

November 26, 2012

BY FACSIMILE & EMAIL

Kerry Kolodziej
Trial Attorney
Office of the Chief Counsel
U.S. Department of Transportation
National Highway Traffic Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

Re: NHTSA Findings, Conclusions and Order Dated November 13, 2012 Regarding ZAP Recalls 09V-177, 09V-385, 12V-230, 12V-363

Dear Ms. Kolodziej:

Thank you for the time you spent with us by phone this afternoon. I am writing to follow up on that call and to address certain aspects of the Agency's November 13, 2012 Findings, Conclusions and Order ("Order").

The Order directed ZAP to make certain submissions to your office by today. These submissions include:

- 1) A written report, under oath, stating that ZAP will remedy the MY 2008 Xebra by refunding each owner of a MY 2008 ZAP Xebra the "average market value" of \$3,100; and
- 2) A draft notification letter to owners which specifies that ZAP will provide a remedy of refunding each owner of a MY 2008 ZAP Xebra the average market value of \$3,100 and specifies a method for owners to request such a refund (including requirements that the owner transfer title and possession of the MY 2008 ZAP Xebra to ZAP upon payment).

Please note that the Order was faxed to us on Friday, November 16, 2012, but not received by me until I returned to the office the following Monday (November 19). Thus, in light of the intervening Thanksgiving holiday, ZAP had only three business days to review and respond to the Order. Nonetheless, we have worked diligently over this time to evaluate and understand the Agency's findings and conclusions and the implications of the Agency's Order (including the above-referenced requirements), and to seek and retain counsel to assist us in this matter. However, ZAP is a public-traded company, with board members located and living internationally. ZAP's rules of corporate governance dictate that matters such as this Order, and company actions related thereto, require board involvement and approval, which has been difficult to accomplish in this short period of time.

We are committed to providing a remedy to affected vehicle owners, but we are unable to agree (at least by today's deadline) to make an unqualified refund commitment "under oath," as specified in the Order. As discussed with you today, we have several concerns with the Order as currently drafted, including several ambiguities, which we believe should, in fairness, be addressed. For example, the one-size-fits-all refund amount does not address situations where an individual's vehicle has been junked or destroyed, or is in extremely poor condition. Moreover, it does not address situations where the title is encumbered due to an outstanding loan that may exceed the value of the vehicle. It does not address situations where an owner objects to the amount, and asserts a higher value. And it does not address situations where an owner refuses the refund and wishes to have his/her vehicle repaired. In this latter situation, ZAP would like to be able to offer a repair and, for this reason, is continuing to work to develop a viable repair procedure that brings these vehicles into full FMVSS 122 compliance. On this latter point, if a repair subsequently becomes available that will allow these vehicles to meet FMVSS 122, ZAP would like to be able to elect the repair procedure, rather than a refund, for any remaining unremedied vehicles. (If an adequate repair remedy does become available, we believe the Agency should be neutral as to whether an owner receives a repair or a refund.) *We would like to explore these and other issues with you and appropriate NHTSA officials within the*

next few days. We will contact you to set up a time to meet with you by phone, videoconference or in person to discuss these matters further.

We would also like to correct the record regarding the number of vehicles subject to the recall. A review of ZAP's internal records indicates that 691 vehicles were imported into the U.S., but 2 of those vehicles were subsequently exported and 62 vehicles remain in ZAP's control. Therefore, the correct number of vehicles subject to recall is 627.

The foregoing should not be construed as a waiver of any of ZAP's rights, remedies, arguments, or defenses available to it in connection with the Order, including any appeal rights, all of which ZAP reserves in their entirety.

ZAP



Chuck Schillings
Co-CEO

cc: Daniel C. Smith, Senior Associate Administrator for Vehicle Safety, NHTSA
Priscilla Lu, Chairman, ZAP
Alex Wang, Co-CEO, ZAP