



1 NGC 13-03

2 STATE OF NEVADA

3 BEFORE THE NEVADA GAMING COMMISSION

4 STATE GAMING CONTROL BOARD, )  
5 COMPLAINANT, )  
6 vs. )  
7 MANDALAY CORP., dba )  
8 MANDALAY BAY RESORT & CASINO, )  
9 RESPONDENT. )

STIPULATION FOR SETTLEMENT AND ORDER

10 The State of Nevada, on relation of its GAMING CONTROL BOARD ("BOARD"),  
11 COMPLAINANT herein, filed and served a Complaint in NGC Case No. 13-03, against  
12 MANDALAY CORP., dba MANDALAY BAY RESORT & CASINO ("MANDALAY BAY"),  
13 RESPONDENT herein, alleging certain violations of the Nevada Gaming Control Act and  
14 Regulations of the Nevada Gaming Commission.

15 IT IS HEREBY STIPULATED AND AGREED to by the BOARD and the RESPONDENT  
16 that the Complaint, NGC Case No. 13-03, filed against the RESPONDENT in the above-  
17 entitled case shall be settled on the following terms and conditions:

18 1. The RESPONDENT does not contest any of the allegations of fact set forth in the  
19 Complaint, NGC Case No. 13-03, and does not contest any conclusion set forth therein.

20 2. The RESPONDENT fully understands and voluntarily waives the right to a public  
21 hearing on the charges and allegations set forth in the Complaint, the right to present and  
22 cross-examine witnesses, the right to a written decision on the merits of the Complaint, which  
23 must contain findings of fact and a determination of the issues presented, and the right to  
24 obtain judicial review of the Nevada Gaming Commission's decision.

25 3. The RESPONDENT agrees to pay a fine in the amount of FIVE HUNDRED  
26 THOUSAND AND 00/100 DOLLARS (\$500,000.00) electronically transferred to the *State of*  
27 *Nevada-Nevada Gaming Commission* on or before the date this Stipulation for Settlement and  
28 Order (also referred to as "Stipulation for Settlement") is accepted by the Nevada Gaming

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Las Vegas, Nevada 89101

1 Commission. Said payment shall be made by a method of electronic payment approved by  
2 the Tax and License Division of the COMPLAINANT pursuant to NRS 353.1467. Interest on  
3 the fine shall accrue pursuant to NRS 17.130 on any unpaid balance computed from the date  
4 the payment is due until the payment is made in full.

5 4. The RESPONDENT further agrees to pay an additional amount of SEVENTEEN  
6 THOUSAND AND 00/100 DOLLARS (\$17,000.00) electronically transferred to the *State of*  
7 *Nevada-Nevada Gaming Commission* on or before the date this Stipulation for Settlement is  
8 accepted by the Nevada Gaming Commission. Said payment shall be made by a method of  
9 electronic payment approved by the Tax and License Division of the COMPLAINANT pursuant  
10 to NRS 353.1467. Interest on that payment shall accrue pursuant to NRS 17.130 on any  
11 unpaid balance computed from the date the payment is due until the payment is made in full.  
12 This payment represents the reimbursement of expenses incurred by the COMPLAINANT in  
13 conducting the investigation resulting in the Complaint, NGC Case No. 13-03.

14 5. To assist the Nevada Gaming Commission in its evaluation of the matters  
15 encompassed by this stipulated settlement agreement, the RESPONDENT offers the  
16 following:

17 a. The House of Blues Foundation Room is an upscale restaurant and ultra lounge  
18 facility located on the top level of MANDALAY BAY. RESPONDENT is the landlord who  
19 leases the premises to the tenant and operator, House of Blues Las Vegas Restaurant Corp.  
20 ("House of Blues" or "HOB"), a subsidiary of Live Nation, Inc., a publicly traded company.

21 b. Both RESPONDENT and MGM Resorts International ("MGM"), RESPONDENT's  
22 ultimate parent company, have historically been proactive in ensuring that the nightclubs and  
23 ultra lounges located at MGM properties have been operated appropriately. For instance,  
24 since 2008, MGM's Internal Audit Department ("Internal Audit") has performed semi-annual  
25 reviews of operations at MGM-located nightclubs, whether operated by the licensee or a third  
26 party. These reviews include testing for security procedures and training programs directed  
27 towards prohibiting the presence of drugs, lewd behavior, and prostitution. Additionally, on a  
28 regular basis, Internal Audit conducts unannounced observations and issues reports and

1 requires management responses when warranted. Through January 15, 2014, Internal Audit  
2 (along with outside investigative agencies hired by MGM) has conducted 133 reviews of  
3 operations at MGM-located nightclubs and lounges. Since 2010, nightclubs and ultra lounges  
4 have been required to adhere to a comprehensive nightclub and ultra lounge minimum best  
5 practice policy (the "Nightclub Procedures"). In 2012, MGM also hired two former Las Vegas  
6 Metropolitan Police Department officers to conduct true covert observations. While there was  
7 a lapse in those covert observations while the former officers pursued their own business,  
8 since May 2013, as both employees and as independent licensed investigators, they, and  
9 another investigative firm, have conducted 34 undercover observations of 14 nightclubs, three  
10 dayclub pools, three lounges and 14 bars. Additionally, the MGM Audit and Compliance  
11 Committees are briefed on and discuss nightclub issues on a routine basis. MGM  
12 representatives have also routinely and consistently coordinated with the BOARD and with the  
13 Las Vegas Metropolitan Police Department to monitor activities at MGM-located nightclubs  
14 and ultra lounges.

15 c. RESPONDENT was not aware of the illegal or inappropriate activities at the  
16 House of Blues Foundation Room only because it did not consider the House of Blues  
17 Foundation Room a venue at which illegal or inappropriate activities were likely to occur.  
18 MGM has focused its compliance efforts on nightclubs which it determined created an  
19 environment for the greatest risk of inappropriate or illegal activities based upon the history of  
20 the club and its customer mix. MGM determined that venues at which thousands of young  
21 adults congregated created the greatest risk of inappropriate behavior. There were only 22  
22 total security incident reports from the House of Blues Foundation Room in 2012, none of  
23 which involved allegations of wrong-doing such as drug use or prostitution and none of which  
24 involved over-intoxication or other "typical" incidents that one expects from a property not  
25 sufficiently secure.

26 d. The House of Blues Foundation Room is not a nightclub. It is a small club,  
27 generally catering to a more mature clientele. Almost half of its annual revenue comes from  
28 operation of the dining room. It is small, less than 9,000 square feet of public space.

1 e. RESPONDENT has required House of Blues Foundation Room security and host  
2 personnel to attend a property-facilitated security training program each year since 2008.

3 f. None of the activities alleged in COMPLAINT involved RESPONDENT's  
4 employees, and many of the activities identified in the COMPLAINT were undertaken by  
5 employees or agents of a third-party contractor retained by the House of Blues Foundation  
6 Room to market and to assist in the operation of the venue.

7 g. MGM began a full-scale investigation of activities at the House of Blues  
8 Foundation Room immediately upon being advised of the allegations in the COMPLAINT, and  
9 it required the House of Blues Foundation Room to agree to significant remediation of its  
10 internal policies and procedures governing operations at the House of Blues Foundation  
11 Room. RESPONDENT required significant amendments to its lease with House of Blues Las  
12 Vegas Restaurant Corp., the tenant, to more specifically outline the expected operation of the  
13 location, including that the House of Blues Foundation Room must obtain MGM's approval  
14 before it enters into any contract with a third-party contractor where such contract proposes to  
15 delegate any of House of Blues Foundation Room's responsibilities for compliance or other  
16 legal requirements or proposes for such third party to perform or assist House of Blues  
17 Foundation Room with the performance of services to House of Blues Foundation Room's  
18 employees or patrons. The amendments also require that House of Blues Foundation Room  
19 employees and employees of such third-party contractors must undergo an MGM background  
20 check.

21 h. Although MGM had not identified the House of Blues Foundation Room as a high-  
22 risk environment, it had scheduled a covert observation of activities which was temporarily  
23 delayed when the individuals who were to have conducted the covert operation left MGM's  
24 employ. MGM has conducted three (3) covert operations at the House of Blues Foundation  
25 Room since the RESPONDENT was advised of the allegations in the COMPLAINT.

26 i. The House of Blues Foundation Room itself took these significant remedial  
27 actions upon being advised of the allegations in the COMPLAINT to improve applicable

28 . . . .

1 policies and procedures and to communicate those policies and procedures to the appropriate  
2 employees, supervisors and executives:

3 1) Immediately commenced a comprehensive internal investigation and  
4 conducted undercover operations to determine which of its employees and the employees of  
5 its third-party contractor may have engaged in the illegal and inappropriate activities and  
6 terminated six (6) House of Blues Foundation Room employees and the contract with its third-  
7 party contractor;

8 2) Immediately initiated and completed an audit of historical compliance  
9 procedures and documents of the House of Blues Foundation Room including, but not limited  
10 to pre-employment drug testing and background checks, work cards, and alcohol training.

11 3) Implemented background checks on all current third-party contactors and  
12 committed to do so for any future agreements;

13 4) Revised, updated and strengthened its Zero Tolerance policy document;

14 5) Completed in-depth Zero Tolerance training for all House of Blues Foundation  
15 Room employees and supervisors attended by RESPONDENT's security training officers and  
16 trained all other Las Vegas House of Blues employees on its Zero Tolerance Policy;

17 6) Established a continuing program for undercover investigations for all aspects  
18 of the Zero Tolerance Policy;

19 7) Met and are in further communication with Las Vegas Metropolitan Police  
20 Department to strengthen its working relationship and to better anticipate future issues that  
21 are common to restaurant and lounge facilities in Las Vegas; and

22 8) Retained additional senior security and compliance personnel.

23 6. In consideration for the execution of this settlement agreement, the RESPONDENT,  
24 for itself, its heirs, executors, administrators, successors, and assigns, hereby releases and  
25 forever discharges the State of Nevada, the Nevada Gaming Commission, the Nevada  
26 Gaming Control Board, the Nevada Attorney General and each of their members, agents, and  
27 employees in their individual and representative capacities, from any and all manner of  
28 actions, causes of action, suits, debts, judgments, executions, claims, and demands

1 whatsoever known or unknown, in law and equity, that the RESPONDENT ever had, now has,  
2 may have, or claims to have against any and all of the persons or entities named in this  
3 paragraph arising out of, or by reason of, the investigation of the allegations in the Complaint,  
4 this disciplinary action, NGC Case No. 13-03, or any other matter relating thereto.

5 7. In consideration for the execution of this settlement agreement, the RESPONDENT  
6 hereby indemnifies and holds harmless the State of Nevada, the Nevada Gaming  
7 Commission, the State Gaming Control Board, the Nevada Attorney General, and each of  
8 their members, agents, and employees in their individual and representative capacities  
9 against any and all claims, suits and actions, brought against the persons named in this  
10 paragraph by reason of the investigation of the allegations in the Complaint filed in this  
11 disciplinary action, NGC Case No. 13-03, and all other matters relating thereto, and against  
12 any and all expenses, damages, charges and costs, including court costs and attorney fees,  
13 which may be sustained by the persons and entities named in this paragraph as a result of  
14 said claims, suits and actions.

15 8. The RESPONDENT enters into this stipulation for settlement freely and voluntarily,  
16 and with the assistance of legal counsel. The RESPONDENT acknowledges that this  
17 stipulated settlement is not the product of force, threats, or any other form of coercion or  
18 duress, but is the product of discussions between legal counsel for the RESPONDENT and  
19 the attorney for the BOARD.

20 9. The RESPONDENT affirmatively represents that if the RESPONDENT, this Stipulation  
21 for Settlement and Order, and/or any amounts distributed under this Stipulation for Settlement  
22 and Order are subject to, or will become subject to, the jurisdiction of any bankruptcy court,  
23 the bankruptcy court's approval is not necessary for this Stipulation for Settlement and Order  
24 to become effective, or that the bankruptcy court has already approved this Stipulation for  
25 Settlement and Order.

26 10. The RESPONDENT and the BOARD acknowledge that this settlement is made to  
27 avoid litigation and economize resources. The parties agree and understand that this  
28 Stipulation for Settlement and Order is intended to operate as full and final settlement of the

1 Complaint filed against the RESPONDENT in the above-entitled disciplinary case, NGC Case  
2 No. 13-03.

3 11. The RESPONDENT and the BOARD recognize and agree that the Nevada Gaming  
4 Commission has the sole and absolute discretion to determine whether to accept this  
5 stipulated settlement agreement. The RESPONDENT and the BOARD hereby waive any  
6 right they may have to challenge the impartiality of the Nevada Gaming Commission to hear  
7 the above-entitled case on the matters embraced in the Complaint if the Nevada Gaming  
8 Commission determines not to accept this stipulated settlement agreement. If the Nevada  
9 Gaming Commission does not accept the Stipulation for Settlement and Order, it shall be  
10 withdrawn as null and void and the RESPONDENT's admissions, if any, that certain violations  
11 of the Nevada Gaming Control Act and the Regulations of the Nevada Gaming Commission  
12 occurred shall be withdrawn.

13 12. The RESPONDENT and the BOARD agree and understand that this settlement  
14 agreement is intended to operate as full and final settlement of the Complaint filed in NGC  
15 Case No. 13-03. The parties further agree and understand that any oral representations are  
16 superseded by this settlement agreement and that only those terms memorialized in writing  
17 herein shall be effective.

18 13. The RESPONDENT agrees and understands that although this settlement, if approved  
19 by the Nevada Gaming Commission, will settle the Complaint filed in NGC Case No. 13-03,  
20 the allegations contained in the Complaint filed in NGC Case No. 13-03 and the terms of this  
21 settlement agreement may be considered by the BOARD and/or the Nevada Gaming  
22 Commission with regards to any and all applications by the RESPONDENT that are currently  
23 pending before the BOARD or the Nevada Gaming Commission, or that are filed in the future  
24 with the BOARD.

25 14. Except as otherwise provided, the RESPONDENT and the BOARD shall each bear  
26 their own costs incurred in this disciplinary action, NGC Case No. 13-03.

27 15. By signing this Settlement Agreement, the RESPONDENT hereby waives the 21-day  
28 and the five-day notice requirements found under NRS 241.033 and 241.034, including the

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555 E. Washington Ave., Ste. 3900  
Las Vegas, Nevada 89101

1 content requirements of such notices, in relation to any hearing before the Nevada Gaming  
2 Commission on this Settlement Agreement that may be held.

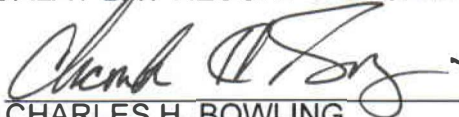
3 16. This stipulated settlement agreement shall become effective immediately upon  
4 approval by the Nevada Gaming Commission.

5 Dated this 24 day of FEBRUARY 2014.

Dated this 3<sup>rd</sup> day of March 2014.

6 MANDALAY CORP., dba  
7 MANDALAY BAY RESORT & CASINO

STATE GAMING CONTROL BOARD

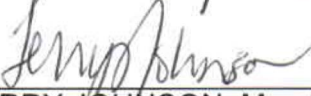
8 By:   
9 CHARLES H. BOWLING  
10 President, Chief Operating Officer

  
A.G. BURNETT, Chairman

11 WHITTEMORE GAMING GROUP

  
SHAWN R. REID, Member


12 By:   
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14 1975 Village Center Circle  
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TERRY JOHNSON, Member

17 Attorney for RESPONDENT

18 Submitted by:

19 CATHERINE CORTEZ MASTO  
20 Attorney General

21 By:   
22 EDWARD L. MAGAW  
23 Deputy Attorney General  
24 Gaming Division

25 Attorneys for State Gaming Control Board

**ORDER**

26 IT IS SO ORDERED in NGC Case No. 13-03.

27 DATED this 20 day of March 2014.

28 NEVADA GAMING COMMISSION  
  
PETER C. BERNHARD, Chairman