

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS (the "Agreement") is made this ____ day of November, 2011, between and among Steven Apilado, LaRon Charles and Jon Russ (collectively, "Plaintiffs" or the "Players") and the North American Gay Amateur Athletic Alliance ("NAGAAA"), including the settlement and release of all claims that were asserted or could have been asserted in the lawsuit captioned *Steven Apilado, LaRon Charles, and Jon Russ, plaintiffs, v. The North American Gay Amateur Athletic Alliance, defendant*. This Agreement sets forth the Agreement of the parties with respect to resolving certain disputes that have arisen, and to bring peace to their relationship.

RECITALS AND WARRANTIES

WHEREAS:

1. The Players participated in NAGAAA's 2008 Gay Softball World Series ("GSWS") which was held in the greater Seattle, Washington region.
2. The parties had a dispute over various issues that arose during the GSWS. After pursuing administrative remedies through NAGAAA, the Players, through their litigation counsel K&L Gates LLP and the National Center for Lesbian Rights ("NCLR") commenced an action in the United States District Court, Western District of Washington, under Case No. C10-00682 JCC ("the Litigation").
3. NAGAAA has implemented positive changes as a result of the Litigation and as part of its growth as an organization.
 - a. NAGAAA has added explicit language to its Instruments of Governance confirming that all bisexual individuals are full participants in the Gay Softball World Series, and that bisexual individuals shall not be subject to Roster limitations.
 - b. NAGAAA has also added language confirming that all transgender individuals are full participants in the Gay Softball World Series, regardless of their sexual orientation, and that transgender individuals shall not be subject to Roster limitations.
 - c. Plaintiffs, NCLR and K&L Gates LLP objected to NAGAAA's definitions of "gay" and "heterosexual" that were in effect in 2008. In 2011, NAGAAA's Council revised its definitions to be more inclusive. These revisions met many, but not all, of Plaintiffs', NCLR's and K&L Gates' objections to the definitions. Plaintiffs and their counsel continue to object to, and urge NAGAAA to eliminate: (1) NAGAAA's Rule that places a limit on the number of heterosexuals that are on a Roster; (2) NAGAAA's position that it counts as heterosexual, and thus, subject to exclusion, individuals

1
ST
Res

who are closeted, or who are questioning, or don't place a label, on their sexual orientation, especially because that position has the potential to particularly chill participation by men of color; and (3) any process by which NAGAAA will allow a vote on the perceived sexual orientation of any player. Nevertheless, Plaintiffs, NCLR and K&L Gates recognize that the impetus for NAGAAA's adoption of its Rule and definitions was premised on the historic homophobia in sports and negative perceptions and stereotypes regarding LGBT individuals and those who may be perceived to be LGBT.

- d. The parties all deny any and all liability towards one another and enter into this Agreement solely to avoid further legal expense, to bring peace to their relationship, and to collectively focus on the broader issue of combating and seeking the eradication of discrimination against the LGBT community in sports at all levels.

NOW, THEREFORE, the parties agree as follows:

1. Monetary Consideration. In exchange for the terms and conditions of this Agreement, within seven business days of full execution of this Agreement, NAGAAA will pay to Plaintiffs' counsel, through K&L Gates, the total amount ("Settlement Amount") set forth in confidential Schedule 1 to this Agreement, which will not be published by any party. This amount is intended to cover Plaintiffs' claims for alleged non-wage compensatory damages and for costs and expenses incurred during and following the 2008 GSWS and in the subsequent litigation. Other than this payment, each party will bear his or its own costs and attorneys' fees.
2. Non-Monetary Consideration.
 - a. NAGAAA agrees to post on its website an Open Letter that will include the following statements:
 - i. NAGAAA's mission is to serve the LGBT community and to send a message through the annual Gay Softball World Series that athletes can play competitive team sports as openly gay, lesbian, bisexual, and transgender individuals. In order to fulfill its mission, NAGAAA has adopted a rule that the majority of players on teams competing at the annual Gay Softball World Series must be athletes who identify as members of the LGBT community.
 - ii. NAGAAA recognizes that some individuals who were present in the room during the 2008 Protest Hearing apparently did not have the same understanding of NAGAAA's definitions, as they applied to bisexual players, that NAGAAA's leadership had.

WR
ST
peo

- iii. The Protest Committee voted Plaintiffs to be believed to be heterosexual, subjected them to the participation limit imposed by NAGAAA's Rules, disqualified their team, and expunged their participation from the 2008 GSWS;
- iv. The Protest Hearing included questioning and a voting procedure that Plaintiffs found to be offensive;
- v. NAGAAA has since adopted new definitions that make clear that bisexual or transgender players are not subject to NAGAAA's roster limits;
- vi. NAGAAA recognizes that disqualifying Plaintiffs' team and expunging their participation from the 2008 GSWS was not consistent with NAGAAA's intention of being inclusive of bisexual players and conducting its Protest Hearings in a manner that does not cause undue offense; and
- vii. NAGAAA regrets the impacts the 2008 Protest Hearing process had on Plaintiffs and their team and confirms that its records will be amended to reflect the participation of the Plaintiffs and their team in the 2008 GSWS, including the results of all games played by D2, and that D2 is recognized as a second place winner, and will be awarded a second place trophy, for that Series.

3. Acknowledgement of Changes. The Plaintiffs acknowledge, through their counsel, the positive changes that NAGAAA has implemented, and its commitment to the LGBT community as a whole.

4. Agreement to Speak. NAGAAA agrees to allow the delegate from the San Francisco Gay Softball League to speak to NAGAAA's Council at its winter 2012 meeting about various rationales for eliminating the Rule and definitions regarding sexual orientation. NAGAAA agrees that this Section ⁴ is a material term of this Agreement.

MR SJT

5. Mutual Commitment. NCLR and NAGAAA commit and agree to participate in an ongoing dialogue regarding making sports at all levels, including professional sports, more welcoming and inclusive of the entire LGBT community. NAGAAA agrees that NCLR and K&L Gates may organize a panel discussion regarding differing approaches to creating and maintaining sports organizations that serve the GLBT community, including discussions regarding the pros and cons of participation rules based on sexual orientation, and ways to eradicate discrimination against members of the LGBT community in all sports, to occur in Minneapolis during the 2012 Gay Softball World Series. NAGAAA agrees to co-sponsor the event and to provide a venue and a time for the event that does not conflict with other official scheduled GSWS events. The panel will include up to two individuals designated by NAGAAA and two designated by NCLR and will be facilitated by a neutral third party with an appropriate background to do so; other specifics to be worked out, subject to final agreement by NCLR and NAGAAA's Board and/or Council. NAGAAA agrees that this Section ⁵ is a material term of this Agreement.

MR SJT

3
MR
Row *RJF*

6. Non-Admission. This Agreement shall not be construed as an admission by any party of any wrongdoing whatsoever toward or against any other party hereto. All parties specifically deny any wrongdoing or unlawful act or omission, and/or violation of any law, statute, or ordinance.
7. Confidentiality. The Parties agree to keep confidential the amount paid by NAGAAA as part of this Settlement Agreement.¹ The parties agree that ~~Paragraph 4~~ ^{this Section 7} is a material term of this Agreement. ML
ST
8. Dismissal. Within two business days thereafter, Plaintiffs agree to dismiss the Litigation with prejudice and without costs except as set forth in this Agreement. K&L Gates shall immediately prepare and circulate for execution a Notice of Settlement and a Stipulated Order of dismissal, with prejudice, and without costs, other than as set forth herein, of all claims which were or could have been brought in the Litigation.
9. Release. The Plaintiffs each agree to and shall and hereby do release and forever discharge NAGAAA, its agents, officers, commissioners, directors, volunteers, attorneys, members and council members from any and all liability, known or unknown, relating to the 2008 GSWS and matters that were or could have been asserted in this Litigation.
10. Acknowledgement. The Plaintiffs acknowledge and agree that this Agreement is in full and final settlement and satisfaction of all such claims, rights, causes of action, and potential causes of action arising from or relating to the 2008 GSWS, and that this Agreement bars each of them from bringing any future litigation or claim of any kind against any of the released individuals or entities herein for any act, event, or omission arising, occurring, or relating to the 2008 GSWS. Excluded from this release are claims relating to the enforcement of this Agreement.
11. Non-Reliance. The Plaintiffs agree and acknowledge that in executing this Agreement, they have not relied in any way upon representations or statements not set forth in this Agreement, and further that they have independently chosen to enter this Agreement without regard to representations or statements made by their respective representatives, which are not contained herein.
12. Entire Agreement. This Agreement contains the entire Agreement between the parties relating to resolution of disputes, and supersedes any other written Agreement. The parties agree and understand that to be enforceable, any change or modification to this Agreement must be in writing and signed by all parties.
13. Voluntary Release and Advice of Counsel. The Plaintiffs agree, warrant, and represent that they understand and acknowledge the significance and consequence of this Agreement, and acknowledge and agree that it is voluntary and has not been entered into as a result of any actionable coercion or duress, and expressly confirm

¹ The particulars of the settlement payment, including directions regarding the 1099 form, the timing of the payment, and the number of payments, will be finalized by the parties after Plaintiffs have an opportunity to consult with tax counsel.

ML
ST
ROM

that this Agreement is to be given full force and effect according to each and all of its express terms and conditions. The parties each acknowledge that they have had the chance to confer with counsel of their choice and that they understand the terms of this Agreement.

14. Governing Law and Venue. This Agreement will be governed by and interpreted in accordance with the laws of the State of Washington. Any action brought to enforce the terms of this Agreement shall be brought in an appropriate court in King County, Washington.
15. Parties Bound. The parties agree and understand that this Agreement shall be binding on their respective marital communities (if applicable), heirs, representatives, assigns, and successors.
16. Counterparts. The parties agree that this Agreement may be executed by the parties as counterparts, fully enforceable as if but one Instrument had been signed.
17. Section Headings. The parties agree that the Section Headings in this Agreement are included for convenience of reference only, and shall not be considered part of the Agreement.
18. Construction. The parties agree that in the event of any dispute concerning the interpretation or construction of this Agreement, no presumption shall exist with respect to the party initially drafting the Agreement. All parties agree they have had ample opportunity to influence the choice of language and terms in this Agreement.
19. Sufficiency of Consideration. Other than the satisfaction of the obligations and terms set forth in this Agreement, the parties each acknowledge and agree that no additional consideration is required or owing to the other, and that sufficient consideration has passed between them by virtue of this Agreement to render this Agreement, including the releases herein, valid and enforceable.

THIS AGREEMENT CONSISTS OF ____ PAGES, EACH OF WHICH HAS BEEN INITIALED BY THE PARTIES.

This Agreement is entered into this November day of _____, 2011.

STEVEN APILADO

This Agreement is entered into this _____ day of _____, 2011.

LARON CHARLES

This Agreement is entered into this _____ day of _____, 2011.

5
MPC
RAW
SIT

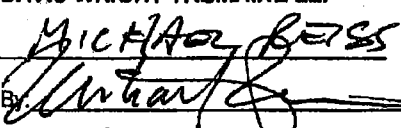
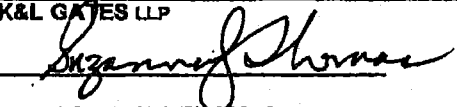
JON RUSS

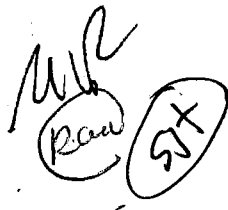
This Agreement is entered into this 23RD day of NOVEMBER, 2011.

NORTH AMERICAN GAY AMATEUR ATHLETIC ALLIANCE


By: Roy Melani
Its: Commissioner

Reviewed and approved as to form:

Counsel for Plaintiffs	Counsel for NAGAAA
NATIONAL CENTER FOR LESBIAN RIGHTS By: _____ Date: _____	DAVIS WRIGHT TREMAINE LLP  By: <u>Michael Weiss</u> Date: <u>11-22-11</u>
K&L GATES LLP  By: SUZANNE J. THOMAS Date: <u>November 23, 2011</u>	


Handwritten initials "ML" above two circular stamps. The first stamp contains the word "Raw" and the second contains "ST". A small number "6" is written below the stamps.



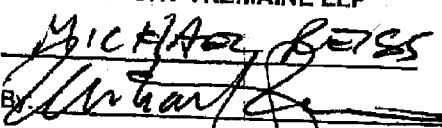
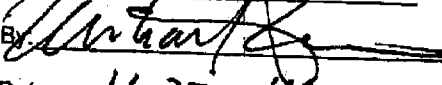
JON RUSS

This Agreement is entered into this 23 day of November, 2011.

NORTH AMERICAN GAY AMATEUR ATHLETIC ALLIANCE

By: Roy Melani
Its: Commissioner

Reviewed and approved as to form:

Counsel for Plaintiffs	Counsel for NAGAAA
NATIONAL CENTER FOR LESBIAN RIGHTS	DAVIS WRIGHT TREMAINE LLP
_____ By: _____ Date: _____	 By:  Date: <u>11-22-11</u>
K&L GATES LLP	
_____ By: SUZANNE J. THOMAS Date: _____	

that this Agreement is to be given full force and effect according to each and all of its express terms and conditions. The parties each acknowledge that they have had the chance to confer with counsel of their choice and that they understand the terms of this Agreement.

14. **Governing Law and Venue.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Washington. Any action brought to enforce the terms of this Agreement shall be brought in an appropriate court in King County, Washington.
15. **Parties Bound.** The parties agree and understand that this Agreement shall be binding on their respective marital communities (if applicable), heirs, representatives, assigns, and successors.
16. **Counterparts.** The parties agree that this Agreement may be executed by the parties as counterparts, fully enforceable as if but one instrument had been signed.
17. **Section Headings.** The parties agree that the Section Headings in this Agreement are included for convenience of reference only, and shall not be considered part of the Agreement.
18. **Construction.** The parties agree that in the event of any dispute concerning the interpretation or construction of this Agreement, no presumption shall exist with respect to the party initially drafting the Agreement. All parties agree they have had ample opportunity to influence the choice of language and terms in this Agreement.
19. **Sufficiency of Consideration.** Other than the satisfaction of the obligations and terms set forth in this Agreement, the parties each acknowledge and agree that no additional consideration is required or owing to the other, and that sufficient consideration has passed between them by virtue of this Agreement to render this Agreement, including the releases herein, valid and enforceable.

THIS AGREEMENT CONSISTS OF _____ PAGES, EACH OF WHICH HAS BEEN INITIALED BY THE PARTIES.

This Agreement is entered into this November day of _____, 2011.

STEVEN APILADO

This Agreement is entered into this NOV day of 25, 2011.



LARON CHARLES

This Agreement is entered into this _____ day of _____, 2011.

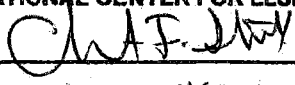
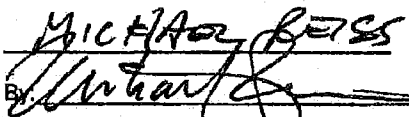
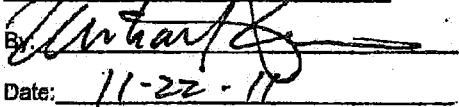
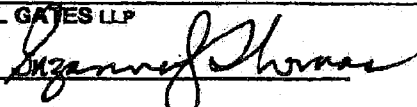
JON RUSS

This Agreement is entered into this 23rd day of NOVEMBER, 2011.

NORTH AMERICAN GAY AMATEUR ATHLETIC ALLIANCE


By: Roy Melani
Its: Commissioner

Reviewed and approved as to form:

Counsel for Plaintiffs	Counsel for NAGAAA
<p>NATIONAL CENTER FOR LESBIAN RIGHTS</p> <p> By: CHRISTOPHER F. STOLL Date: <u>11/23/11</u></p>	<p>DAVIS WRIGHT TREMAINE LLP</p> <p> By:  Date: <u>11-22-11</u></p>
<p>K&L GATES LLP</p> <p> By: SUZANNE J. THOMAS Date: <u>November 23, 2011</u></p>	



that this Agreement is to be given full force and effect according to each and all of its express terms and conditions. The parties each acknowledge that they have had the chance to confer with counsel of their choice and that they understand the terms of this Agreement.

14. Governing Law and Venue. This Agreement will be governed by and interpreted in accordance with the laws of the State of Washington. Any action brought to enforce the terms of this Agreement shall be brought in an appropriate court in King County, Washington.
15. Parties Bound. The parties agree and understand that this Agreement shall be binding on their respective marital communities (if applicable), heirs, representatives, assigns, and successors.
16. Counterparts. The parties agree that this Agreement may be executed by the parties as counterparts, fully enforceable as if but one instrument had been signed.
17. Section Headings. The parties agree that the Section Headings in this Agreement are included for convenience of reference only, and shall not be considered part of the Agreement.
18. Construction. The parties agree that in the event of any dispute concerning the interpretation or construction of this Agreement, no presumption shall exist with respect to the party initially drafting the Agreement. All parties agree they have had ample opportunity to influence the choice of language and terms in this Agreement.
19. Sufficiency of Consideration. Other than the satisfaction of the obligations and terms set forth in this Agreement, the parties each acknowledge and agree that no additional consideration is required or owing to the other, and that sufficient consideration has passed between them by virtue of this Agreement to render this Agreement, including the releases herein, valid and enforceable.

THIS AGREEMENT CONSISTS OF ___ PAGES, EACH OF WHICH HAS BEEN INITIALED BY THE PARTIES.

This Agreement is entered into this November day of 21, 2011.



STEVEN ARILADO

This Agreement is entered into this _____ day of _____, 2011.

LARON CHARLES

This Agreement is entered into this _____ day of _____, 2011.