaintiff's planned trip and key policy terms.

According to the Complaint, on May 10, 2020, Plaintiff booked accommodations at a beach house in Rockport, Texas through the website VRBO.com. Compl. ¶ 18. Plaintiff's road trip vacation was scheduled for July 24, 2020 to July 31, 2020. *Id.* ¶¶ 18, 37.

The Complaint alleges that in connection with that May 10, 2020 booking, Plaintiff purchased the policy from Generali. Compl. ¶ 20 & Ex. A. The policy provides "Trip Cancellation" coverage "***if you are prevented from taking your Trip due to one of the following unforeseeable Covered Events that occur before departure on your Trip***." *Id.* ¶ 40 & Ex. A at 16 (emphasis added in Complaint). The Complaint only identifies one Covered Event as allegedly relevant to Plaintiff's claim: "4. Being hijacked or Quarantined." *Id.* ¶ 41, Ex. A, at 17. As the Complaint acknowledges, the policy defines "Quarantine" to mean "the ***enforced isolation*** of you or your Traveling Companion, for the purpose of preventing the spread of illness, disease, or pests." *Id.* ¶ 41, Ex. A, at 10 (emphasis added).

Additionally, in a section of General Exclusions, the policy discloses that it does not cover "any loss" that is "caused by, or resulting from . . . any issue or event that could have been ***reasonably foreseen or expected*** when you purchased the coverage." Compl. Ex. A, at 13–14 (emphasis added). The trip cancellation benefit is explicitly subject to the General Exclusions. Compl. Ex. A, at 19.

Plaintiff acknowledges that by May 10, 2020, COVID-19 was a global health crisis affecting the United States, Kansas, and her county specifically. Compl. ¶¶ 21–26 & n.7. But, according to Plaintiff, "COVID-19 was not spreading in her community" when she booked the trip on May 10. *Id.* ¶ 27.

In fact, according to an official government website cited in the Complaint, COVID-19 ***was*** spreading in Kansas and Sedgwick County on May 10. The Sedgwick County government website provided daily COVID-19 updates that documented over 230 new confirmed COVID-19 cases in Kansas on the very day Plaintiff purchased her policy. In Sedgwick County, government authorities reported 10 new confirmed cases that day, representing a 2.2% daily increase. *See* Sedgwick County COVID-19 Daily Update – May 10, 2020, attached hereto as Exhibit 1, available at https://www.sedgwickcounty.org/communications/news-releases/sedgwick-county-covid-19-daily-update-may-10-2020/.[3] That rate of increase exceeded the nation's increase in reported cases of 2.0%. *Id.* And, as Plaintiff acknowledges, at the time she purchased the policy Kansas was only just beginning a "phased lifting of restrictions" relating to the state's COVID-19 response—a process that began less than one week earlier. Compl. ¶ 26. The Complaint cites Governor Kelly's reopening plan, which begins by disclaiming that "[t]his framework is not a return to the life we knew just a few short months ago. Until a vaccine is developed, we must continue to adhere to the fundamental mitigation practices that have kept us alive up to this point." Kansas Office of the Governor, *Ad Astra: A Plan to Reopen Kansas*, April 30, 2020, at 1 (attached hereto as Exhibit 2). As part of those measures, Governor Kelly advised Kansans of the need to continue exercising caution and to "[m]inimize nonessential travel." *Id.*

[3] In considering this motion to dismiss, the Court can take judicial notice of the COVID-19 statistics provided by the Sedgwick County government website for two reasons: First, the Court can consider authentic copies of documents that are "referred to in the complaint" and are "central to the plaintiff's claim." *Pace v. Swerdlow*, 519 F.3d 1067, 1072 (10th Cir. 2008) (collecting cases). Here, Plaintiff's Complaint refers to the same Sedgwick County website that contains the relevant statistics. Compl. ¶ 24 & n.7; *GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1385 (10th Cir. 1997) ("Factual allegations that contradict . . . a properly considered document are not well-pleaded facts that the court must accept as true."). Second, the Court may consider "facts which are a matter of public record" at the motion-to-dismiss stage. *Johnson v. Spencer*, 950 F.3d 680, 705 (10th Cir. 2020). Official government announcements such as the Sedgwick County daily COVID-19 update are in the public record.

B. Plaintiff's daughter comes in close contact with someone known to have tested positive for COVID-19.

Unfortunately, COVID-19's continued spread in Plaintiff's community affected Plaintiff's family. The Complaint alleges that on July 12, Plaintiff's daughter was "directly exposed to COVID-19 while playing at a friend's house." Compl. ¶ 28. Plaintiff allegedly learned of the potential exposure the following day, and scheduled a doctor's appointment for July 14. *Id.* ¶ 29. The Complaint attached a letter from Plaintiff's doctor, dated July 14, 2020, that described the potential exposure and "suggest[ed] that the family perform a two week quarantine from the last exposure time and to refrain from traveling at this time." Compl. Ex. C.

The letter contradicts the Complaint in several respects. First, the letter states that "[l]ast week our [sic] 12 year old daughter was playing at a friends [sic] house daily," indicating that the potential exposure occurred between July 5 and 11. Compl. Ex. C. That contradicts the Complaint's allegation that the exposure occurred on July 12. Compl. ¶ 28. The letter's timeline of earlier exposure is also substantiated by the testing report attached to the Complaint, which shows that the positive COVID-19 test was collected on July 9, 2020 and reported on July 12, 2020. *Id.*, Ex. C (Doc. 1–3 at 7). Second, the Complaint alleges that "the doctor directed them to quarantine until at least August 1." Compl. ¶ 31. The letter directly contradicts that allegation, as Plaintiff's doctor suggested only a two-week quarantine "from the last exposure time," *id*. Ex. C, which (according to the timeline in the letter) expired no later than July 25, 2020.

Although the doctor's letter does not elaborate on the suggested "quarantine" and makes no reference to Kansas Department of Health and Environment's COVID-19 protocol, Plaintiff contends that her family's quarantine was "required" by the doctor and necessary to comply with that state protocol. Compl. ¶ 33 & n.11. The Complaint includes excerpts from this protocol (in the form of a Frequently Asked Questions guide), *see id.*, Ex. C, at 3–6 (Doc. No. 1–3), which

explains the "quarantine recommendations" that apply when a patient is "told by a public health or other authority that [he or she is] a close contact of a laboratory confirmed case of COVID-19." *Id*. at 3. The protocol says that only the state's or county's Local Health Officers are authorized to issue isolation and quarantine orders, but expects that individuals will voluntarily isolate without written orders. *Id*. at 5.

The protocol attached to the Complaint also provides more clarity as to what individuals who are asked to isolate voluntarily are expected to do. Specifically, although such individuals "should not attend school, work or any other setting where they are not able to maintain about a 6-foot distance from other people," individuals under the "14-day home quarantine" could go out in public and attend events "[i]f they are able to attend settings where they can maintain this recommendation for a 6-foot distance from others." *Id*; *see also* https://www.coronavirus.kdheks.gov/184/What-to-Do-if-Quarantine-for-Exposure (same) (last visited Oct. 19, 2020).

C. Plaintiff cancels her trip and files a claim.

Plaintiff alleges that she cancelled her trip because of her doctor's recommendation and "in order to comply with the Kansas Health Department (KHD) guidelines." Compl. ¶ 33.

Plaintiff allegedly submitted her claim to Generali on July 15, 2020. Compl. ¶ 32. On July 22, Generali denied Plaintiff's claim as her cancellation was not due to a Covered Event. Compl. ¶ 34 & Ex. D.[4] But as an accommodation, Generali offered Plaintiff a voucher for the full amount of the insurance premium she paid to be used on a future trip. *Id.* On August 5, 2020, Plaintiff

[4] The Complaint does not contain any allegation as to whether Plaintiff received or did not receive any refund from VRBO.com or the owner of the booked accommodations. As Plaintiff acknowledges, the policy provides coverage only for "forfeited, prepaid, non-refundable, non-refunded, and unused published Payments" when an unforeseeable Covered Event results in trip cancellation. Compl. ¶ 40.

filed this lawsuit alleging claims for breach of contract and declaratory and injunctive relief. She seeks to represent a nationwide class.

QUESTIONS PRESENTED

1) Whether Plaintiff has stated a plausible claim for breach of contract in light of the policy's express language, including its definition of "being …. Quarantined" and its exclusion of coverage for "issue[s] or event[s] that could have been reasonably foreseen or expected."

2) Whether Plaintiff has stated a plausible claim for declaratory or injunctive relief in light of the policy language.

ARGUMENT

To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). "A claim has facial plausibility" only "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Courts insist upon "specificity in pleading … to avoid the potentially enormous expense of discovery in cases with no reasonably founded hope" of success. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558-59 (2007) (internal quotation marks omitted). If the Court finds that the pleading fails to state a viable claim and any amendment would be futile, the Court should dismiss Plaintiff's Complaint with prejudice. *See, e.g., Barnett v. Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.*, 956 F.3d 1228, 1236 (10th Cir. 2020) (noting leave to amend can be denied after district court addresses motion to dismiss); *Lind v. Aetna Health, Inc.*, 466 F.3d 1195, 1199 (10th Cir. 2006) (affirming dismissal with denial of leave to amend where amendment would be futile).

Under Kansas law, insurance policies are interpreted "like any other contract." *Catholic Diocese of Dodge City v. Raymer*, 251 Kan. 689, 693 (1992). That interpretation presents a

question of law, in which the "[t]erms in an insurance policy are generally given their plain and ordinary meaning unless the parties have expressed a contrary intent." *Emps. Reinsurance Corp. v. Jefferson Pilot Fin. Ins. Co.*, 176 F. Supp. 2d 1183, 1191 (D. Kan. 2001). "When an insurance contract is not ambiguous, the court may not make another contract for the parties. Its function is to enforce the contract as made." *Catholic Diocese*, 251 Kan. at 693. "To be ambiguous, a contract must contain provisions or language of doubtful or conflicting meaning, as gleaned from a natural and reasonable interpretation of its language." *Id.*

As the Complaint acknowledges, Plaintiff's policy provided trip cancellation coverage only if she was "prevented from taking [her] Trip due to one of the following ***unforeseeable Covered Events*** that occur before departure." Compl. ¶ 40 & Ex. A at 16 (emphasis added). As explained below, the cause of Plaintiff's cancellation was neither unforeseeable nor a Covered Event.

A. Plaintiff had no coverage because cancellations related to COVID-19 "could have been reasonably foreseen" when she purchased the policy.

By May 10, 2020, Kansas—like the rest of the world—was well acquainted with COVID-19 and the near unprecedented public health crisis and travel effects. Kansas, like many states, implemented orders to reduce the spread of the virus. Compl. ¶¶ 24–25. And while Governor Kelly implemented guidelines to "slowly re-open Kansas" beginning May 4, 2020, *Ad Astra* (Ex. 2), the virus continued to spread, and those guidelines reflected that Kansans should take slow and measured steps in resuming daily activities such as nonessential travel. *Id.* When Plaintiff purchased her policy on May 10, 2020, COVID-19 was not merely foreseeable, but remained an active health crisis.

With no established cure or vaccine available, that ongoing crisis posed specific and foreseeable risks to any travel plans booked in May 2020 for that summer. Travel insurance—

including Plaintiff's policy—is not designed to insure against such known and expected risks. These limits on foreseeable losses are explicit in the policy. The Complaint acknowledges trip cancellation benefits apply only if the cancellation was due to one of the specified, "***unforeseeable*** Covered Events." Compl. ¶ 40 (some emphasis omitted); *see id.* Ex. A at 16. Additionally, the policy excludes any loss caused by or resulting from "any issue or event that could have been reasonably foreseen or expected when [the insured] purchased the coverage." *Id.*, Ex. A, at 14; *see also id.,* Ex. A, at 19 (providing general exclusions apply to trip cancellation benefit).

Given these express policy coverage limitations and exclusions, in May 2020 no reasonable person could have believed that it was unforeseeable that a July 2020 trip would have to be cancelled because of COVID-19. Common sense and Plaintiff's own Complaint demonstrate her recognition of that very real possibility. *See Snyder Ins. Services, Inc. v. Sohn,* No. 16-cv-2535-DDC, 2017 WL 2839775, at *5 (D. Kan. July 3, 2017) (relying on Court's common sense to dismiss claims) (citing *Iqbal*). As the Complaint alleges, the World Health Organization and the President declared COVID-19 a public health emergency over three months before Plaintiff booked her trip. Compl. ¶ 22. And, of course, no vaccine or cure for COVID-19 was widely available by May 2020 (or, indeed, at the time of this filing in November 2020).

Plaintiff attempts to gloss over the reality of the ongoing public health crisis by alleging that "when Plaintiff booked the trip, COVID-19 was not spreading in her community." Compl. ¶ 27. Unlike the Complaint's citations in support of other allegations about the spread of COVID-19, *see id.* ¶¶ 22–26 & nn. 7–9, Plaintiff offers no basis for the assertion that COVID-19 was not spreading as of May 10, 2020. Instead, that allegation defies experience, common sense, and official public records that are subject to judicial notice.

The Court should not accept as true Plaintiff's assertion that COVID-19 was not spreading in her community as of May 10, 2020, as the claim is directly contradicted by other sources cited in the Complaint. For example, the official Sedgwick County government website that the Complaint cites for other purposes, Compl. ¶ 24 & n.7, contains a May 10, 2020 "Daily Update" of COVID-19 cases. *See* Ex. 1. The numbers presented in that official press release show not only that both Kansas and Sedgwick County continued to experience increases in new cases of COVID-19 as of May 10, 2020, but also that both regions saw higher percentage increases in cases than the United States as a whole:

Sedgwick County COVID-19 Daily Update – May 10, 2020

COVID-19 Overall Case Count

Confirmed cases in U.S. as of noon May 10, 2020, Johns Hopkins University & Medicine

Confirmed cases in Kansas, and counties as of noon May 10, 2020, Kansas Department of Health and Environment

Confirmed cases in Sedgwick County as of noon, May 10, 2020, Sedgwick County Health Department

Location	Yesterday	Today	Percent Change
United States	1,288,569	1,314,799	+ 2.0
Kansas	6,751	6,984	+ 3.5
Kansas Deaths		157	
Sedgwick County*	458	468	+ 2.2

Source: Exhibit 1

This uptick of cases—both in Kansas and Sedgwick County specifically—is consistent with other news reports cited in the Complaint. *See* Compl. ¶ 26 & n.9. The April 30, 2020 news report Plaintiff cites regarding the easing of some of the state's COVID-19 restrictions begins by noting that "the number of new coronavirus cases [is] still rising steadily." Jim McLean, *"Kansas Is Set To Reopen With Restrictions on Restaurants, Stores, and Churches*" KCUR 89.3 (April 30, 2020) https://www.kcur.org/news/2020-04-30/kansas-is-set-to-reopen-with-restrictions-on-restaurants-stores-and-churches (last visited Nov. 11, 2020) (attached hereto as Exhibit 3). As noted above,

these sources should be considered in resolving this motion to dismiss, as they are referred to in the Complaint and are central to Plaintiff's allegation that there was no foreseeable risk due to COVID-19 at the time she purchased her trip on May 10, 2020. *See supra* n.3. Given this contradiction, the Court should reject the Complaint's factual allegation that "COVID-19 was not spreading in her community" as of that date. Compl. ¶ 27; *see Davis v. BAE Sys. Tech. Sols. & Servs. Inc.*, 764 F. App'x 741, 745 (10th Cir. 2019) ("Mere legal conclusions and factual allegations that contradict . . . a properly considered document are not well-pleaded facts that the court must accept as true." (quoting *GFF Corp.,* 130 F.3d at 1385)).

The Complaint also concedes that months prior to Plaintiff's purchase of the policy Generali had announced that events relating to the COVID-19 outbreak could foreseeably interfere with travel, and thus were "foreseeable event[s]" and "[c]onsequently, any event(s) related to COVID-19 for all new travel policies purchased on or after January 29, 2020 may thereby be excluded in accordance with the terms and conditions of the Policy." Compl. ¶ 42. Generali's position statement from January 2020 is fully consistent with the purpose of travel insurance, which is to provide coverage for certain events that are not foreseeable. Multiple provisions of the policy repeat this limitation specifying that coverage extends only to unforeseeable events. *See* Compl. Ex. A, at 14, 16, 18, 19, 21.[5]

[5] This limitation and Generali's announcement are consistent with the general public's understanding of the foreseeability of COVID-19-related events. Months before Plaintiff purchased her policy, considerable press coverage discussed that newly purchased travel insurance policies would generally not cover COVID-19. *See* Vox.com, "Why your travel insurance might not cover the coronavirus," (Mar. 4, 2020) ("[M]ost travel insurance won't cover a cancellation . . . [t]hat's because travel insurance is designed to cover unforeseen events, and Covid-19 is now considered a foreseen event." (internal quotation marks omitted)), available at https://www.vox.com/the-goods/2020/3/4/21163320/travel-flight-insurance-coronavirus-coverage-cancellation; AARP, "Does travel insurance cover canceled trips due to a viral epidemic?" (Mar. 13, 2020) ("Just as you can't purchase insurance that would cover a trip disruption caused by an already named hurricane, once a virus is known, its presence is no longer

Indeed, the Policy expressly excludes coverage for losses due to issues or events "that could have been ***reasonably*** foreseen or expected" at the time of purchase. Compl., Ex. A, at 14. It is utterly implausible that when Plaintiff purchased the policy in May 2020, she was not aware that COVID-19 continued to pose serious health risks and travel interruptions across the United States and Kansas. Compl. ¶¶ 24–26 (discussing state and local responses). Kansas began a phased reopening only six days earlier, reflecting that COVID-19 remained a concern. *Id.* ¶ 26. In announcing that plan, the Governor stressed that the reopening process would be slow, that there would be no immediate return to normal, and that Kansans should minimize nonessential travel to prevent further spread of the virus. *Ad Astra,* Ex. 2, at 1–2. Given that ongoing health crisis, any insured would have reasonably foreseen that COVID-19 could interfere with a trip scheduled for only eleven weeks later.

This foreseeability is made clear by the policy's other provisions. As described above, the policy does not cover events such as COVID-19. Instead, the policy offers coverage in certain circumstances for natural disasters such as floods, earthquakes, and hurricanes (where the natural disaster renders accommodations at the destination inaccessible). *See* Compl., Ex. A, at 19. Even in those circumstances, however, the policy does not cover losses "if the event occurs or if a hurricane is named prior to or on your Trip Cancellation Coverage Effective Date." *Id.* This limitation reflects the policy's common-sense exclusion of known and foreseeable risks. There is no doubt that by May 2020, COVID-19 was "named" and the most well-known and publicized ongoing health risk in the world. As the policy expressly did not cover losses from foreseeable

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an unforeseen event and there's no related coverage."), available at https://www.aarp.org/travel/travel-tips/safety/info-2020/insurance-coronavirus-coverage.html; BBC.com, "Coronavirus: Insurers limiting travel protection" (Mar. 13, 2020) ("[T]ravel insurance is for unforeseen circumstances and the coronavirus danger was no longer an unforeseen circumstance."), available at https://www.bbc.com/news/business-51871776.

events, Generali did not assume the risk of loss related to COVID-19 for Plaintiff's policy purchased on May 10, 2020.

B. Plaintiff was not prevented from taking her trip because of a "Covered Event."

Even apart from the foreseeable nature of Plaintiff's trip cancellation due to potential exposure to COVID-19, the facts alleged in the Complaint demonstrate that Plaintiff was not prevented from taking her trip for one of the 21 "Covered Events" enumerated within the policy. Compl. Ex. A, at 17–19. Of those 21 circumstances, Plaintiff's Complaint hangs entirely on one: Was Plaintiff (and her family) "[b]eing hijacked or Quarantined"? *Id.* at 17. The policy defines Quarantine as "the ***enforced isolation*** of you or your Traveling Companion, for the purpose of preventing the spread of illness, disease, or pests." *Id.* at 10 (emphasis added); *Flight Concepts Ltd. P'ship v. Boeing Co.*, 38 F.3d 1152, 1157 (10th Cir. 1994) (under Kansas law, a contract can use parties' own, agreed-upon definitions).

As "enforced isolation" is not further defined in the policy, the Court should look to the plain and ordinary meaning. *State Auto Prop. & Cas. v. Lewis*, 8 F. Supp. 3d 1303, 1310 (D. Kan. 2014) ("In understanding the common usage of words, Kansas courts will turn to common dictionary understandings."). Breaking the term into its constituent parts, "enforce" is defined as "constrain [or] compel" (as in "enforce obedience") and "to carry out effectively" (as in "enforce laws"). *Enforce*, Merriam-Webster, *available at* https://bit.ly/32Jcl37. And "isolate" or "isolation" is defined as "to set apart from others." *Isolate,* Merriam-Webster, *available at* https://bit.ly/35Noo1j.

Plaintiff has not—and cannot—plausibly allege that she was constrained or compelled to stay apart from others. While the Complaint alleges that Plaintiff cancelled her trip because she "was required to undergo enforceable quarantine per her doctor's directions," Compl. ¶ 33, the materials cited and attached to her Complaint contradict that assertion in at least three ways.

First, as explained in the Kansas Department of Health publication that Plaintiff attached to the Complaint, only the county "Local Health Officer, as well as the State Health Officer Dr. Lee Norman, has the authority to issue isolation and quarantine orders." Compl. Ex. C at 5 (Doc. No. 1–3). Thus, while it was certainly prudent for Plaintiff to follow her doctor's advice, the doctor had no authority to constrain or compel Plaintiff and her family to remain apart from others.

Second, even if Plaintiff's doctor had the authority to compel or enforce Plaintiff's isolation, it is clear that she did not exert such authority. Plaintiff attaches a letter to her Complaint in which her doctor states, "I am ***suggesting*** that the family perform a two week quarantine from the last exposure time and to refrain from traveling at this time." Comp. Ex. C at 2 (Doc. No. 1–3) (emphasis added). This letter contradicts Plaintiff's allegation that she was "***required*** to undergo enforceable quarantine per her doctor's directions." Compl. ¶ 33 (emphasis added); *see Davis,* 764 F. App'x at 745 (rejecting pleading's factual allegation contradicted by exhibit).

Third, even if Plaintiff's doctor had the authority under Kansas law to quarantine Plaintiff's family and even if her doctor actually compelled Plaintiff's family to quarantine under Kansas's COVID-19 guidance, those restrictions did ***not*** amount to enforced *isolation*. Turning again to the Kansas Department of Health's publication, the Complaint discloses that under Kansas's state protocol, individuals "under a 14-day home quarantine" for potential exposure to COVID-19 "can attend" events "where they can maintain this recommendation for a 6-foot distance from others." Compl. Ex. C at 3 (Doc. No. 1–3). Far from any enforced isolation, the "14-day quarantine" applicable under Kansas's guidelines and Plaintiff's doctor only instructed that individuals "should not attend school, work or any other setting where they are not able to maintain about a 6-foot

distance from other people." *Id.* Thus, under Kansas's guidelines, Plaintiff remained free to leave her home and was never subject to enforced isolation.[6]

At its core, Plaintiff's Complaint asserts that she is entitled to coverage under the policy because her doctor used the word "quarantine" in connection with her family's potential exposure to a known case of COVID-19. But coverage under the policy does not turn on any colloquial use of the word "quarantine," and instead is based on the policy provisions and definitions. Plaintiff's own allegations and authorities, make clear that she was not "prevented from taking [her] trip due to" being in "enforced isolation." Compl. Ex. A at 10, 16. As Kansas guidelines permitted potentially exposed individuals to continue to engage in routine activities provided they were socially distanced, Plaintiff and her family were never in "enforced isolation."

Again, Generali in no way faults Plaintiff for cancelling her trip—that was the prudent and safe course of action. But not all cancellations—even when driven by responsible and health-conscious reasons—qualify for coverage under the terms of the policy. Nothing in Plaintiff's Complaint—as detailed in its attached exhibits—plausibly suggests that Plaintiff was prevented from taking her trip because she was "being . . . quarantined." Accordingly, Plaintiff is not entitled to coverage and cannot state a plausible claim for breach of contract.

C. The Complaint fails to allege a plausible claim for declaratory or injunctive relief.

The Complaint includes a separate count seeking declaratory judgment—presumably pursuant to 28 U.S.C. § 2201. Compl. ¶¶ 60–64. Plaintiff's "claim" for declaratory and injunctive

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[6] Even within the COVID-19 context, Plaintiff's circumstances are far different from compelled isolation. For instance, Plaintiff does not allege that she was monitored by law enforcement or prohibited from leaving her residence. *See, e.g.,* ABC News, "Kentucky Couple Under House Arrest After Refusing to Sign Self-Quarantine Agreement" (Jul. 20, 2020), available at https://abcnews.go.com/US/kentucky-couple-house-arrest-refusing-sign-quarantine-agreement/story?id=71886479.

relief also should be dismissed because it has the same substantive flaws and is subsumed in her breach-of-contract claim. *Auman v. Kan.*, No. 17-2069-DDC, 2018 WL 587232, at *6 (D. Kan. Jan. 29, 2018) ("Plaintiff bases his declaratory relief claims on claims that this order dismisses. A request for declaratory relief is barred to the same extent that the claim for substantive relief on which it is based would be barred.") (internal quotation marks omitted).

D. Amendment would be futile.

Given that Plaintiff did not cancel her trip due to any non-excluded Covered Event, any amendment to the Complaint would be futile. Generali therefore requests that the Court grant this motion, deny leave to amend, and dismiss this case with prejudice. *See e.g., Barnett*, 956 F.3d at 1236; *Lind*, 466 F.3d at 1199 (affirming dismissal with denial of leave to amend where amendment would be futile).

CONCLUSION

For the foregoing reasons, the Plaintiff's Complaint should be dismissed with prejudice.

Dated: November 13, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2020, I filed the above and foregoing utilizing the Court's CM/ECF System, which will transmit an electronic notification of this filing to all counsel of record.

s/ Jason D. Stitt
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