

CAUSE NO. 2014-2287-3

BAYLOR UNIVERSITY,

Plaintiff,

vs.

THE BAYLOR UNIVERSITY ALUMNI  
ASSOCIATION,

Defendant.

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IN THE DISTRICT COURT OF

MCLENNAN COUNTY, TEXAS

74<sup>TH</sup> JUDICIAL DISTRICT

**Settlement Agreement and Mutual Release**

This Settlement Agreement and Mutual Release (the "Agreement") is entered into between Baylor University ("Baylor") and The Baylor Alumni Association ("BAA").<sup>1</sup> The parties are referred to collectively in this document as "the Parties."

**I. Recitations**

1. Whereas, Baylor and the BAA are parties to various agreements, including a License Agreement dated September 8, 1993, an Official Recognition and License Agreement dated May 27, 1994, and other formal and informal agreements;

2. Whereas, the Parties have asserted claims against each other in a lawsuit styled *Baylor University v. The Baylor University Alumni Association*, No. 2014-2287-3, in the 74<sup>th</sup> District Court of McLennan County, Texas ("the Lawsuit");

3. Whereas, the Parties now wish to make peace to the maximum extent possible, confirm a new legal relationship between themselves for the future, and establish a mechanism for the election of alumni regents to the Baylor Board of Regents. To that end they desire to (1) settle and compromise, without any admission of liability, all claims that each Party has asserted against the other, including a release of claims which were or could have been asserted in the Lawsuit, (2) enter into a new license agreement for the use of certain of Baylor's marks in the future, included as attachment 1 hereto ("New License"); and (3) establish an enforceable procedure for election of alumni Regents to the Baylor Board of Regents;

NOW, THEREFORE, for the reasons set forth above and in consideration of the mutual covenants, agreements and releases set forth below, the Parties agree as follows:

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<sup>1</sup> Also known as the "The Baylor University Alumni Association."

## II. Effective Date.

This Agreement shall be effective as of the date it has been executed and formally approved by the governing boards of the respective Parties (the "Effective Date"). The Parties acknowledge that certain provisions contemplated by this Agreement (including the BAA's name change) must be approved by a vote of the BAA membership consistent with its Constitution and Bylaws, which the BAA President agrees to call, and hold at the earliest practicable date no later than 60 days of the initial execution of this Agreement. The BAA President and the Board of Directors (as a whole) agree to recommend the Settlement Agreement and its terms to the members of the BAA as a fair and reasonable and desired resolution in connection with the membership vote thereon. Baylor agrees to issue a substantively identical statement from President Kenneth Starr at the BAA's request. Further, neither Party, nor the leadership of either Party, shall campaign against the Settlement Agreement as an appropriate resolution in connection with the membership vote.

The BAA President shall certify in writing to Baylor the result of this membership vote within 5 days of the Membership vote, and in any event no later than 65 days after the execution of this Agreement. In the event that such certification is not timely provided, or the Membership vote is unsuccessful, this Agreement becomes voidable at Baylor's election. Baylor shall thereafter have a 30 day period in which to waive such membership consent and the compliance with the Settlement items related thereto and accept all other terms of this Agreement in writing. If at the end of such 30 day period Baylor has not issued such formal waiver in writing then this Settlement and all agreements hereunder shall be void and unenforceable.

## III. Settlement Payment.

Baylor will pay the amount of two million dollars (\$2,000,000.00) to the BAA within thirty (30) days of (1) the BAA certification of the membership vote approving the provisions of this settlement requiring BAA membership approval; or (2) Baylor's written waiver of such requirement and acceptance of the remainder of the terms of this Agreement; but in no event will Baylor be required to make the payment earlier than 10 days after the Effective date, as defined by the Supplemental Agreement relative hereto. The payment will be made to the BAA or in the name of the Newly Named Entity, at the BAA's election.

## IV. Mutual Releases and Discharges.

1. Release and Discharge of Claims; No Admission of Liability. The Parties agree to release and discharge each other from any and all existing claims and obligations the Parties may have had arising out of or related to the agreements and events underlying the Lawsuit, as well as all accrued claims the Parties may have, each against the other, whether based on contract or tort, or any other basis at law or equity (all jointly and severally the "Released Claims"). This Agreement is a compromise settlement of disputed claims and shall not be deemed or construed to be an admission of liability by any Party. The Parties not only release each other from the Released Claims, but also release the other Party's past and present directors, officers, Regents, members, predecessor entities, employees, attorneys, agents, and insurers (collectively and

severally, the "Released Parties"). This Agreement does not release or affect in any manner the litigation currently pending in district court in McLennan County, Texas that is styled *In Re Sadie Jo Black Family Foundation*, Cause No. 2014-4606-4 and the parties' rights to litigate over the instrument at issue in that case, but to the extent there are claims for direct monetary relief as between the parties hereto, either asserted or unasserted therein, such claims are released herein.

2. Dismissal of Litigation. Upon payment of the Settlement Payment in Section III, the Parties will immediately take all steps necessary to cause all claims in the Lawsuit to be dismissed with prejudice by the Court, including but not limited to filing in the Lawsuit within ten (10) calendar days thereafter, an agreed motion for dismissal with prejudice of all claims.

3. Termination of Prior Agreements. Baylor and the BAA agree that any and all prior agreements between Baylor and the BAA are terminated such that neither would owe any further duties or have any further obligations towards the other, aside from the duties and obligations contemplated by this Agreement. In particular, Baylor and the BAA release each other from all obligations that may still exist under prior agreements, including but not limited to: (i) the 1993 License Agreement (which the BAA asserts is a perpetual license allowing the BAA to function as "the general alumni organization of Baylor University," granting the BAA the exclusive right to use the marks "Baylor Alumni Association," "Baylor University Alumni Association," and *The Baylor Line* as a magazine, and defining quality control regarding the BAA's role as an "independent voice" of alumni of Baylor University); (ii) the 1994 Official Recognition and (Building) License; (iii) the 1995 Agreement regarding the maintenance and operation of the Hughes Dillard Alumni Center building; (iv) the 1997 Agreement regarding the Baylor Class Ring Program; and (v) the 2003 Memorandum of Understanding regarding the design, maintenance and hosting of the BAA's website.

#### V. **Change in BAA's Purposes and Termination of the Use of Baylor's Marks.**

1. Future identification of the BAA. The BAA will formally change its name to one of the following: The Baylor Line Society, The Baylor Line Foundation, Independent Baylor Alumni, or Independent Alumni of Baylor (the "Newly Named Entity"). The Newly Named Entity could change its name again in the future provided it complies with the restrictions in this agreement, the New License, and under governing law concerning use of Baylor's intellectual property. Baylor would agree not to challenge the Newly Named Entity's use of one of the names (at any given time) Independent Baylor Alumni, or Independent Alumni of Baylor, provided the Newly Named Entity uses no other indicia of Baylor in connection with its uses of those descriptive terms, other than that use that would otherwise be allowable in the absence of a license agreement, or as allowed by and in compliance with the terms of the New License. The Newly Named Entity will incorporate language clarifying in a reasonable and prominent manner that the Newly Named Entity is "separate and independent from Baylor University" (the "disclaimer language") on its website, in its magazine, in any written or verbal solicitation for donations, and as otherwise required by the New License. To avoid confusing the public, Baylor agrees it will not, at any time in the next ten (10) years use, or license another to use the names "Baylor Alumni Association," or "Baylor University Alumni Association." Baylor further agrees

that it will not use or license another to use the name "The Baylor Line" or "The Line" for any print or electronic publication. Baylor will continue to use the name "Baylor Alumni Network."

2. Termination of use of Baylor's marks. The Newly Named Entity will cease using the names "Baylor Alumni Association" and "Baylor University Alumni Association", the logos incorporating those names, and all other Baylor marks other than the Baylor marks licensed pursuant to the New License. The Newly Named Entity agrees to cease use of these marks and transition to its new name at the earliest practicable time not to exceed nine months after the BAA membership vote referenced in Section II. The domain name **BaylorAlumniAssociation.com** will automatically direct traffic to a redirected home page offering a choice of the Newly Named Entity's website or Baylor's official website for three (3) years. At the end of three (3) years, the Newly Named Entity will transfer ownership and registration of the domain name to Baylor. The Newly Named Entity will not otherwise advertise or use the domain name **BaylorAlumniAssociation.com**. It is the intent of the Parties to cooperate in a review of the Newly Named Entity's existing domain names to determine if the Newly Named Entity has appropriate rights to use such domain names following the Effective Date. Within ten (10) days of the Effective Date, the Newly Named Entity will disclose its existing registered domain names containing the word "Baylor." In the case of the Newly Named Entity domain names that incorporate Baylor marks and for which the Newly Named Entity has no right to use such domain names, then the Newly Named Entity agrees to offer to transfer such domain names to Baylor prior to the expiration of the registration. For the avoidance of doubt, the Newly Named Entity has the right to register and use domain names that include Independent Baylor Alumni or Independent Alumni of Baylor.

3. Activities of the Newly Named Entity. The Newly Named Entity will no longer hold itself out to the public as an "alumni association." The Newly Named Entity's purposes will include, but not be limited to, publishing the *Baylor Line* Magazine, granting scholarships to students of Baylor University and connecting and communicating with Baylor alumni consistent with the New License. Except as otherwise agreed in this Agreement and the New License, the Newly Named Entity would not be subject to the control of Baylor or any limitations on the activities it can undertake.

#### VI. License of Baylor Marks

Baylor will grant to the Newly Named Entity a license to use certain Baylor marks pursuant to the New License. This Agreement and the New License should be construed in a manner consistent with one another, but in the event of a conflict, the terms of this Agreement control.

#### VII. Alumni-Elected Regents

The Parties agree to provide for the election of alumni to the Baylor Board of Regents as follows:

1. Creation of Alumni-Elected Regents. For a term of twenty (20) years, the Bylaws of Baylor University ("Bylaws") and the Guidelines for Board Operations of the Baylor University Board of Regents ("Guidelines") will be revised to allow for the election of at least three (3) and not less than 10% of all voting seats in the manner described herein. The 10% minimum will be determined by rounding the number of total voting regents to the nearest multiple of 10, with the multiple of 5 rounded down. For example, if the Baylor University Board of Regents consists of 26 to 35 voting Regents, then at least 3 must be Alumni-Elected Regents. If the Baylor University Board of Regents consists of 36 to 45 voting regents, then at least 4 must be Alumni-Elected Regents.

2. Rights and Responsibilities of Alumni-Elected Regents. The individuals elected through this process will be referred to as "Alumni-Elected Regents." The seats to be held by the Alumni-Elected Regents will be referred to as the "Alumni-Elected Regent seats". The Alumni-Elected Regents serve as voting members of the Board of Regents, subject to the same rights, privileges, duties and obligations of any other voting Regent. Candidates have to agree to abide by the rules of the Board of Regents, including its rules pertaining to confidentiality. Regardless of how selected, all members of the Board of Regents owe their fiduciary duties to Baylor, not any constituency.

3. Limitations on Alumni-Elected Regents. The Alumni-Elected Regents are not allowed to serve on the board of another BGCT institution of higher education or the Baptist Foundation of Texas. The Alumni-Elected Regents will not be included in any calculation of Baptist (or non-Baptist) Regents, the percentage of voting Regents elected by the BGCT, or the residency requirements under the Bylaws.

4. Procedures for the initial selection of Alumni-Elected Regents. For terms starting June 1, 2016, the BAA's board of directors and Baylor Board of Regents agree that the following individuals will fill the Alumni-Elected Regent Seats:

1. [REDACTED] (Initial 1-year term expiring 5/31/17)
2. [REDACTED] (Initial 2-year term expiring 5/31/18)
3. [REDACTED] (Initial 3-year term expiring 5/31/19)

Upon completion of their initial term, the three Alumni-Elected Regents who are appointed pursuant to this provision will be eligible to seek re-election by the alumni for two additional three-year terms following the process for subsequent elections of Alumni-Elected Regents as set forth in Section VII.5 and VII.6 below.

5. Subsequent elections of Alumni-Elected Regents. Upon the expiration of each of the initial terms described above (and thereafter for any new seats that may be created), each of the Alumni-Elected Regent seats will be filled by elections. Baylor will retain and pay a third-party firm to monitor and conduct such elections in accordance with these procedures. All undergraduate and graduate alumni of Baylor would be eligible for election as Alumni-Elected Regents, with the following exceptions:

- a. Members of the faculty or staff of the University and members of their immediate families are not eligible;
- b. An individual who had previously been nominated for election but not elected by alumni may be nominated a second time, but an interval of five years must elapse before the second nomination;
- c. Members of the immediate family of the President, the President's Executive Council, or any other Regent are not eligible;
- d. Members of the Nominating Committee and their immediate family are not eligible.

6. Procedures for subsequent elections of Alumni-Elected Regents. Candidates for subsequent elections of Alumni-Elected Regents will be nominated by a committee composed of four members: two members appointed by the Chairman of the Baylor University Board of Regents and the two Alumni-Elected Regents not currently standing for re-election or their designees (the "Nominating Committee"). In the absence of any other agreement, as described in this Agreement, the Nominating Committee would follow *Robert's Rules of Order Newly Revised*.

- a. In the event the Nominating Committee is unable to agree on three candidates, then there will be four candidates on the ballot for that election. In such event, each member of the Nominating Committee shall select one candidate.
- b. The Nominating Committee will solicit nominations from the various advisory and advocacy boards and groups associated with Baylor University, including but not limited to the academic school advisory groups, the student life advisory group, and the endowment investment committee. Any alumnus who submits a nomination supported by the signatures of at least 50 other Baylor graduates will also be considered by the Nominating Committee. The Nominating Committee will also be allowed to self-generate nominees.
- c. The Nominating Committee will meet with candidates, review applications, decide whether candidates meet the qualifications set forth herein and select the three best candidates to appear on the ballot for an open Alumni-Elected Regent seat.

7. Qualifications for Alumni-Elected Regents. Candidates would have to meet the qualifications established in the Certificate of Formation, Bylaws and Guidelines for all members

of the Baylor University Board of Regents, as amended from time to time by Baylor, including the following:

- a. Candidates must be Baylor graduates and committed Christians who have accepted Jesus Christ as both Lord and Savior, active members of a Baptist church or a local church from a historic Christian tradition, and living in a manner that demonstrates their commitment to Him;
- b. Candidates will be required to have actively demonstrated their deep appreciation for Baylor, its unique role in higher education and Baptist life, and its indebtedness to its Baptist founders and Texas Baptist churches;
- c. Candidates must be willing and able to contribute their time, talent, and financial means to strengthen and move Baylor forward;
- d. Candidates must be supported by a nomination from one of the various advisory or advocacy boards and groups associated with Baylor (e.g., academic school advisory groups, student life advisory group, endowment investment committee, etc.), a petition signed by at least fifty (50) other Baylor graduates, or be appointed by the Committee;
- e. Candidates must complete an application including the following:
  - i. A personal statement of faith;
  - ii. A letter of recommendation from a minister at the candidate's local church, preferably the senior minister, discussing the candidate's faith commitment and addressing whether the candidate is an active and faithful member and other matters discussed in this section, or submit a similar letter of recommendation from another minister or person in full-time Christian service who is familiar with the candidate;
  - iii. A statement certifying his or her willingness to support Baylor's mission and core values, including shared governance, academic freedom, and the integration of academic excellence with Christian commitment;
- f. Candidates for the election will certify before their name is selected by the Committee the following:
  - i. Candidates will not run on specific issues, but on their accomplishments and experiences, and their interest in serving Baylor. Candidates will not engage in campaign activity outside of the

communication efforts established and supported by the University or the Newly Named Entity.

ii. Candidates will not solicit, use or publicize, any endorsement from Baylor, any advisory and advocacy boards and groups associated with Baylor, or any boards or groups independent of Baylor.

iii. ~~Candidates will not solicit or use third party funds, resources, contact or mailing lists, or other aide or assistance in the election process.~~ Candidates will discourage third parties from engaging in campaign activities on their behalf.

iv. Candidates understand the University, the President of Baylor and the members of the President's Executive Council are not permitted to participate in funding, endorsing or opposing any candidate.

v. Baylor will publish candidate profiles to present comparable information about each candidate, approved by the candidates, and included with the ballot material.

g. Amendments to the qualifications for Alumni-Elected Regents will be applicable to all voting Regents. Amendments to the qualifications cannot be made to give the Baylor University Board of Regents a right to pre-approve or veto candidates in a manner inconsistent with the other terms of this Agreement. By way of example and not limitation, the qualifications could not be amended to include a requirement that a candidate receive the approval of the Baylor University Board of Regents, any committee of the Baylor University Board of Regents, or the Chair of the Baylor University Board of Regents.

8. Rules Governing Elections for Alumni-Elected Regents. The following rules are intended to ensure fairness and an independent election process designed to effectuate alumni choice.

a. Alumni-Elected Regent candidates will not run on platforms but on their accomplishments and experiences and their interest in serving Baylor.

b. Baylor and the Newly Named Entity are not permitted to endorse or oppose any candidate, or use or provide funds, resources, contact or mailing lists, or other aide or assistance in support of, or in opposition to any candidate unless all candidates are afforded the same advantages.

c. The President of Baylor and the members of the President's Executive Council are not permitted to participate in funding, endorsing or opposing any candidate.



d. All of the candidates will be eminently qualified to serve as an Alumni-Elected Regent. Profiles will be written to present comparable information about each candidate. These profiles will be approved by the candidates and included with the ballot material. Candidates will agree to refrain from campaigning. Friends of candidates will also be requested to refrain from campaigning on behalf of any of the candidates.

e. Baylor would utilize Baylor Magazine, the Baylor website and social media channels to introduce candidates to alumni.

9. Other Provisions Regarding Alumni-Elected Regents. Any limitation on the number of terms a Regent can serve that are applicable to all other Regent seats would also apply to the Alumni-Elected Regent seats (currently three (3) year terms, with a three (3) consecutive term limit).

a. Alumni-Elected Regents will be required to run for re-election by alumni according to the procedures set forth above. The goal for Alumni-Elected Regents would be to make them as similar to other voting Regents as possible. To that end, Alumni-Elected Regents other than those who are elected in the initial elections as set forth in section A, above, would serve a three-year term, and be eligible for re-election by alumni for two additional three-year terms.

b. The removal of a member of a university governing body is an important issue in the context of its accreditation. Baylor's regional accreditor is The Southern Association of Colleges and Schools Commission on Colleges (a/k/a "SACS"). According to SACS, members of the governing board need to be free to "exercise their responsibilities without fear of retaliation measures, such as removal from office by arbitrary or capricious means." Universities accredited by SACS are required to have "substantive and procedural processes" to insure members of the governing board can be dismissed only for appropriate reasons and by a fair process. Alumni-Elected Regents will not be subject to recall elections.

c. Under the Bylaws a "Regent may be removed from his or her position as a Regent only for cause and by employing the disciplinary procedure set forth in the current edition of *Robert's Rules of Order Newly Revised*." As part of these settlement terms, Baylor will agree not to change the definition of cause without providing 90 days' notice, and the Bylaws would be amended to further provide that any Regent, including any Alumni-Elected Regent who is removed from office under the disciplinary procedure of the Board of Regents, would have a contractual right to demand confidential arbitration by three (3) arbitrators (one selected by the BOR chair, one selected by the Regent subject to removal, and one selected by those two arbitrators) who could reinstate him or her as a Regent if the arbitrators determined the Board of Regents failed to follow its disciplinary procedure or cause did not exist for removal.

d. Vacancies created by the death, resignation or removal of an Alumni-Elected Regent would be filled by an election of Baylor alumni at the next scheduled election cycle.

e. These provisions of the Bylaws allowing for Alumni-Elected Regent seats would not be changed for at least twenty (20) years.

#### VIII. General Provisions.

1. Standing to enforce. For the avoidance of doubt, it is expressly agreed that both Baylor and the BAA (including as the Newly Named Entity) would be entitled to bring actions to enforce the terms of this Agreement, including but not limited to the election procedures governing Alumni-Elected Regents described in this Agreement.

2. Review by Parties and Counsel. The Parties acknowledge that they have had the opportunity to consult with an attorney of their choosing and that they have either consulted with such attorney with respect to the terms and conditions of this Agreement or have elected not to seek advice of counsel and, in signing this Agreement, waive their right to do so. The Parties further acknowledge that they have carefully read the Agreement and fully understand its meaning and intent as well as the effect of signing and executing the Agreement.

3. Authority to Execute Agreement. The Parties and the individuals signing this Agreement represent and warrant that the Parties and their signatories have full and complete authority and authorization to execute this Agreement and to take or cause to be taken all acts contemplated by this Agreement.

4. Costs and Fees. The Parties agree to bear their own costs, expenses, and fees, including attorneys' fees and court costs, incurred in connection with the Lawsuit.

5. Choice of Law. The Parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

6. Severability. Should any provision in this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the Parties agree that the remaining provisions shall remain in full force and effect.

7. No Oral Modification. The parties agree that this Agreement may not be modified, altered, amended, or otherwise changed except upon written consent by each of the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns.

8. Multiple Originals. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which taken together shall constitute one agreement.

9. Headings. The use of headings herein is for convenience of reference only and is not intended to supplement or change the terms of this Agreement.

~~10. Status of Parties. Neither this Agreement nor the New License is intended to create, and may not be interpreted or construed as creating, a partnership, joint venture, agency, employment, master and servant, or similar relationship between the Parties. The parties agree and acknowledge that the BAA (and the Newly Named Entity) is completely independent from Baylor, and except as expressly contemplated by this Agreement including, but not limited to, the New License, Baylor has no control over the BAA or the Newly Named Entity. For example, it is understood that The Baylor Line has editorial independence from Baylor University, and the positions taken by the BAA, the Newly Named Entity, and its publications (editorial and otherwise) which may be contrary to the administration of the University or its Board of Regents shall not be alleged by Baylor to constitute insufficient quality and shall not be grounds for termination of the licenses and other rights contemplated by this Agreement.~~

11. The parties will cooperate to issue a Joint Statement about the resolution of the case, this settlement, and the parties desire to move forward. The Parties agree that the Joint Statement will be issued within 24 hours of initial execution of this Agreement.

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officer(s) duly authorized as of the dates indicated below.

BAYLOR ALUMNI ASSOCIATION

By: Thomas A. Nesbitt

Name: THOMAS A. NESBITT

Title: PRESIDENT

Date: MARCH 7, 2016

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Date Approved by Board

BAYLOR UNIVERSITY

By: Kenneth Winston Starr

Name: Kenneth Winston Starr

Title: President and Chancellor

Date: March 7, 2016

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Date Approved by Board