

DISTRICT COURT, LARIMER COUNTY, STATE OF COLORADO Larimer County Justice Center Address: 201 La Porte Ave., Suite 100 Ft. Collins, Colorado 80521 Phone: 970-494-3500	DATE FILED: July 28, 2023 12:41 PM FILING ID: C2C651CE9025E CASE NUMBER: 2023CV30600
Plaintiff: RESURRECTION CHRISTIAN SCHOOL, a Colorado nonprofit corporation, v. Defendant: RESURRECTION CHRISTIAN CHURCH, aka RESURRECTION FELLOWSHIP, aka REZ.Church, a Colorado nonprofit corporation.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<i>Attorneys for Plaintiff Resurrection Christian School:</i> Allan L. Hale, Reg. No. 14885 William J. Kelly III, No. 38749 Shannon M. Bell, Reg. No. 35440 Kelly Law Partners, LLC 501 Cherry Street, Suite 1100 Denver, CO 80236 Phone: (720) 236-1800 Fax: (720) 236-1799 E-mail: ahale@kellylawpartners.com wkelly@kellylawpartners.com sbell@kellylawpartners.com	Case No.: Division:
VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES	

Plaintiff, Resurrection Christian School (“RCS” or “School”), by and through its counsel, Kelly Law Partners, LLC, brings this Verified Complaint against the Defendant, Resurrection Christian Church (“REZ” or “Church”) (the “School” and the “Church” are referred to collectively sometimes as the “Parties”) for Declaratory Relief, Injunctive Relief, and Damages and as grounds states and alleges:

INTRODUCTION¹

For 25 years, the Parties cooperatively and successfully ran their respective School and Church in adjacent and shared facilities in Loveland, Colorado. Now, actions by the Church threaten to substantially interfere with, or prohibit altogether, the School's operations. If not stopped immediately, such actions will irreparably damage the School by constructively evicting it from certain shared facilities and leased property near the start of its 2023-24 academic year.

Members of the Church formed the School in 1998 as a separate not-for-profit corporation with the vision that it would be a northern Colorado Christian school providing students with a quality education founded on Christian principles and values. The legal relationship between the Parties, and their agreement for the separate and joint use of the property and buildings, is reflected in two leases, one in 2009 and a second in 2012. Although the School and Church are separate legal entities, they operate under and follow nearly identical "Statements of Faith."

In the last 12 years, the School has grown and expanded into new classrooms and built a high school. Currently, it has 1,600 children from 750 families, and 165 faculty, coaches, and administrators, who together represent 73 local churches. The School's finances are sound, and its leadership model is collaborative with a Superintendent and a nine-member board of directors.

In the period of 1998 to 2009, the Parties' respective leadership teams displayed strong collaboration between the School and the Church in pursuing their shared educational mission. Beginning in 2010, with the arrival of a new senior pastor, the Church's leadership went in a different direction.

During this same period, Church leadership has placed significant pressure on the School to grant the Church increased influence and authority in the areas of School governance and spiritual oversight, while persistently seeking to increase the School's financial obligations to the Church. The Church now believes that the School brings it "no value" in the arena of contemporary Christian worship and complains that its 99-year Lease with the School is "below market." The Church has turned its back on the Parties' shared educational mission and now seeks to evict – or constructively evict – the School and terminate the 99-year Lease.

After more than a year of good faith efforts to address and resolve their differences, including two separate mediations, the School reluctantly brings this case and asserts claims against the Church for declaratory and injunctive relief to clarify, confirm, and enforce **their shared expectations** under the terms of their 99-year Lease. A Temporary Restraining Order and a Preliminary Injunction are necessary to prevent the Church from interfering with the School's

¹ This Introduction is offered to assist the Court and others to understand the claims asserted, their factual bases, and the relief sought. It is not intended to be a formal claim or averment under C.R.C.P. 8, and, therefore, no response is required. Rules 8 through 10 do not prohibit a useful introductory statement.

operations and the use of its property and to protect the ongoing learning and care of the students, the goodwill and reputation of the School, and its rights under the 99-year Lease.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, RCS (the “School”), is a Colorado nonprofit corporation founded in 1998 with a principal street address of 6508 E. Crossroads Blvd., Loveland, Colorado 80538.

2. Defendant, REZ.Church (the “Church”), is a Colorado nonprofit corporation founded in 1977 with a principal street address of 6502 E. Crossroads Blvd., Loveland, Colorado 80538. The School and the Church are referred to sometimes as the “Parties.”

3. The Court has jurisdiction over the subject matter at issue because this is a civil action for damages and equitable relief. See COLO. CONST. ART. VI, § 9(1).

4. The Court has personal jurisdiction over the parties pursuant to C.R.S. § 13-1-124(1), because they: (a) transacted business in the State of Colorado at times material to this action; (b) purposefully availed themselves of the rights and privileges of the State of Colorado at times material to this action; and (c) the Church committed the wrongful acts and omissions described below, with resulting injury, damages, loss or other consequences in the State of Colorado.

5. Venue is proper in this Court, as the dispute centers around the ownership and use of improved real property that is located in the City of Loveland in Larimer County, Colorado, and the underlying lease has a venue selection clause designating this venue.

FACTUAL ALLEGATIONS

6. In 1985, the Church purchased the land that it and the School operate on for \$100,000. The property comprises approximately 74 acres on roughly equally sized north and south parcels (collectively the “Property”). **Ex. 1**, map and diagram of property. Nearly all of the improvements are located on the north parcel.

7. In 1998, led by the senior pastor, members of the Church organized and incorporated the School. The School was formed as a separate not-for-profit corporation with the vision that it would be a northern Colorado Christian school providing students with a quality education founded on Christian principles and values.

8. The School was intended to be governed and managed according to a “Statement of Faith” that is nearly identical to the Church’s Statement of Faith. Notwithstanding this similarity, the School was intended to be independent, including being governed and operated separately from the Church.

9. The Church, known as Resurrection Fellowship at the time, does not appear

anywhere in the School's founding documents. The founders could have given the Church complete control over the School in different ways, e.g., by making it one and the same, or a division or subsidiary, or by specifying the Church Board would also constitute the School Board, but they did not.

10. The School and the Church have separate budgets, tax identification numbers as employers, and governance structures. In their current 99-year Lease Agreement, executed in 2012, the Parties confirmed in writing their legal separateness.

11. RCS opened the elementary school in the fall of 1998.

12. In the period of 1998 to 2009, there was strong collaboration between the School and the Church in pursuing their shared educational mission.

13. Over the course of the next several years, RCS, with full knowledge and approval of the Church, expanded the School by adding a middle school and athletic fields in 2003, and the first half of the high school in 2006.

14. The Church operated a preschool at the Property for several years; however, in 2012, the Church asked RCS to take over the preschool.

15. RCS has run and operated the preschool continuously and without interruption since 2012.

A. The 2009 Lease.

16. In 2009, the Parties agreed to more formally describe their separate and joint use of the property and buildings by entering into a 99-year written lease (the "Original Lease"). The Original Lease covered certain buildings, playgrounds, ball fields, parking spaces, and related property ("Original Lease") that the School was using or occupying. A true and correct copy of the Original Lease is attached as **Ex. 2**.

17. The Original Lease provides for the lease of "the property located at 6508 East Crossroads Boulevard, Loveland, Colorado 80538, currently occupied by [RCS], with all improvements located thereon." As of April 28, 2009, RCS was occupying the elementary school, middle school, high school (in its then configuration), playgrounds, and athletic fields.

18. The Original Lease had a 99-year term from April 28, 2009, to April 28, 2108. Rent was \$1.00 per year. It allowed for review of its terms every three years to assure compliance with its terms and to ensure that no changes were needed. It recognized the School had made improvements to the property and maintained the right to redecorate, alter, or make future improvements to the property as it should deem expedient or necessary for its purposes, and provided that the Church had to approve any plans and specifications for improvements or alterations to the property but could not unreasonably withhold its approval.

19. The School paid for and added a modular building with three more classrooms in 2010. The Church approved the addition of the modular building.

20. The Original Lease provides that the Church and School “will continue to make use of the existing and future building of [REZ] and will develop processes to ensure full access to and use of any such building to both the Church and School in such a manner that permits use without disruption to the activities and ministries of both parties.” But it provided that priority to use shared elements had been given to the School based on its school calendar.

21. The Original Lease granted the School the right to “contract for any service or utility incident to the Tenant’s use of the premises” and provided if the Church terminated the lease for anything other than an unremedied breach, the School would be entitled to payment amounting to the full commercial value of the square footage leased for all unused years of the lease.

B. The 2012 Lease.

22. On or about July 30, 2012, the Parties amended and restated the Original Lease for a new 99-year period (the “2012 Lease”). A true and correct copy of the 2012 Lease is attached as **Ex. 3**.

23. The 2012 Lease does not incorporate the Bylaws of the School or the Church.

24. The 2012 Lease, ¶ 33, specifically speaks to the legal separateness of the School and the Church by prohibiting the relationship between the Parties from being deemed a partnership, agency, or joint venture and confirming that they “expressly understood and agreed that the relationship between [them] ... is and shall at all times remain solely that of landlord and tenant.”

25. The term of the 2012 Lease is from July 26, 2012, to July 25, 2111. “Base Rent” is \$1.00 per year. The 2012 Lease provides that the School shall pay “Additional Rent,” which includes its pro-rata share of utilities, taxes (if applicable), assessments, insurance, maintenance, trash removal, repairs, and replacements. “Rent” under the 2012 Lease is Base Rent plus Additional Rent.

26. The Parties did not intend the 2012 Lease to change the School’s historic use of the property or buildings. The Parties intended for the School to continue its right to use and occupy certain properties and buildings and to expand as needed.

27. For at least 10 years under the 2012 Lease, the School continued to operate the preschool and used the athletic fields and the parking areas as it had under the Original Lease, without incident or objection from the Church.

28. All improvements and maintenance to the School, including improvements to and

maintenance of the athletic fields after their initial installation, have been paid for by the School.

C. The Parties Grow Apart.

29. Since 2012, the School has grown and expanded into new classrooms and a high school building. Currently, it has 1,600 children from 750 families, and 165 faculty, coaches, and administrators, who together represent 73 local churches. The School's finances are sound, and its leadership model is collaborative with a Superintendent and a nine-member board of directors.

30. In the last three years Senior Pastor Wiggins's actions have become divisive and he has openly complained that the School is no longer "controlled" by the Church and "does nothing for the Church" and that the 99-year Lease signed in 2012 is "below market" and should be terminated.

31. Recognizing their growing differences over the last five years, in late February of 2022, the Church proposed two options for resolving the relationship between the Parties, one of "Spiritual Covering" or one of "Good Business".

32. Senior Pastor Wiggins encouraged the School to consider these two options or any other ideas that could improve their relationship. In March 2022, while the School was discussing moving toward a Good Business relationship, suddenly and without warning, Senior Pastor Wiggins terminated future conversations by threatening to go to the Attorney General for the purpose of challenging the School's not-for profit status.

33. Senior Pastor Wiggins began to openly attack the School's mission, governance, and operation to the point that, in writing, on April 7, 2022, the Church demanded a return to a "Spiritual Covering relationship," control over the School's Board, and immediate dismissal of its Superintendent. Three days later, on April 10, 2022, Senior Pastor Wiggins attacked the School and its Superintendent for nearly an hour in a pre-recorded video shown in the Church sanctuary denominated a "family meeting."

D. The Current Disputes.

34. In May 2022, the dispute escalated, and the Church began to restrict the School's access to and use of certain facilities, and started a campaign to harass the School financially by unilaterally charging for undocumented repairs, maintenance, and alleged "additional rent" in contravention of the 2012 Lease provisions.

35. Both parties retained counsel and participated in, first, "pastoral mediation" for nearly nine months, followed closely by legal mediation for three months, which just ended.

36. During the period of these seriatim mediations, the Parties agreed that the School would not pursue litigation and the Church would not restrict the School's access to and use of certain facilities, nor would it pursue payment of disputed charges for repairs, maintenance, and

alleged additional rent. They also agreed that any delay resulting from mediation would not be used by either party in any subsequent litigation.

E. Disagreement over the “Leased Premises” in the 2012 Lease.

37. The 2012 Lease acknowledges that the School has been leasing certain church and school buildings, as well as adjacent outside playgrounds, ball field, parking spaces, and related property under the Original Lease.

38. The 2012 Lease identifies the “Leased Premises” as the School Building, Common Areas, and the New Building.

39. The athletic fields are used for middle and high school physical education, football practices and games, baseball practices and games, softball practices, cross country practices and meets, track practices, and soccer practices.

40. The Church now argues that the Leased Premises **exclude the athletic fields** that the School paid to build in 2003, paid to improve and maintain for 20 years, and used continuously for 20 years.

41. The Church also now argues that the Leased Premises **exclude the preschool** that has been operated by the School since 2012.

42. The Church also now argues that the Leased Premises **exclude the parking areas** that have been shared with the School for years.

43. The Church seeks to exclude the School from the athletic fields, preschool, and parking areas, arguing that such areas are not included in the definition of Common Areas in the 2012 Lease.

44. The Church’s position is new, is contradicted by the historical record of construction, improvements to, maintenance, and use of these areas by the School, and is based on an ambiguity in the 2012 Lease itself. Further, the Church’s argument is at odds with the **shared expectations of the Parties** under the 2012 Lease. The Parties intended for the School to continue to use and pay the maintenance for the athletic fields as it had historically done.

45. The 2012 Lease defines the “School Building” as six (6) enumerated buildings existing on the Land and occupied by the School as of July 30, 2012.

46. School Building is defined as the buildings being **currently occupied** by the School as “A1,” “A2,” “A3,” “A4,” “A5,” and “A6” and as depicted on the Site Plan attached as Addendum B to the 2012 Lease.

47. The buildings identified on the Site Plan as “A1,” “A2,” “A3,” “A4,” “A5,” and

“A6” did not accurately reflect the buildings **then occupied** by the School as of the date of the 2012 Lease.

48. The “buildings” identified on the Site Plan include items that are not actual buildings.

49. The 2012 Lease identifies the “New Building” as a new school building identified on the Site Plan as “B1.” The New Building was constructed in 2012 and was an addition to the existing high school building. The School paid for the New Building. The Church approved the construction of the New Building pursuant to the provisions of the 2012 Lease.

50. The Premises are defined as the Land and all improvements located thereon, including but not limited to the Church Buildings, the School Building, and New Building and the Common Areas.

51. The Common Areas are defined as all areas of the Premises other than the Church Buildings, School Building, or the New Building, including but not limited to parking areas, landscape areas, and areas within the Church Building that the Church designated for non-exclusive use by RCS.

52. The 2012 Lease guarantees the School the right to use the Common Areas within the Leased Premises on a non-exclusive basis with the Church.

53. The School has been using some of the designated areas within the Church Building to operate the preschool at the specific request of the Church to take over operations of the preschool.

54. Larimer County conducted a routine, pre-operational inspection of the preschool on June 23, 2023 and identified a handful of issues that need to be addressed before the start of school.

55. The School advised the Church of the items that involve minor alterations to the building, such as replacing a small area of carpet with smooth flooring, adjusting water heater temperatures, and adding a sink near an existing toilet.

56. The Church is refusing to allow the School to perform this work at the School’s cost.

57. The Church’s refusal knowingly jeopardizes the School’s ability to open and operate the preschool.

58. The Church designated old empty office spaces within the Church Building for the School to use for office space, and the School also uses the main auditorium, theaters 1 and 2, 1 room repurposed for the elementary school music room, 2 rooms for tutoring, and 1 room for a

reading specialist. The School stopped using the offices, the music room, the auditorium, and theaters in 2022.

59. The Church agreed to not unreasonably restrict access to or use of the Leased Premises, including the shared facilities located therein.

60. The 2012 Lease provides that all vehicles used by the School or its employees, students, parents, visitors, and other approved users of Tenant facilities shall be parked only in areas designated by the Church acting reasonably and in good faith.

61. The Church guaranteed the School **a minimum** of 100 parking spaces for the exclusive use of the School Monday through Friday of each week.

62. On May 18, 2022, the Church sent demand that the School use only certain marked spaces within the Common Areas as it defined such areas.

63. The Church's need for use of the majority of the parking spaces is limited to times services are being held at the Church or occasional special events or funerals. Services are not held Monday through Friday.

64. The Church's demand that the School limit its use of the parking spaces ignores the language of the 2012 Lease and is not reasonable or in good faith.

65. The 2012 Lease provides that the School's pro-rata share of the utilities, assessments, insurance, maintenance, trash removal, repairs, and replacements shall initially be on the same terms of the Original Lease, but the Church can increase or decrease these costs as necessary for the School to pay its **fair share** of these items.

66. The Original Lease does not include any terms for allocating pro-rata expenses.

67. The 2012 Lease further provides that if any utility company determines that the School's use of the Church Building requires an increase in the utilities based on the School's use and occupancy of the Church Building, that the School shall pay any such additional fees, including but not limited to repairs or modifications requested by the utility company.

68. The Church further agreed under the 2012 Lease to work with the School regarding any of the improvements within the School Building, Church Building, and Common Areas that are intended for joint use of the parties and to develop a process to ensure full access to and use of such shared facilities by the School in a manner that permits use without disruption of the activities of the School.

69. A shared reservation system was created and has been used by the Parties to ensure full access to and use of such shared facilities by the School in a manner that permits use without disruption of the activities of the School or the Church. Since at least 2009, the Church has

followed the practice of asking the School first if the Church, or third-parties, could use the athletic fields, thus recognizing the School's priority to use of the fields.

70. The Church removed the School's access to the reservation system in the spring of 2022. Although the Church subsequently reinstated the School's access to the reservation system, it would routinely go in and cancel a reservation made by the School without any notice or reason.

71. The Church agreed to refrain from engaging in any conduct that will materially adversely affect the business or activities of the School.

72. The Church agreed to refrain from restricting access to or use of the Leased Premises, including shared facilities located thereon.

73. In June of 2022, the Church demanded the School cease using portions of the Church Building for preschool activities, cease using portions of the Church Building for office space, cease using the majority of the parking facilities, and cease using the athletic fields. The Church suspended this demand, in part, during the Parties' mediations, but the School was forced to vacate the offices.

74. The office spaces the School vacated remain empty and unused by the Church.

75. The portions of the Church Building used for preschool classes are areas within the Church Building that the Church designated for non-exclusive use by the School.

76. The portions of the Church Building used for office space are areas within the Church Building that the Church designated for non-exclusive use by the School.

77. The parking facilities are located within the Common Areas.

78. The athletic fields are located within the Common Areas.

79. The School loaned the Church \$50,000 for the initial installation of the athletic fields. The Church later repaid this loan to the School. All improvements (including score boards, bleachers, lights, etc.) and maintenance since initial installation have been fully paid for by the School. These costs are in excess of hundreds of thousands of dollars.

80. Although the School has paid the cost to irrigate the athletic fields since they were constructed as its pro-rata share of expenses, the Church agreed in 2016 to transfer ownership to the School of the water source for irrigation. Upon information and belief, this transfer was not formally completed or communicated to the water provider. The School has maintained and paid for 100% of the irrigation lines and water for the fields since 2016.

81. The School has solely maintained the athletic fields for over 14 years.

82. The use of the athletic fields is directly related to the operations of the School.
83. The Church agreed that, as between the parties, the School was more than just a tenant but, rather, the effective owner of these improvements.
84. The athletic fields are used by the grade school for field day activities. They are used for physical education for the middle and high school students. They are used for the middle and high school athletic teams.
85. The use of the fields is paramount, as the physical education classes and extracurricular athletic opportunities are key components of the education experience at the School, and the State also requires physical education credits for a high school graduation certificate.
86. The School's high school population is comprised of approximately 50% of students who compete in athletics. Academic excellence and Christian faith are the focus of the School; however, athletics plays a key role in enhancing the student educational experience.
87. At the end of the school year, the Church removed all signs on the athletic fields that referred in any way to the School. A few days before graduation in 2023, the Church caused seniors' photographs that had been placed on the ballfield fence to be removed.
88. The athletic fields have also been used since the fall of 2003 for general school events.
89. The athletic fields are used annually for a Back-2-School Bash to welcome all incoming students and their families while reaffirming the School's Statement of Faith.
90. The School promised that the Leased Premises shall be occupied and used by it exclusively as a Christian school and for related purposes, which school is known as Resurrection Christian School. The School has continuously used and occupied the Leased Premises exclusively as a Christian school and its related purposes. The School intends to continue to use and occupy the Leased Premises exclusively as a Christian school and for related purposes, under the name Resurrection Christian School.
91. In 2022, the Church started issuing invoices to the School for pro-rata expenses in a haphazard fashion, at almost double the rates as past invoices, and without any supporting back-up. Upon information and belief, the Church is invoicing the School for deferred maintenance and repair in contravention of the 2012 Lease that provides the Church shall first pay for all necessary maintenance and repair and then be reimbursed by the School in an agreed amount.
92. On May 4, 2023, the Church issued an update to its Facility Use Agreement to go into effect on June 1, 2023. On or about May 4, 2023, the Church also issued a new Facility Booking Guideline. The updated Facility Use Agreement and Facility Booking Guideline are

inconsistent with the terms of the 2012 Lease.

93. The Parties scheduled and engaged in “pastoral mediation” for the period from June 2022 through March 2023. The Parties scheduled and engaged in “legal mediation” for the period of April through mid-July 2023.

94. The Church agreed to stay implementation of the new Facility Use Agreement and Facility Booking Guideline until after mediation. On July 17, 2023, the Church demanded the School comply with the Facility Use Agreement and Facility Booking Guideline if it wants to use the athletic fields.

95. On July 17, 2023, the Church advised that all events booked on and after August 1, 2023, will require a signed Facilities Use Agreement to be on file. On July 17, 2023, the Church stated that beginning August 1, 2023, users will also be charged \$15 per hour (*with a two-hour minimum*) for each field used (*Football Field, Varsity Softball Field, or Practice Softball Field*). On July 17, 2023, the Church informed the School that if it does not receive a signed Facilities Use Agreement by 12 noon (*MST*) on Friday, July 28, 2023, the Church will remove all of the School’s reservations for use of the athletic fields.

96. The Church’s attempt to change the terms and conditions associated with use of the athletic fields is inconsistent with the terms of the 2012 Lease and the parties historical use of the athletic fields.

97. The Church’s attempt to change the terms and conditions associated with use of the athletic fields is in bad faith.

98. The Church is attempting to use force and coercion to effectuate a unilateral change of the 2012 Lease.

FIRST CLAIM
**(Declaratory Judgment Concerning the School’s Right to Operate Its Preschool,
Use Athletic Fields, Use Parking, and Pay Reasonable
Maintenance Costs under the 2012 Lease)**

99. The School incorporates and re-alleges its allegations in the paragraphs above as if fully set forth herein.

100. The School asserts this claim for declaratory judgment or declaratory relief pursuant to C.R.C.P. 57 and C.R.S. § 13-51-101 *et seq.*

101. A controversy exists between the Parties regarding the definition, scope, and use of the Leased Premises, breaches of the 2012 Lease, and the Church’s ability to terminate the 2012 Lease or exclude or constructively evict the School from portions of the Leased Premises.

102. The School requests declarations that: (1) it is allowed to continue to occupy and use those portions of the Premises it has been occupying and using since 2012 and earlier; (2) that the Church does not have the right to terminate the 2012 Lease or exclude, evict, or constructively evict the School from portions of the Leased Premises.

SECOND CLAIM

**(Injunctive Relief Concerning the School's Right to Operate Its Preschool,
Use Athletic Fields, Use Parking, and Pay Reasonable
Maintenance Costs Under the 2012 Lease)**

103. The School incorporates and re-alleges its allegations in the paragraphs above as if fully set forth herein.

104. The Church has threatened to terminate the 2012 Lease and demanded the School immediately cease occupying and using portions of the Leased Premises.

105. The Church now imposes new terms on the School's ability to use the athletic fields effective as of August 1, 2023.

106. The School has been using the disputed areas of the Premises attendant to operating its schools, preschool through high school inclusive for more than 10 years.

107. The School's occupancy and use includes use of the elementary school, middle school, high school, office space, parking facilities, athletic fields, playgrounds, and preschool classrooms.

108. If the School is excluded from using the portions of the Leased Premises or if the 2012 Lease as a whole is terminated, it will result in immediate and irreparable harm to the School's operations in serving its students and families and establishing new students, as well as harm to its goodwill and reputation.

109. The School is left without an adequate remedy at law, because, among other things, the damage to existing and prospective student and parent relationships and student access to facilities attendant to their education cannot be determined as a matter of law.

110. The School requests injunctive relief prohibiting the Church from terminating the 2012 Lease or evicting or constructively evicting it from occupying and using portions of the Leased Premises it has historically used to operate.

THIRD CLAIM
(Unjust Enrichment and Estoppel)

111. The School incorporates and re-alleges its allegations in the paragraphs above as if fully set forth herein.

112. The School invested in capital improvements to the School Buildings, New Building, and attendant athletic fields of more than \$16 million.

113. The School made these investments, at its expense, based on the representations of the Church that the School would have rights to use these improvements for 99 years.

114. The School reasonably relied on the Church's representations.

115. The Church now seeks to take sole use of these improvements to the exclusion of the School.

116. The Church did not pay for or in any way contribute to the costs of these improvements, except for the initial installation of the athletic fields.

117. It would be inequitable for the Church to take over exclusive use of these improvements without compensation to the School.

FOURTH CLAIM
(Breach of Contract and Breach of the Duty of Good Faith and Fair Dealing)

118. The School incorporates and re-alleges its allegations in the paragraphs above as if fully set forth herein.

119. The 2012 Lease is a contract.

120. Every contract contains an implied covenant of good faith and fair dealing.

121. The Church made certain promises and warranties to the School under the terms of the 2012 Lease, including but not limited to: (a) the right to use the Leased Premises; (b) the right to use the Leased Premises for 99 years; (c) the right to use the Leased Premises for a Christian school, together with all incidental functions; and (d) the right for the School to construct and use improvements on the Leased Premises.

122. The Church promised to refrain from taking any conduct that will materially adversely affect the business or activities of the School.

123. The Church has breached its promises under the 2012 Lease.

124. The Church's breaches include, but are not limited to, the attempt to exclude the School from the Leased Premises.

125. The Church's breaches include, but are not limited to, the imminent threat to terminate the 2012 Lease.

126. The Church's breaches include, but are not limited to, imposing the Facility Use Agreement and Facility Booking Guideline, which are inconsistent with the terms of the 2012 Lease.

127. The Church's breaches include, but are not limited to, refusal to allow minor modifications to the preschool at the School's cost, to allow it to remain open for operations.

128. The Church's breaches amount to conduct intentionally designed to materially and adversely affect the business and activities of the School.

129. The Church's breaches amount to conduct intentionally designed to materially and adversely affect the goodwill and reputation of the School.

130. The Church's breaches amount to conduct intentionally designed to restrict the School's access to and/or use of the Leased Premises, including the shared facilities located thereon.

131. The Church's breaches are willful and wanton.

132. The School has fully performed all of its obligations under the 2012 Lease.

133. The Parties attempted to resolve their disputes through pastoral mediation; however, they were unsuccessful in resolving their disputes with the mutually selected pastors.

134. The Parties attempted to resolve their disputes through legal mediation; however, they were unsuccessful in resolving their disputes with the mutually selected mediator.

135. The School seeks reimbursement of its fees and expenses, including but not limited to attorney's fees and costs, pursuant to Paragraph 37 of the 2012 Lease.

FIFTH CLAIM
(Tortious Interference with Existing and Prospective Contracts)

136. The School incorporates and re-alleges its allegations in the paragraphs above as if fully set forth herein.

137. The School has existing contracts with: (a) its preschool, middle school and high school families; (b) faculty members; (c) administrators; and (d) support staff. These contracts are

renewable for each academic year.

138. The School has a reasonable expectation a substantial portion of these contracts will be renewed based on its continued operation under the 2012 Lease.

139. The Church's refusal to allow necessary improvements to the preschool building improperly interferes with the School's current and prospective business relationships with preschool families, as well as some faculty members, administrators, and support staff.

140. The Church's refusal to allow access to the athletic fields improperly interferes with the School's current and prospective business relationships with some middle school and high school families, as well as some faculty members, administrators, and support staff.

141. The Church's refusal to allow access to additional parking improperly interferes with the School's current and prospective business relationships with some middle school and high school families, as well as some faculty members, administrators, and support staff.

142. The School seeks damages for this interference in an amount to be fully proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Resurrection Christian School, requests the Court award the following relief:

- a. Damages in an amount to be proven at trial;
- b. Injunctive relief barring the Church from terminating the 2012 Lease or evicting or constructively evicting the School from portions of the Leased Premises;
- c. Alternatively, grant partition;
- d. The School's attorneys' fees and costs incurred in connection with this lawsuit;
- e. Prejudgment and post-judgment interest as allowed by law; and,
- f. Such other and further relief as may be appropriate.

Respectfully submitted this 28th day of July, 2023.

KELLY LAW PARTNERS, LLC

/s/Allan L. Hale

Allan L. Hale, Reg. No. 14885

William J. Kelly III, Reg. No. 38749

Shannon M. Bell, Reg. No. 35440

501 South Cherry Street, Suite 1100

Denver, CO 80246

Phone: (720) 236-1800

Email: ahale@kellylawpartners.com

wkelly@kellylawpartners.com

sbell@kellylawpartners.com

*Attorneys for Plaintiff Resurrection Christian
School*

Plaintiff's Address:

6508 East Crossroads Blvd.

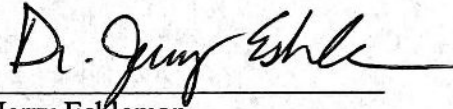
Loveland, Colorado 80538

EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
1	Google Map Diagram and Photograph of Property location
2	<i>Lease</i> , dated April 28, 2009
3	<i>Lease Agreement</i> , dated July 30, 2012

VERIFICATION

I hereby certify that I have read and reviewed the foregoing Verified Complaint for Declaratory and Injunctive Relief and Damages, and exhibits referenced in and attached thereto, and know the contents thereof. I am reasonably informed and, on the basis of my knowledge, information and belief, state that the foregoing factual allegations are true and correct, and that Exhibits 2 and 3 are complete and accurate.



Dr. Jerry Eshleman
Superintendent
Resurrection Christian School