

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-000653-GPG-STV

ASCENT CLASSICAL ACADEMIES,

Plaintiff,

v.

ASCENT CLASSICAL ACADEMY CHARTER
SCHOOLS, INC., and LANDS' END, INC. a/k/a
LANDS END DIRECT MERCHANTS, INC.,

Defendants.

ANSWER AND COUNTERCLAIMS

Defendants Ascent Classical Academy Charter Schools, Inc. and Lands' End, Inc. a/k/a Lands End Direct Merchants, Inc. ("Defendants"), by and through their undersigned counsel, answer Plaintiff's Amended Complaint and Jury Demand ("Amended Complaint"), and ACACS asserts its Counterclaims as follows:

PRELIMINARY STATEMENT

1. Defendants Ascent Classical Academy Charter Schools ("ACACS") and Lands' End, Inc. ("Lands' End") admit that Ascent Classical Academies ("ACA") is a nonprofit corporation that manages charter schools. Defendants deny the remaining allegations in paragraph 1.

PARTIES

2. Admitted

3. Admitted

4. Admitted

JURISDICTION

5. Admitted

VENUE

6. Admitted

GENERAL ALLEGATIONS

7. Denied

8. Denied

9. Admitted

10. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 10. Thus, Defendants deny the same.

11. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 11. Thus, Defendants deny the same.

12. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 12. Thus, Defendants deny the same.

13. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 13. Thus, Defendants deny the same.

14. Admitted

15. Denied

16. Denied

17. Denied

18. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 18. Thus, Defendants deny the same.

19. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 19. Thus, Defendants deny the same.

20. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 20. Thus, Defendants deny the same.

21. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 21. Thus, Defendants deny the same.

22. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 22. Thus, Defendants deny the same.

23. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 23. Thus, Defendants deny the same.

24. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 24. Thus, Defendants deny the same.

25. The document referred to speaks for itself. All other allegations are denied.

26. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 26. Thus, Defendants deny the same.

27. Denied

28. Denied

29. Denied

30. The document referred to speaks for itself. All other allegations are denied.

31. Denied

32. The document referred to speaks for itself. All other allegations are denied.

33. The document referred to speaks for itself. All other allegations are denied.

34. Denied

35. Denied

36. Defendants admit that Rob Williams made a disclosure to the ACACS board. All other allegations are denied.

37. Defendants admit that Mr. Williams recused himself from certain discussions and votes by the ACACS board. All other allegations are denied.

38. Denied

39. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 39. Thus, Defendants deny the same.

40. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 40. Thus, Defendants deny the same.

41. The allegations in paragraph 41 are legal statements that do not require a response. To the extent a response is required, the allegations are denied.

42. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 42. Thus, Defendants deny the same.

43. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 43. Thus, Defendants deny the same.

44. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 44. Thus, Defendants deny the same.

45. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 45. Thus, Defendants deny the same.

46. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 46. Thus, Defendants deny the same.

47. Denied

48. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 48. Thus, Defendants deny the same.

49. Denied

50. Denied

51. Denied

52. Denied

53. Denied

54. Denied

55. Denied

56. Denied

57. Denied

58. Defendants admit that charter school applications were submitted to Boulder Valley School District and Adams 12 School District. The remaining allegations are denied.

59. Admitted

60. Denied

61. Admitted

62. Denied

63. Denied

64. Admitted

65. Denied

66. Admitted

67. Denied

68. Denied

69. Denied

70. Denied

71. Denied

72. Defendants admit that Ascent Classical Academy of Douglas County merged with Ascent Classical Academy of Northern Colorado. All other allegations are denied.

73. Admitted

74. The document referred to speaks for itself. All other allegations are denied.

75. The document referred to speaks for itself. All other allegations are denied.

76. Denied

77. Denied

78. Denied

79. Denied

80. Denied

81. Admitted

82. The document referred to speaks for itself. All other allegations are denied.

83. The document referred to speaks for itself. All other allegations are denied.

84. Denied

85. Admitted

86. Admitted

87. Admitted

88. Denied

89. Denied

90. Denied

91. Denied

92. Denied

93. Denied

94. Denied

95. Denied

96. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 96. Thus, Defendants deny the same.

97. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 97. Thus, Defendants deny the same.

98. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 98. Thus, Defendants deny the same.

99. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 99. Thus, Defendants deny the same.

100. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 100. Thus, Defendants deny the same.

101. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 101. Thus, Defendants deny the same.

102. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 102. Thus, Defendants deny the same.

103. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 103. Thus, Defendants deny the same.

104. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 104. Thus, Defendants deny the same.

105. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 105. Thus, Defendants deny the same.

106. Admitted

107. The document referred to speaks for itself. All other allegations are denied.

108. The document referred to speaks for itself. All other allegations are denied.

109. The document referred to speaks for itself. All other allegations are denied.

110. The document referred to speaks for itself. All other allegations are denied.

111. Denied

112. Denied

113. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 113. Thus, Defendants deny the same.

114. Denied

115. Denied

116. Denied

117. Denied

118. Denied

119. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 119. Thus, Defendants deny the same.

120. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 120. Thus, Defendants deny the same.

121. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 121. Thus, Defendants deny the same.

122. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 122. Thus, Defendants deny the same.

123. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 123. Thus, Defendants deny the same.

124. Defendants admit that the charter school application for the Durango school was not approved by the local school district. All other allegations are denied.

125. Denied

126. Denied

127. The document referred to speaks for itself. All other allegations are denied.

128. The document referred to speaks for itself. All other allegations are denied.

129. The document referred to speaks for itself. All other allegations are denied.

130. The document referred to speaks for itself. All other allegations are denied.

131. The document referred to speaks for itself. All other allegations are denied.

132. The document referred to speaks for itself. All other allegations are denied.

133. Defendants admit that the ACACS schools in Brighton School District 27J and Grand Junction were eventually opened. All other allegations are denied.

134. Denied

135. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 135. Thus, Defendants deny the same.

136. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 136. Thus, Defendants deny the same.

137. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 137. Thus, Defendants deny the same.

138. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 138. Thus, Defendants deny the same.

139. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 139. Thus, Defendants deny the same.

140. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 140. Thus, Defendants deny the same.

141. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 141. Thus, Defendants deny the same.

142. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 142. Thus, Defendants deny the same.

143. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 143. Thus, Defendants deny the same.

144. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 144. Thus, Defendants deny the same.

145. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 145. Thus, Defendants deny the same.

146. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 146. Thus, Defendants deny the same.

147. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 147. Thus, Defendants deny the same.

148. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 148. Thus, Defendants deny the same.

149. Admitted

150. The document referred to speaks for itself. All other allegations are denied.

151. Denied

152. Denied

153. Denied

154. Denied

155. Denied

156. Denied

157. Denied

158. Denied

159. Denied

160. The document referred to speaks for itself. All other allegations are denied.

161. The documents referred to speak for themselves. All other allegations are denied.

162. The document referred to speaks for itself. All other allegations are denied.

163. The document referred to speaks for itself. All other allegations are denied.

164. Denied

165. Denied

166. The document referred to speaks for itself. All other allegations are denied.

167. The document referred to speaks for itself. All other allegations are denied.

168. The document referred to speaks for itself. All other allegations are denied.

169. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 169. Thus, Defendants deny the same.

170. The document referred to speaks for itself. All other allegations are denied.

171. The document referred to speaks for itself. All other allegations are denied.

172. The document referred to speaks for itself. All other allegations are denied.

173. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 173. Thus, Defendants deny the same.

174. Denied

175. Denied

176. Denied

177. Denied

178. Defendants admit that the contracts referred to renewed for the 2023-24 school year. All other allegations are denied.

179. The document referred to speaks for itself. All other allegations are denied.

180. The document referred to speaks for itself. All other allegations are denied.

181. The document referred to speaks for itself. All other allegations are denied.

182. The document referred to speaks for itself. All other allegations are denied.

183. The document referred to speaks for itself. All other allegations are denied.

184. The document referred to speaks for itself. All other allegations are denied.

185. The statements in paragraph 185 are not factual allegations that require a response.

186. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 186. Thus, Defendants deny the same.

187. Defendants admit that the contract referred to was extended for an additional year.

All other allegations are denied.

188. Denied

189. Denied

190. Denied

191. Denied

192. Denied

193. The documents referred to speak for themselves. All other allegations are denied.

194. Denied

195. Denied

196. Denied

197. Denied

198. Denied

199. Denied

- 200. Denied
- 201. Denied
- 202. Denied
- 203. Denied
- 204. Denied
- 205. The document referred to speaks for itself. All other allegations are denied.
- 206. The document referred to speaks for itself. All other allegations are denied.
- 207. Denied
- 208. Denied
- 209. Denied
- 210. Denied
- 211. Denied
- 212. Denied
- 213. Denied
- 214. Denied
- 215. Denied
- 216. The document referred to speaks for itself. All other allegations are denied.
- 217. Denied
- 218. Defendants admit that the domain name referred to was registered. All other allegations are denied.
- 219. Denied
- 220. Denied

- 221. Denied
- 222. Denied
- 223. Denied
- 224. Denied
- 225. Denied
- 226. Defendants admit that ACACS launched a website. All other allegations are denied.
- 227. Denied
- 228. Admitted
- 229. The document referred to speaks for itself. All other allegations are denied.
- 230. The document referred to speaks for itself. All other allegations are denied.
- 231. The document referred to speaks for itself. All other allegations are denied.
- 232. The document referred to speaks for itself. All other allegations are denied.
- 233. The documents referred to speak for themselves. All other allegations are denied.
- 234. Defendants admit that ACACS rejected the proposal outlined in the letter from ACA's attorney dated September 15, 2023. All other allegations are denied.
- 235. Denied
- 236. The document referred to speaks for itself. All other allegations are denied.
- 237. Denied
- 238. Denied
- 239. The document referred to speaks for itself. All other allegations are denied.
- 240. Denied
- 241. Denied

- 242. Denied
- 243. The document referred to speaks for itself. All other allegations are denied.
- 244. The document referred to speaks for itself. All other allegations are denied.
- 245. The document referred to speaks for itself. All other allegations are denied.
- 246. The document referred to speaks for itself. All other allegations are denied.
- 247. The document referred to speaks for itself. All other allegations are denied.
- 248. The document referred to speaks for itself. All other allegations are denied.
- 249. Denied
- 250. Denied
- 251. Denied
- 252. The document referred to speaks for itself. All other allegations are denied.
- 253. The document referred to speaks for itself. All other allegations are denied.
- 254. Denied
- 255. The document referred to speaks for itself. All other allegations are denied.
- 256. The document referred to speaks for itself. All other allegations are denied.
- 257. The document referred to speaks for itself. All other allegations are denied.
- 258. Denied
- 259. Denied
- 260. Denied
- 261. Denied
- 262. Denied
- 263. Denied

- 264. Denied
- 265. The document referred to speaks for itself. All other allegations are denied.
- 266. The document referred to speaks for itself. All other allegations are denied.
- 267. Denied
- 268. Admitted
- 269. Denied
- 270. Denied
- 271. Denied
- 272. Denied
- 273. Denied
- 274. Denied
- 275. Admitted
- 276. Denied
- 277. Denied
- 278. Denied
- 279. Defendants admit that ACACS launched a website. All other allegations are denied.
- 280. The document referred to speaks for itself. All other allegations are denied.
- 281. The document referred to speaks for itself. All other allegations are denied.
- 282. Denied
- 283. Denied
- 284. Denied
- 285. Denied

286. Denied

287. Denied

288. Denied

289. Denied

290. Defendants admit that ACA has filed applications with the United States Patent and Trademark Office. The applications speak for themselves. All other allegations are denied.

291. Denied

292. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 292. Thus, Defendants deny the same.

293. Denied

294. Denied

295. Denied

296. Denied

297. Denied

298. Defendants admit that ACA operates the website identified. All other allegations are denied.

299. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 299. Thus, Defendants deny the same.

300. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 300. Thus, Defendants deny the same.

301. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 301. Thus, Defendants deny the same.

302. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 302. Thus, Defendants deny the same.

303. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 303. Thus, Defendants deny the same.

304. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 304. Thus, Defendants deny the same.

305. Denied

306. Denied

307. Denied

308. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 308. Thus, Defendants deny the same.

309. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 309. Thus, Defendants deny the same.

310. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 310. Thus, Defendants deny the same.

311. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 311. Thus, Defendants deny the same.

312. Denied

313. Denied

314. Denied

315. Denied

316. Denied

317. The document referred to speaks for itself. All other allegations are denied.

318. Denied

319. Denied

320. Denied

321. Denied

322. Denied

323. Denied

324. Denied

325. Denied

326. Denied

327. Defendants admit that ACACS has established various social media accounts. All other allegations are denied.

328. The documents referred to speak for themselves. All other allegations are denied.

329. The documents referred to speak for themselves. All other allegations are denied.

330. Denied

331. The document referred to speaks for itself. All other allegations are denied.

332. Denied

333. Denied

334. Denied

335. Denied

336. Denied

337. Denied

338. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 338. Thus, Defendants deny the same.

339. The document referred to speaks for itself. All other allegations are denied.

340. The document referred to speaks for itself. All other allegations are denied.

341. Denied

342. Denied

343. Denied

344. Denied

345. Denied

346. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 346. Thus, Defendants deny the same.

347. Defendants lack knowledge or information sufficient to admit or deny the allegations of paragraph 347. Thus, Defendants deny the same.

348. Denied

349. Denied

350. Denied

351. Denied

352. Denied

353. Denied

354. Denied

355. Denied

356. Denied

**ANSWER TO FIRST CLAIM FOR RELIEF
Breach of Contract – Against ACACS**

357. This paragraph does not require a response. Defendants incorporate all previous responses.

358. Admitted

359. Denied

360. Denied

361. Denied

362. Denied

**ANSWER TO SECOND CLAIM FOR RELIEF
Cybersquatting (15 U.S.C. § 1125(d)) – Against ACACS**

363. This paragraph does not require a response. Defendants incorporate all previous responses.

364. Denied

365. Denied

366. Denied

367. Denied

368. Denied

369. Denied

370. Denied

371. Denied

372. Denied

373. Denied

374. Denied

375. Denied

**ANSWER TO THIRD CLAIM FOR RELIEF
Federal Unfair Competition – Against ACACS
(Trademark Infringement; False Designation of Origin)
(15 U.S.C. § 1125(a))**

376. This paragraph does not require a response. Defendants incorporate all previous responses.

377. Denied

378. Denied

379. Denied

380. Denied

381. Denied

382. Denied

383. Denied

384. Denied

385. Denied

386. Denied

387. Denied

388. Denied

**ANSWER TO FOURTH CLAIM FOR RELIEF
Colorado Common Law Unfair Competition – Against ACACS
(Trademark Infringement; False Designation of Origin)**

389. This paragraph does not require a response. Defendants incorporate all previous responses.

390. Denied

391. Denied

392. Denied

393. Denied

394. Denied

395. Denied

396. Denied

397. Denied

398. Denied

399. Denied

**ANSWER TO FIFTH CLAIM FOR RELIEF
Colorado Unfair or Deceptive Trade Practices – Against ACACS
(C.R.S. § 6-1-101, *et seq.*)**

400. This paragraph does not require a response. Defendants incorporate all previous responses.

401. Denied

402. Denied

403. Denied

404. Denied

405. Denied

406. Denied

407. Denied

408. Denied

ANSWER TO SIXTH CLAIM FOR RELIEF
Promissory Estoppel – Against ACACS

409. This paragraph does not require a response. Defendants incorporate all previous responses.

410. Denied

411. Denied

412. Denied

413. Denied

414. Denied

ANSWER TO SEVENTH CLAIM FOR RELIEF
Unjust Enrichment – Against ACACS

415. This paragraph does not require a response. Defendants incorporate all previous responses.

416. Denied

417. Denied

418. Denied

419. Denied

420. Denied

421. Denied

ANSWER TO EIGHTH CLAIM FOR RELIEF
Civil Theft – Against ACACS

422. This paragraph does not require a response. Defendants incorporate all previous responses.

423. Denied

424. Denied

ANSWER TO NINTH CLAIM FOR RELIEF
Contributory Trademark Infringement (15 U.S.C. § 1114) – Against Lands’ End

425. This paragraph does not require a response. Defendants incorporate all previous responses.

426. Denied

427. Denied

428. Denied

429. Admitted

430. Denied

431. The document referred to speaks for itself. All other allegations are denied.

432. Denied

433. Denied

434. Denied

435. Denied

AFFIRMATIVE DEFENSES

Plaintiff’s claims are barred in whole or in part by the following defenses and affirmative defenses.

1. Plaintiff’s allegations fail to state a claim upon which relief can be granted.
2. Plaintiff failed to mitigate its damages.
3. Plaintiff’s equitable claims are barred by the doctrine of unclean hands.
4. Given its conduct, Plaintiff is estopped from bringing its claims against Defendants.

5. Defendants' conduct is protected by fair use.
6. Plaintiff has only recently applied for trademark registration and that registration will likely be contested.
7. Defendants reserve the right to assert any legal defense, affirmative or otherwise, permitted by law which discovery may disclose or mandate.

JURY DEMAND

Defendants demand a trial by jury on all issues so triable.

COUNTERCLAIMS

Defendant ACACS brings two counterclaims against ACA, as follows.

1. ACACS is a charter school network that operates pursuant to the Charter Schools Act. C.R.S. § 22-30.5-104.7. *See generally* C.R.S. §§ 22-30.5-101 to -704.
2. ACA is a charter management organization ("CMO"), also called an education management provider. It provides management services to charter schools, like ACACS.
3. As a charter school network, ACACS may hold one or more charter contracts through one or more authorizers for purposes of operating more than one school. C.R.S. § 22-30.5-104.7(2)(a).
4. Over the period relevant to ACACS's counterclaim, it has operated four charter schools.
5. They are located in Douglas County School District, Poudre School District (referred to as the school in "Northern Colorado" or "NoCo"), Brighton 27J School District ("Northern Denver" or "27J"), and Mesa County Valley School District 51 ("Grand Junction").

6. While the schools in Douglas County and Northern Colorado were initially authorized by the Douglas County School District and Poudre School District, respectively, all four schools are now authorized by the Charter School Institute (“CSI”).

7. Accordingly, ACACS has four charter contracts with CSI – one for each school.

8. The Charter Schools Act mandates that “[a] charter school network is responsible for governance, oversight, and monitoring of compliance and performance for each school” C.R.S. § 22-30.5-104.7(1).

9. The Act also stipulates that charter schools “shall be administered and governed by a governing body” as agreed in the charter contract. C.R.S. § 22-30.5-104(4)(a).

10. ACACS’s charter contracts with CSI also reflect both that (i) ACACS must remain responsible for the governance of each school and (ii) the ACACS board is the final authority for decisions on how to operate the schools.

11. While not identical, the four charter contracts between ACACS and CSI are substantially similar.

12. For instance, Section 2.3 provides that “the educational programs conducted by the School are considered to be operated by the School as a public school under the legal supervision of [CSI].”

13. Echoing C.R.S. 22-30.5-104.7(1) of the Charter Schools Act, Section 5.1 of the charter contracts states, “The School shall be responsible for its own operations....”

14. In addition, Section 4.1 of the charter contracts states that “the School[s] shall be governed by a Board of Directors.... The School Board members are fiduciaries of the School[s]

and shall operate in accordance with the School Corporation's Articles of Incorporation and Bylaws...."

15. The bylaws for the schools further emphasize that the ACACS board of directors must remain the final governing body for the operation of the schools.

16. Section 3.1 of the bylaws provides that "all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed by, its board of directors."

17. Moreover, Section 4.6(a) of the bylaws dictates that the chair of the board "shall, subject to the direction and supervision of the board of directors: (i) preside at all meetings of the board of directors; (ii) see that all resolutions of the board of directors are carried into effect; and (iii) perform all other duties incident to the officer of the president and as from time to time may be assigned to such office by the board of directors."

18. The Charter Schools Act and the charter contracts allow ACACS to contract with a third party, like ACA, to provide management and educational services. *See* C.R.S. § 22-30.5-104(4)(b); Charter Contracts §§ 5.1, 7.2, 8.8.

19. While entering into management contracts is permissible, the Act stipulates that the charter school must "maintain[] a governing board that is independent of the educational management provider." C.R.S. § 22-30.5-104(4)(b).

20. ACACS contracted with ACA to provide management services to its four schools.

21. ACACS and ACA entered into four substantially identical Management Agreements.

22. These Management Agreements begin by recognizing that the ACACS schools are charter schools organized pursuant to the Charter Schools Act. *See* Recitals on page 1.

23. They also recognize that the charter schools must operate subject to the charter contracts with CSI. *See* Recitals on page 1 and Article XII.L.

24. Article I.B of the Management Agreements provides, “The School hereby contracts with [ACA], to the extent permitted by law, for the provision of all labor, materials, facilities ... and supervision necessary for the provision of educational services to students, and the management, operation and maintenance of the School in accordance with the educational goals, curriculum, [and operational priorities], all as adopted by the School’s Board of Directors ... and/or included in the School’s Charter Contract.”

25. The primacy of ACACS’s board is clear throughout the Management Agreements.

26. Article III.A of the Management Agreements states, “[ACA] shall be responsible and accountable to the Board for the administration, operation and performance of the School in accordance with the Charter Contract.”

27. Article III.B provides, “[ACA] agrees to implement the educational goals and programs as set forth in the Charter Contract.” It further requires ACA to obtain ACACS board approval for any changes to the educational program.

28. Article III.C states, “Subject to the oversight and authority of the Board as provided herein, [ACA] shall be responsible for the Educational Program and the management, operation, accounting and business administration of the School.”

29. All rules and procedures must be approved by the ACACS board. *See* Article III.J.

30. Throughout Article III of the Management Agreements, it is clear that while ACA was hired to operate the schools day-to-day, it remained under the supervision of the ACACS board.

31. This theme from Article III that the ACACS board had ultimate authority at the schools is also clear in Article IV of the Management Agreements.

32. Article IV.A states, “The Board shall be responsible for its fiscal and academic policy.”

33. Article IV.E further emphasizes this same point: “The Board shall retain the authority to make reasonable regulations relative to anything necessary for the proper establishment, maintenance, management, and operation of the School The Board shall further retain the responsibility ... to adopt written policies governing the procurement of supplies, materials, and equipment.”

34. Article VI governs the financial arrangements between ACACS and ACA.

35. ACA’s fee for providing its services was to be negotiated annually. *See* Article VI.C.

36. ACA was entitled to be paid monthly, once ACACS approved the invoice ACA had sent. *See* Article VI.C.

37. The ACACS board approved the budget, and ACA was then authorized to spend ACACS’s revenues to provide educational and management services under the Management Agreements. *See* Article VI.B & H.

38. While under the Management Agreements ACA employed the faculty and staff directly, the ACACS board remained ultimately in charge.

39. For instance, Article VII.B states, “The accountability of [ACA] to the School is an essential foundation of this Agreement.”

40. As a result, the senior administrator of each school was subject to ACACS board approval.

41. In addition, the ACACS board was permitted to reject, on a case by case basis, the assignment of any faculty or staff member to any ACACS school. *See* Article VII.C & D.

42. The Management Agreements have fee-shifting provisions that state, “If any party commences an action against another party as a result of a breach or alleged breach of this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys’ fees and costs of suit.” *See* Article XII.I.

43. For the first several years, both ACACS and ACA wanted to closely affiliate with Hillsdale College.

44. However, beginning in about February 2023, ACA and its founder, Derec Shuler, came to believe that Hillsdale and its CMO, American Classical Education, were competitors in the charter school management market.

45. Mr. Shuler resented the competition because he wanted to expand ACA into other states.

46. ACACS, on the other hand, desired to have its four schools remain in close partnership with Hillsdale.

47. The Douglas County Management Agreement specifically provides that the Douglas County school will “at all times during the term of this Agreement remain in compliance with the obligations of the Hillsdale College Memorandum of Understanding.” *See* Article IV.F.

48. However, ACA's conduct, and specifically that of Mr. Shuler, violated this provision by taking steps antithetical to the Hillsdale MOU, which resulted in the relationship with Hillsdale deteriorating.

49. All the Management Agreements specify that ACA was responsible for executing specific functions "[s]ubject to the oversight and authority of the [ACACS] Board." *See* Article III.C.

50. This included hiring, firing, and supervision of employees at the schools, subject to the oversight and authority of the ACACS board. *See* Article III.C.2, Article VII.

51. ACA violated this provision by failing to provide consistent and competent employees, especially at the critical Head of School positions. Instead, due to ACA's poor management, the schools experienced excessive turnover, employee unrest, and low morale. This adversely affected the education students were receiving at the schools.

52. ACA's obligation also extended to securing appropriate facilities, subject to the oversight and authority of the ACACS board. *See* Article III.C.3.

53. ACA violated this provision when it failed to secure a suitable facility for the Grand Junction school in a timely fashion. Indeed, the conduct of ACA and Mr. Shuler placed that school on a troublesome foundation from the outset.

54. Under Article IV.E of the Management Agreements, the ACACS board had a reservoir of retained authority "to make reasonable regulations relative to anything necessary for the proper establishment, maintenance, management, and operation of the School[s]...." Consistent with that authority, the ACACS board, on October 2, 2023, voted to change the name of Ascent Classical Academy of 27J to Ascent Classical Academy of Northern Denver. ACA

refused to recognize this change, thereby violating the Management Agreement for the Northern Denver (27J) school.

55. On October 5, 2023, one of ACA's attorneys wrote a letter to legal counsel for ACACS claiming that ACACS had breached the Management Agreements and, as a result, they would terminate on November 4, 2023. In this letter, ACA's attorney further threatened that, as a result of ACACS's alleged breach, ACA would terminate the employment of all the school employees in all four schools on November 4, 2023, which would have resulted in the educational program immediately halting for all the students and families. While ACA did not follow through on this threat, it was another example of how ACA undermined employee morale to the detriment of the students and families ACACS was obligated to serve.

56. The Daniels Fund awarded a grant for the expansion of the schools in Douglas County and Northern Colorado.

57. The grant funds were diverted into the control of ACA because, at the time, the parties were cooperating pursuant to the terms of the Management Agreement.

58. Representatives from the Daniels Funds have repeatedly insisted that the grants were for the benefit of the ACACS schools in Douglas County and Northern Colorado.

59. Despite the clarity on this point, ACA refuses to provide these grant funds to ACACS.

60. ACA sent a letter on December 31, 2023, in which it declared that the four Management Agreements were terminated as of "11:59 PM this evening."

61. Given the termination of the Management Agreements at the end of December 2023, a transition needed to occur of information and systems being provided from ACA to

ACACS so that it could continue to serve its students and families and support the employees who worked in the schools.

62. ACA, however, failed to cooperate with this transition and, at times, actively hindered it by refusing to provide information and/or access to systems which ACA no longer had any right or need to possess and ACACS needed to operate its schools.

FIRST COUNTERCLAIM
Breach of Contract – Against ACA

63. ACACS incorporates all prior allegations.

64. ACACS and ACA entered into the following four enforceable contracts, called management agreements:

- a. Douglas County Management Agreement
- b. Northern Colorado Management Agreement
- c. Northern Denver (27J) Management Agreement
- d. Grand Junction Management Agreement

65. ACACS performed all of its obligations under these agreements.

66. ACA breached the management agreements by failing to follow ACACS board directives; secure facilities in a proper and timely manner; provide a suitable workplace for the employees which caused turmoil and turnover; transfer funds, information, and systems to ACACS as part of the transition; honor the Hillsdale MOU; and return or transfer funds and other assets it was not entitled to.

67. ACA's breaches damaged ACACS by adversely affecting the quality of the educational services at the schools, causing it to spend unnecessary funds, retaining ACACS funds,

harming its reputation, and failing to provide the services promised under the Management Agreements.

68. At present, it is estimated that ACA's breaches have caused damage to ACACS in the amount of \$258,089.97.

69. Under Article XII.I of the management agreements, ACACS is entitled to its reasonable attorneys' fees and costs related to this litigation.

**SECOND COUNTERCLAIM
Unjust Enrichment – Against ACA**

70. ACACS incorporates all prior allegations.

71. ACA received benefits from its prior relationship with ACACS.

72. ACA received these benefits at ACACS's expense.

73. Under the circumstances, it would be unjust for ACA to retain these benefits without commensurate compensation to ACACS.

PRAYER FOR RELIEF

WHEREFORE, Defendants ACACS and Lands' End seek judgment in their favor and respectfully request that the Court:

1. Dismiss Plaintiff's claims or otherwise deny Plaintiff relief for its claims.
2. ACACS seeks damages due to ACA's breach of contract and its unjust enrichment; ACACS seeks recovery of an amount to be determined at trial, but which is currently estimated at \$258,089.97. ACACS also seeks to recover its attorneys' fees and costs under Article XII.I of the management agreements.
3. Defendants seek an award of attorneys' fees and costs as authorized by statute.

4. Defendants also ask the Court to award such other and further relief as the Court deems just and proper.

Dated this 11th day of October 2024.

Respectfully submitted,

SPARKS WILLSON, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October 2024, a true and correct copy of the foregoing was served via electronic mail using CM/ECF upon the following:

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