

BEFORE THE MOTOR VEHICLE DEALER BOARD

STATE OF COLORADO

Case No. BD13-1181

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF: **PHIL LONG HYUNDAI OF MOTOR CITY, LLC.
d/b/a PHIL LONG HYUNDAI OF MOTOR CITY, LLC.
MOTOR VEHICLE DEALER
LICENSE #38161**

Respondent.

IT IS HEREBY STIPULATED & AGREED by and between the Colorado Department of Revenue, Auto Industry Division (“Division”), Motor Vehicle Dealer Board (“Board”) and Phil Long Hyundai of Motor City, LLC., d/b/a Phil Long Hyundai of Motor City, LLC., (“Respondent”) (collectively the “Parties”) in lieu of further legal action:

1. The Board has jurisdiction over the Respondent and the subject matter of this Stipulation and Final Agency Order as set forth in article 6 of Title 12, C.R.S. and the Administrative Procedure Act, article 4 of Title 24, C.R.S.
2. The Respondent has been licensed as a motor vehicle dealer in the State of Colorado at all times relevant herein.
3. The Board has alleged that Respondent violated the following:
 - A. § 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (e) Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person's damage;
 - B. § 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (h) Having made a fraudulent or illegal sale, transaction, or repossession;
 - C. § 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (i) Willful misrepresentation, circumvention, or concealment of or failure to disclose, through whatsoever subterfuge or device,

any of the material particulars or the nature thereof required to be stated or furnished to the buyer;

D. § 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (k) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold or furnished by a licensed dealer.

E. Regulation 12-6-118 (3) (k) Advertising shall be construed to be misleading or inaccurate in the following particulars:

Rule 3. Advertising a specific motor vehicle for sale or lease with price or terms quoted, without fully identifying the vehicle as to year, make, model and dealer stock number. Such vehicle shall be willfully shown and sold at the advertised price and/or terms while such vehicle remains unsold or unleased, for a period of five days following the last date the ad was published, unless the ad states that the advertised price and terms are good only for a specific time and such time has elapsed. If a specific number of motor vehicles is advertised, such vehicles must have been invoiced to the dealer;

Rule 9. Advertising or making statements that are not true or that cannot or will not be honored. Advertising which creates the false impression that the purchaser will determine the terms, price or conditions of a sale, such as "write your own deal," "name your own price," "no reasonable offer refused," and "we will not be undersold." Advertising any item as "free" which is associated with or conditioned upon the negotiated sale of a motor vehicle.

F. § 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (o) (o) To willfully violate any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles; To Wit: 12 C.F.R. §213.7 Advertising - Regulation M

(d) *Advertisement of terms that require additional disclosure*

(1) *Triggering terms.* An advertisement that states any of the following items shall contain the disclosures required by paragraph (d)(2) of this section, except as provided in paragraphs (e) and (f) of this section:

(i) The amount of any payment; or

- (ii) A statement of any capitalized cost reduction or other payment (or that no payment is required) prior to or at consummation or by delivery, if delivery occurs after consummation.

(2) *Additional terms.* An advertisement stating any item listed in paragraph (d)(1) of this section shall also state the following items:

- (i) That the transaction advertised is a lease;
- (ii) The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
- (iii) The number, amounts, and due dates or periods of scheduled payments under the lease;
- (iv) A statement of whether or not a security deposit is required; and
- (v) A statement that an extra charge may be imposed at the end of the lease term where the lessee's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

G. Regulation 12-6-102 (12). A "new" motor vehicle is defined as "any motor vehicle being transferred for the first time from a manufacturer or importer, or dealer or agent of a manufacturer or importer, and which motor vehicle has heretofore not been used, and is what is commonly known as a 'new motor vehicle'". For the purpose of administration of the Motor Vehicle Dealers and Salesperson Licensing Law, a "new" motor vehicle shall be deemed to be a motor vehicle sold by a Colorado licensed motor vehicle dealer, as defined in the Act, who is franchised by the manufacturer of that make of motor vehicle to sell such motor vehicles. Said motor vehicle shall not have been used as a demonstrator or for private use, or for any other purpose which would indicate "use" in the strict definition of the word "used". A motor vehicle which has been used by a dealer solely for the purpose of demonstration to prospective customers shall be considered a "new vehicle", unless such demonstration use has been for more than fifteen hundred (1,500) miles.

New motor vehicles may be exchanged between dealers enfranchised to sell the same make of vehicle by a proper assignment of the Manufacturer's Certificate of Origin.

Only wholesalers or "new" motor vehicle dealers franchised by manufacturers to sell their motor vehicles will be allowed to sell "new" motor vehicles, and only then if they have not previously been sold except by the manufacturer to such dealer.

A "used motor vehicle" is defined as any motor vehicle which has been sold, bargained, exchanged, given away, or the title thereto transferred from the person who first took title thereto from the manufacturer or importer, dealer or agent of the manufacturer or importer, or so used as to have become what is commonly known as a "secondhand motor vehicle". In the event of transfer on the Certificate of Origin, from the original franchised dealer to any other dealer or individual other than a franchised dealer of the same make of vehicle, the vehicle shall be considered a "used" motor vehicle, and must be titled in the new owner's name. Vehicles with more than one fifteen hundred (1500) miles of demonstration use shall be considered "used" vehicles. Such "demonstrators" and other motor vehicles which have been used by a dealer prior to their sale shall be titled in the dealer's name and sold as "used" motor vehicles.

All vehicles which do not qualify as "new" motor vehicles shall be deemed to be "used" motor vehicles for the purpose of administration of this Act. (1 C.C.R. 205-1)

H. 1 CCR 204-10 TITLES AND REGISTRATIONS - Rule 48. COLORADO DEALER LICENSE PLATES

2.7 Use and display of dealer license plates shall be as listed below:

A. Dealer Demonstration License Plates:

1. Shall only be displayed on vehicles offered for sale by a dealer.
2. May be displayed on vehicles for demonstration drive purposes, during normal business hours, when a dealership employee is in the vehicle with the prospective buyer.
 - a. May be displayed on vehicles operated by a prospective buyer for demonstration drives. Demonstration drives by a prospective purchaser shall not exceed seven calendar days. The dealer or wholesaler must issue an authorization letter to any prospective buyer operating the vehicle with Dealer Demonstration license plates after normal business hours. The authorization letter must include the name and address of the prospective buyer, Dealer Demonstration license plate number, dates of the demonstration drive, vehicle make, vehicle model, and vehicle identification number. The authorization letter must be maintained in the vehicle when operated and presented to law enforcement upon request.
3. May be displayed on a vehicles being operated by a dealership employee, during normal business hours, for conducting legitimate dealership business.

4. Dealer Demonstration license plates may not be displayed on vehicles that:

- a. Have been sold, leased, or rented, or;
- b. Are being delivered to the purchaser, or;
- c. Are dealer or dealership employees' personal vehicles, or;
- d. Are loaned or donated by the dealership, or;
- e. Are being pulled, hauled, or are otherwise considered cargo, or;
- f. Are tow vehicles or parts pickup/delivery vehicles

- I. § 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (o) To willfully violate any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles; To Wit: §18-5-301 C.R.S. Fraud in effecting sales. (1) A person commits a class 2 misdemeanor if, in the course of business, he knowingly: (e) Makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting the purchase or sale of property or services.
- J. § 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (o) To willfully violate any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles; To Wit: §18-5-303 C.R.S. Bait advertising. (1) A person commits bait advertising if, in any manner, including advertising or any other means of communication, he offers property or services as part of a scheme or plan, with the intent, plan, or purpose not to sell or provide the advertised property or services at all, or not at the price at which he offered them, or not in a quantity sufficient to meet the reasonable expected public demand, unless the quantity is specifically stated in the advertisement. (3) Bait advertising is a class 2 misdemeanor.
- K. § 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (o) To willfully violate any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or

regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles; To Wit: 49 U.S.C. Section 32705. Disclosure requirements on transfer of motor vehicles

(a)(1) Disclosure Requirements. - Under regulations prescribed by the Secretary of Transportation that include the way in which information is disclosed and retained under this section, a person transferring ownership of a motor vehicle shall give the transferee the following written disclosure:

(A) Disclosure of the cumulative mileage registered on the odometer.

(B) Disclosure that the actual mileage is unknown, if the transferor knows that the odometer reading is different from the number of miles the vehicle has actually traveled.

(2) A person transferring ownership of a motor vehicle may not violate a regulation prescribed under this section or give a false statement to the transferee in making the disclosure required by such a regulation.

L. § 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (r) Representing or selling as a new and unused motor vehicle any motor vehicle which the dealer or salesperson knows has been used and operated for demonstration purposes or which the dealer or salesperson knows is otherwise a used motor vehicle.

4. The Respondent understands that:
- A. The Respondent has the right to be represented by an attorney of the Respondent's choice, at the Respondent's expense;
 - B. The Respondent has the right to a formal hearing in accordance with article 6 of Title 12, C.R.S.;
 - C. By entering into this Stipulation and Final Agency Order, the Respondent is knowingly and voluntarily giving up the right to a hearing, admits the facts contained in this Stipulation and Final Agency Order, and relieves the Board of its burden of proving such facts;
 - D. The Respondent is knowingly and voluntarily giving up the right to present a defense by oral and documentary evidence, and to cross-examine witnesses who would testify on behalf of the Board; and,
 - E. The Respondent is knowingly and voluntarily giving up the right to judicial review of this matter.

5. The Respondent acknowledges receipt of sufficient notice, sufficient advisement of rights, and sufficient process in the proceedings of this case, and desires to resolve all issues, which were the subject of the investigation, by entering into this Stipulation and Final Agency Order.

6. The Respondent admits to the following:

- A. Four (4) counts of § 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (k) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold or furnished by a licensed dealer.
- B. Four (4) counts of § 12-6-118 C.R.S., Licenses - grounds for denial, suspension, or revocation. (3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds: (r) Representing or selling as a new and unused motor vehicle any motor vehicle which the dealer or salesperson knows has been used and operated for demonstration purposes or which the dealer or salesperson knows is otherwise a used motor vehicle.

7. The Respondent agrees; in lieu of subsequent administrative proceedings, to submit to the following sanctions:

- A. The Respondent's motor vehicle dealer license is suspended for two (2) days. These days will be held in abeyance for a period of one (1) year provided there are no additional violations of the statutes and regulations pertaining to motor vehicle dealers or commerce, committed by the Respondent dealership during the one (1) year following the date this Stipulation and Final Agency Order is approved by the Board.
- B. The Respondent shall pay a fine of \$40,000.00. The Respondent agrees \$20,000.00 of the \$40,000.00 fine shall be due and payable within 30 days from the date this Stipulation and Final Agency Order is approved by the Board.
- C. The remaining balance, amounting to \$20,000.00, will be held in abeyance for a period of one (1) year provided there are no additional violations of the statutes and regulations pertaining to motor vehicle dealers or commerce, committed by the Respondent dealership during the one (1) year following the date this Stipulation and Final Agency Order is approved by the Board.
- D. The Respondent agrees to a probation period that will commence with the approval of this Stipulation. Such term of probation will expire one (1) year from the date of the approval of this Stipulation by the Board.

- E. The Respondent assures that it will comply with all state and federal laws and regulations related to the motor vehicle dealer industry and commerce during the probation period.
- F. The Respondent agrees to cooperate with any and all compliance inspections and/or investigations conducted by the Auto Industry Division to ensure compliance with all state and federal laws and regulations related to the motor vehicle dealer industry and commerce.

8. The Respondent agrees to strictly adhere to and to completely fulfill all requirements established in this Stipulation and Final Agency Order.

9. The Respondent is aware that this Stipulation and Final Agency Order will not become an order of the Board unless and until the Board approves it. If this Stipulation and Final Agency Order is not approved by the Board, it is void, and the Respondent shall not be bound by any provisions hereof or admissions herein.

10. Each Party shall bear its own costs and fees incurred in this action.

11. This Stipulation and Final Agency Order is the complete integration of all understandings between the parties. No addition, deletion, or amendment, except as mutually agreed to in a writing signed by both Parties, shall have any force or effect whatsoever.

12. The Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Stipulation and Final Agency Order and which are not inconsistent with its terms.

13. The provisions of this Stipulation and Final Agency Order shall be enforceable by the Parties before the Colorado Motor Vehicle Dealer Board, by any lawful remedy.

14. The Respondent expressly acknowledges having read and understood completely the terms of this Stipulation and Final Agency Order. The Respondent enters this Stipulation and Final Agency Order knowingly and voluntarily, after the opportunity to consult with counsel, and with full understanding of the legal consequences of this Stipulation and Final Agency Order. The Respondent expressly states that the Respondent believes the terms of this Stipulation and Final Agency Order are lawful, fair, conscionable, and appropriate to reach a full and final resolution of this disciplinary matter.

15. This Stipulation and Final Agency Order and all its terms shall have the same force and effect as an order entered by the Board after hearing pursuant to article 6 of Title 12, C.R.S. except that this Stipulation and Final Agency Order cannot be appealed. The Respondent agrees that any violation of this Stipulation and Final Agency Order may constitute grounds for disciplinary proceedings pursuant to the Motor Vehicle Dealer Licensing Law and if proven may constitute a basis for further disciplinary action or for any other remedy authorized by law. In the event this matter is referred to hearing for violation of this Stipulation and Final Agency Order, this Stipulation and Final Agency Order shall be admissible as evidence. In the event an alleged violation of this Stipulation and Final Agency Order is taken to hearing and the facts that

constitute the violation are determined not to be proven, the Board shall not take any disciplinary action, and this Stipulation and Final Agency Order shall remain operative and in full force and effect. The pendency of any disciplinary action pursuant to this Stipulation and Final Agency Order shall not affect the obligation of the Respondent to continue to comply with the terms of this Stipulation and Final Agency Order during the pendency of and after the conclusion of such disciplinary action.

16. This Stipulation and Final Agency Order is a public record in the Board's custody at all times.

17. Effective Date. This Stipulation and Final Agency Order shall become an order of the Board when accepted by the Board and signed by an authorized representative of the Board.

18. This Stipulation and Final Agency Order is a full and final resolution of case number BD13-1181. This Stipulation and Final Agency Order does not resolve any other cases, complaints or matters, known or unknown to the Parties, as of the effective date of this Stipulation and Final Agency Order.

19. The Respondent shall immediately provide in writing to the Board any change of the Respondent's legal address, in order for any notice required under this Stipulation and Final Agency Order or any necessary follow-up to this Stipulation and Final Agency Order to be made in a timely and efficient manner. Any notice required under this Stipulation and Final Agency Order shall be valid only if provided, in writing, to the Parties at their respective legal addresses, which the Parties acknowledge are currently as follows:

A. Board/Division:

Colorado Department of Revenue, Auto Industry Division
Attention: Bruce A. Zulauf, Division Director/Executive Secretary
1881 Pierce Street, Suite 112
Lakewood, Colorado 80214

B. Respondent:

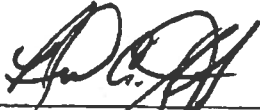
Phil Long Hyundai of Motor City, LLC.
d/b/a Phil Long Hyundai of Motor City, LLC.,
170 Motor Way
Colorado Springs, CO 80906

20. Should any term or provision of this Stipulation and Final Agency Order be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

21. This Stipulation and Final Agency Order may be signed in counterparts, each of which will have full force and effect upon execution by all Parties.

22. The Respondent warrants that it possesses the legal authority to enter into this Stipulation and Final Agency Order and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Stipulation and Final Agency Order and to bind the Respondent to its terms. The person executing this Stipulation and Final Agency Order on behalf of the Respondent warrants that such person has full authorization to execute this Stipulation and Final Agency Order.

AGREED TO BY:



Bruce A. Zulauf
Director/Executive Secretary
Auto Industry Division
Motor Vehicle Dealer Board

2/20/14
Date

FOR THE RESPONDENT:



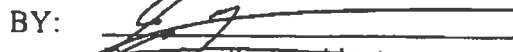
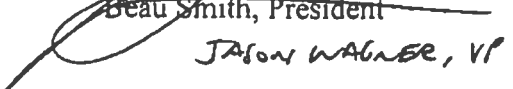
Michael Cimino
Phil Long Hyundai of Motor City, LLC.,
d/b/a Phil Long Hyundai of Motor City, LLC.,

02-26-2014
Date

The Stipulation and Final Agency Order is approved and its terms are hereby adopted as an Order of this Board.

ORDERED AND ENTERED this 13 day of MARCH, 2014.

COLORADO MOTOR VEHICLE BOARD

BY: 
Beau Smith, President

JASON WAGNER, VP

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within STIPULATION AND FINAL AGENCY ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, and personal service (as noted), this 13th day of March 2014, addressed as follows:

Mr. Michael Cimino
Phil Long Hyundai of Motor City, LLC.
170 Motor Way
Colorado Springs, CO 8006

Bruce A. Zulauf, Executive Secretary
Colorado Motor Vehicle Dealer Board
Director, Auto Industry Division
1881 Pierce Street, Room 112
Lakewood, CO 80214
(Placed in Board File)



Arleen Criddell-Tapanen
Assistant to Director