



relationship status.” Paragraph 44 admits that “Defendant contended the BPU understood his relationship with Ms. Pineda as ‘partners’ and they were not married under common law.”

5. The admissions by Plaintiff establish that BPU had actual knowledge of the true nature of the relationship between Defendant and Ms. Pineda before the enrollment form was completed.
6. A party that possesses actual knowledge of the relevant facts prior to an alleged misrepresentation cannot establish the element of reasonable reliance as a matter of law.
7. With actual knowledge of the relationship status, the employer approved the enrollment and provided coverage for over three years.
8. Because Plaintiff’s own admissions establish BPU’s actual knowledge of the true relationship status, no actionable misrepresentation can have occurred. All fraud-based counts including Count I (Fraudulent Misrepresentation), Count II (Negligent Misrepresentation), and Count V (Fraudulent Inducement) fail on this basis and should be dismissed.

### ***III. Defendant Refused to Make a False Statement on the Enrollment Form***

9. The BPU New Hire Enrollment Form (Plaintiff’s Petition Exhibit A) provided only two options for marital status in Section I(8): “Married” and “Single.” The Plan contained no domestic partner enrollment category and no mechanism to designate a long-term civil partner or a common law marriage.
10. BPU’s own Advisory Opinion issued on September 20, 2025 by BPU Ethics Administrator Misty S. Brown (hereinafter “Advisory Opinion”) confirms as an undisputed finding that Defendant left the marital status field blank and intentionally did not check the “married” or “single” box on the enrollment application. Advisory Opinion at 1.
11. Defendant left the marital status field blank because neither available option accurately described his relationship with Ms. Pineda. Checking “Married” would have been false because Defendant and Ms. Pineda were not legally married and they did not hold themselves out to be married. Checking “Single” would have been technically accurate as to legal marital status but would have excluded his domestic partner from coverage, contrary to his good faith belief that domestic partner coverage was available. Defendant’s deliberate refusal to check either false or misleading option is affirmative, documented evidence of good faith.
12. A person who refuses to check a false box on a government form does not possess the *mens rea* required for fraud. The act of leaving the marital status field blank is the opposite of a knowingly false statement because it is the deliberate avoidance of one. Plaintiff cannot construct a fraud claim on the foundation of Defendant’s *refusal* to lie.
13. Furthermore, BPU’s own records confirm that staff processed the enrollment application without obtaining the required documentation (birth certificates, marriage certificates, a

common law marriage affidavit, or other relationship status affidavit) in order to meet its own 30-day processing deadline. Advisory Opinion at 2. Staff proceeded despite the absence of documentation. This is an administrative failure by BPU, not a fraudulent act by Defendant.

14. To the extent any enrollment error occurred, it is a clerical error attributable to BPU's own processing practices and is governed by Section J.5 of the Plan, which provides that clerical errors shall not deprive any individual of coverage or be treated as fraud.
15. The Advisory Opinion further records that Defendant states he disclosed the true nature of his relationship to two former BPU staff members on at least two occasions prior to enrollment and was told it was permissible to list Ms. Pineda on the application and to "just leave it." Advisory Opinion at 3. Defendant denies ever being asked to provide birth or marriage certificates until 2025. These are disputed factual questions that, at the pleading stage, must be resolved in Defendant's favor. A 60-212(b) motion to dismiss cannot be defeated by disputed facts that favor Plaintiff.
16. Defendant's good-faith belief that domestic partner coverage was available under a BCBS-administered governmental plan was objectively reasonable. Blue Cross Blue Shield Association, through its affiliated plans, offers domestic partner enrollment as a standard coverage category. For example, Blue Cross Blue Shield of Kansas City ("BCBSKC"), an independent licensee of Blue Cross Blue Shield Association offers government plans through the City of Kansas City, Missouri (the municipal government directly adjacent to BPU's service territory). BCBSKC through its plan administrators at the City of Kansas City, Missouri, officially recognizes domestic partnerships through its City Clerk's Office and maintains a formal Domestic Partnership Affidavit for registration purposes. That affidavit defines domestic partners as individuals who share a principal residence, cohabitate, and demonstrate financial interdependency through documentation such as a joint bank account. The Plaintiff's own allegations establish that Defendant and Ms. Pineda share a residence and maintain a joint bank account (Plaintiff's Petition para. 39), a relationship that squarely meets a standard municipal definition of domestic partnership.
17. Defendant's objectively reasonable belief is further grounded in his three decades of experience in Kansas public service and his current membership on the Kansas Senate Committee on Financial Institutions and Insurance which is the standing legislative committee with direct knowledge of insurance regulation in Kansas. A thirty-year legislator with institutional expertise in insurance plan structure who disclosed his domestic partnership relationship prior to enrollment, received no guidance from BPU that such coverage was unavailable, and was told by BPU staff to proceed with the listing, had every reasonable and objectively grounded basis to believe that enrollment was proper.
18. The obligation to communicate any coverage limitation rested with BPU's plan administrators. Their failure to do so and their affirmative processing of an incomplete application without required documentation forecloses any finding of fraudulent intent on Defendant's part.

#### ***IV. BPU's Own Advisory Opinion and Investigative Findings Negate Fraud and Preclude Common Law Marriage as a Matter of Law***

19. The BPU Advisory Opinion dated September 20, 2025 constitutes an official investigative finding by Plaintiff's own instrumentality. Its factual findings are admissions by Plaintiff and are fatal to the fraud-based counts.
20. The Advisory Opinion expressly records that during the 2025 enrollment meeting, Defendant "advised that there was no intent to deceive anyone." Advisory Opinion at 2. BPU's own Ethics Administrator recorded this statement as part of the official investigative record. Plaintiff now files a fraud complaint in district court based on facts that its own investigation found Defendant's unequivocal denial of fraudulent intent.
21. The Advisory Opinion further records that Defendant stated "man, I really messed up" or words to that effect. Advisory Opinion at 2. This is a statement of mistake, inadvertence, or administrative error, not a statement of intentional deception. Kansas law recognizes the distinction between mistake and fraud. *See Vondracek v. Mid-State Co-Op, Inc.*, 32 Kan. App. 2d 98, 101, 79 P.3d 197 (2003). A statement of "I messed up" in conjunction with the Plaintiff's admittance that Defendant refused to lie on either the enrollment form or in an affidavit of common law marriage is legally irreconcilable with the intent to deceive required to sustain a fraud claim.
22. Critically, the Advisory Opinion's ultimate conclusion acknowledges that intentionality is genuinely contested. The opinion states conditionally that "unless the Board finds that the actions of the elected official were unintentional," a violation may have occurred, and that "if the Board concludes that the actions were unintentional, then no violation of Section 115 of the Ethics Policy would be deemed to have occurred." Advisory Opinion at 4. BPU's own Ethics Administrator thus found the question of intent to be an open question, not a settled one. Plaintiff cannot plead fraud with particularity in district court on facts that its own investigation found did not establish intentional conduct.
23. The Advisory Opinion also confirms that during the 2025 enrollment process, Defendant was offered a common law marriage affidavit and refused to sign it, advising BPU staff that he and Ms. Pineda "agreed not to present themselves as a married couple." Advisory Opinion at 2. This refusal is independently dispositive on the question of common law marriage under Kansas law.
24. Under Kansas law, a valid common law marriage requires: (1) a present, mutual agreement to be husband and wife; (2) a holding out of each other as husband and wife to the public; and (3) cohabitation. *In re Estate of Antonopoulos*, 268 Kan. 178, 192, 993 P.2d 637 (1999). All three elements are required. The absence of any single element precludes a finding of common law marriage as a matter of law.
25. BPU's own investigation found that Defendant stated he and Ms. Pineda were not married under common law. Plaintiff's Petition admits this same fact at Paragraph 44. The Advisory Opinion confirms that Defendant told BPU staff that the parties specifically agreed not to present themselves as a married couple. Advisory Opinion at 2. This finding directly negates the second required element of common law marriage which is the public holding out as husband and wife as a matter of law. No common law

marriage existed. Defendant could not truthfully have checked “Married” on the enrollment form under any theory, including common law marriage. His refusal to do so was legally correct, shows intent not to deceive and is therefore irreconcilable with a fraud claim.

26. The Advisory Opinion’s determination that no marriage existed was reached “based on the official’s statements that, although they are in a long-term committed relationship, the elected official and individual are not married and have never agreed to be married.” Advisory Opinion at 2. This is an admission by Plaintiff’s own instrumentality that the relationship does not meet the legal definition of marriage under Kansas law. Plaintiff cannot simultaneously rely on these findings to pursue a civil action and disavow them when they negate the elements of its own claims.
27. BPU’s offer of a common law marriage affidavit during the 2025 enrollment process is itself an admission of significance. By offering an administrative path to regularize coverage through an affidavit, BPU treated the coverage question as an unresolved administrative classification matter, not as a fraud that had already occurred. An entity that believes it has been defrauded does not offer the alleged fraudster an affidavit to cure the deficiency. BPU’s own conduct is inconsistent with its current fraud theory and constitutes conduct-based estoppel against asserting that the original enrollment was fraudulent.

#### *V. Two-Year Incontestability Bar*

28. The enrollment form (Plaintiff’s Petition Exhibit A) contains the following incontestability clause in the signature block: “I understand no statement I make voids my coverage or reduces my benefits after my coverage has been in force for two (2) years from the effective date, unless my statements are material to the risk assumed and contained in my written application.”
29. Coverage for Defendant became effective on January 5, 2022. The two-year incontestability period therefore expired on January 5, 2024. The Advisory Opinion confirms that BPU’s investigation did not begin until July 2025, more than eighteen months after the incontestability period closed. Advisory Opinion at 2.
30. Independently of any statutory provision, the incontestability clause is enforceable on its own contractual terms as a provision of the enrollment agreement. Plaintiff’s claims are additionally barred to the extent K.S.A. § 40-2203 applies to the Plan’s enrollment terms. Plaintiff’s claims seeking rescission of coverage or damages based on alleged misrepresentations in the enrollment application are barred as a matter of law. *See* K.S.A. § 40-2203.
31. To overcome the incontestability bar, Plaintiff must demonstrate that any statement was both material to the risk assumed and intentionally false. As established in Sections III and IV above, Plaintiff cannot make that showing. Defendant left the marital status field blank, disclosed the true relationship orally, was told by BPU staff to proceed, and the enrollment was processed by BPU without required documentation as an administrative matter.

32. No intentional misrepresentation of a material fact can be established on these allegations, and retroactive rescission of coverage is barred by the incontestability clause in the enrollment agreement.

#### ***VI. Failure to Plead Fraud with Particularity***

33. Defendant incorporates paragraphs 27 through 31 and further moves for dismissal pursuant to K.S.A. 60-212(b)(6) for failure to state a claim, and pursuant to K.S.A. 60-209(b) for failure to plead fraud with the requisite particularity. Under K.S.A. 60-209(b), circumstances constituting fraud must be stated with particularity. *See Sade v. Hemstrom*, 205 Kan. 514, 471 P.2d 340 (1970); *Knop v. Gardner Edgerton U.S.D. No. 231*, 41 Kan. App. 2d 698, 205 P.3d 755 (2009).
34. Plaintiff fails to plead facts establishing that Defendant made a knowingly false representation.
35. Plaintiff admits that Defendant disclosed to BPU prior to completing the enrollment form that he and Ms. Pineda were not legally married. The enrollment form offered no option to accurately designate a domestic partner, notwithstanding that the nationwide carrier offers such a designation, and Defendant reasonably believed that such coverage was available. BPU processed the enrollment without required documentation as an administrative matter. Coverage was approved and continued for over three years. These facts, as confirmed by Plaintiff's own Advisory Opinion and pleadings, negate the element of knowing falsehood required to plead fraud with particularity.
36. The Petition recites the elements of fraud in conclusory fashion without alleging facts sufficient to establish that Defendant's conduct was knowingly false or made with intent to deceive. Conclusory allegations of fraud are insufficient. *See Vondracek*, 32 Kan. App. 2d at 101. All fraud-based counts must be dismissed for failure to plead with particularity.
37. Kansas law requires a plaintiff pleading fraud to allege with particularity each of the following five elements: (1) an untrue statement of fact; (2) known to be untrue by the party making it; (3) made with the intent to deceive or with reckless disregard for the truth; (4) justifiably relied upon by another party to that party's detriment; and (5) resulting injury. *Vondracek v. Mid-State Co-Op, Inc.*, 32 Kan. App. 2d 98, 101, 79 P.3d 197 (2003); *Rajala v. Allied Corp.*, 919 F.2d 610, 615 (10th Cir. 1990) (applying Kansas law).
38. The Petition fails to adequately plead each element as follows:
- a) Element One--Untrue Statement of Fact. BPU's own Advisory Opinion confirms as an undisputed finding that Defendant did not check "married" or "single" on the enrollment form. Advisory Opinion at 1. Defendant left the marital status field blank. A blank field is not an untrue statement of fact. Furthermore, Defendant was legally correct not to check "Married" because no legal marriage existed, and BPU's own investigation found no common law marriage because the parties specifically agreed not to hold themselves out as married. Plaintiff cannot identify

a false statement of fact because none was made.

- b) Element Two--Known to Be Untrue. Defendant left the marital status field blank and listed Ms. Pineda under "Spouse" after disclosing orally that they were domestic partners and were not legally married. He was told by BPU staff to proceed. A person who discloses the truth, is told to proceed, and declines to check a false box cannot have knowingly made an untrue statement. Plaintiff's own Advisory Opinion corroborates this account by noting that BPU staff verbally requested documentation but were unable to produce any written communication confirming those requests. Advisory Opinion at 4.
- c) Element Three--Intent to Deceive or Reckless Disregard for Truth. BPU's own Advisory Opinion records Defendant's express statement that "there was no intent to deceive anyone." Advisory Opinion at 2. The Opinion further records that Defendant said "man, I really messed up" which is a statement of mistake, not deception. The Advisory Opinion itself acknowledged intentionality as an open question, not a settled finding. A fraud complaint cannot be pled with particularity on facts that the plaintiff's own investigation found do not establish intentional conduct.
- d) Element Four--Justifiable Reliance. As established in Section II, BPU possessed actual knowledge of the true relationship status before enrollment was approved. A party with actual knowledge cannot establish justifiable reliance as a matter of law. Moreover, BPU processed the enrollment without documentation as an administrative matter, chose not to obtain written confirmation of its verbal documentation requests, and offered a common law marriage affidavit in 2025 rather than treating the matter as fraud. These are not the acts of a party that reasonably relied on a misrepresentation.
- e) Element Five--Resulting Injury. The claimed injury, payment of benefits, resulted from BPU's own decision to process an incomplete enrollment application without required documentation in order to meet a self-imposed 30-day deadline, to rely on verbal rather than written documentation requests, and to continue providing coverage for over three years without obtaining certificates. Where the injury flows directly from the plan administrator's own administrative failures, Plaintiff cannot attribute that injury to fraud by Defendant.

39. Because the Petition fails to adequately plead all five required elements of fraud with the particularity demanded by K.S.A. 60-209(b) and *Vondracek*, and because BPU's own Advisory Opinion affirmatively negates the intent element, Counts I, II, and V must be dismissed.

#### ***VII. Administrative Error Does Not Constitute Fraud and Limits Available Remedy***

40. The Plan expressly distinguishes between fraud and administrative error. Section B.3.f provides that coverage may be voided from inception only upon a finding that the Covered Person "intentionally misrepresented material facts or committed fraud." Section H.e provides that coverage may be terminated on the original effective date only upon a

finding that coverage was terminated “due to a Covered Person committing fraud or intentionally misrepresenting a material fact on the Employee application.” Under Kansas law, fraud requires a knowingly false representation made with intent to deceive. *See Vondracek v. Mid-State Co-Op, Inc.*, 32 Kan. App. 2d 98, 79 P.3d 197 (Kan. Ct. App. 2003).

41. Section J.5 separately addresses administrative errors, providing that “clerical errors shall not deprive any individual of coverage under the Plan.” BPU’s Advisory Opinion confirms that staff processed the enrollment application without documentation to meet a 30-day deadline is a textbook administrative error by the Plan administrator, not a fraudulent act by Defendant.
42. Because Plaintiff’s own Advisory Opinion confirms that Defendant stated there was no intent to deceive, that the 2025 investigation found intentionality to be an open question, and that BPU’s own administrative failures caused the processing of an incomplete enrollment, the conduct at issue constitutes at most an administrative error. Accordingly, the fraud-based remedies, penalties, and enhanced damages sought by Plaintiff are barred.

#### ***VIII. Failure to State a Claim for Unjust Enrichment***

43. Defendant incorporates paragraphs 1 through 40.
44. Plaintiff also fails to state a claim for unjust enrichment. Under Kansas law, unjust enrichment requires: (1) a benefit conferred upon the defendant; (2) the defendant’s appreciation or knowledge of the benefit; and (3) acceptance and retention of the benefit under circumstances that make such retention inequitable. *Haz-Mat Response, Inc. v. Certified Waste Servs. Ltd.*, 259 Kan. 166, 910 P.2d 839 (1996); *J.W. Thompson Co. v. Welles Products Corp.* 237 Kan. 503, 509 (1988).
45. The doctrine of unjust enrichment cannot be applied because BPU did not change its position to its detriment as a result of any promise by law or by Defendant because Plaintiff cannot establish the third element. Defendant disclosed the nature of the relationship to BPU before enrollment; BPU staff told him to proceed with the listing; the Plan administrator processed the enrollment without required documentation as an administrative decision; and benefits were provided under a formally executed group health contract for over three (3) years. Retention of benefits provided pursuant to an employer-approved enrollment where Defendant disclosed all material facts, was directed to proceed by BPU staff, and BPU’s own administrative failures caused the deficient processing is not inequitable as a matter of law. Any overpayment, if established, arises from an administrative error by the Plan and must be remedied through the Plan’s own administrative correction procedures under Section J.3.b not through a civil unjust enrichment action in district court.

Wherefore, Defendant respectfully requests that the Court dismiss the Petition for the reasons stated above and grant such other and further relief as the Court deems just and proper. Specifically, Defendant respectfully requests that the Court:

46. Dismiss the Petition in its entirety for lack of subject matter jurisdiction pursuant to

K.S.A. 60-212(b)(1) due to Plaintiff's failure to exhaust administrative remedies under the Plan's Section L appeal procedures and K.S.A. 77-612, and in the alternative, for failure to state a claim pursuant to K.S.A. 60-212(b)(6);

47. In the alternative, dismiss all fraud-based counts (Counts I, II, and V) for failure to state a claim pursuant to K.S.A. 60-212(b)(6) and for failure to plead fraud with particularity pursuant to K.S.A. 60-209(b);
48. Dismiss Count III (Unjust Enrichment) for failure to state a claim pursuant to K.S.A. 60-212(b)(6); and
49. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

*David Haley*

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CERTIFICATE OF SERVICE

I certify that a copy of the above Motion to Dismiss was served on SEAN M. STURDIVAN /  
(plaintiff attorney name)

on the 20<sup>th</sup> day of MARCH, 2026, as follows: VIA US CERTIFIED MAIL

ASHLEY  
N. GARRETT

Service to:

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(Signature of Plaintiff)

Authority

K.S.A. 60-212.