



U.S. Department  
of Transportation

**National Highway  
Traffic Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

**JUL 13 2012**

ZAP  
c/o Mr. Alex Wang, CEO  
501 4th Street  
Santa Rosa, CA 95401

Re: Special Order Including Requests for the Production of Documents

Dear Mr. Wang:

The National Highway Traffic Safety Administration (“NHTSA”) administers the National Traffic and Motor Vehicle Safety Act, as amended and recodified, 49 U.S.C. § 30101 et seq.

It has been years since ZAP initiated recalls of the MY 2008 Xebra. ZAP initially submitted a report, dated May 18, 2009, pursuant to 49 C.F.R. Part 573, *Defect and Noncompliance Responsibility and Reports*, on the noncompliance of MY 2008 Xebra vehicles with the braking distance requirements of Federal Motor Vehicle Safety Standard (“FMVSS”) No. 122, *Motorcycle brake systems*. ZAP subsequently submitted a new Part 573 report, dated May 18, 2012, related to this noncompliance. ZAP also filed a Part 573 report, dated September 30, 2009, on the noncompliance of MY 2008 Xebra vehicles with FMVSS No. 122, S5.1.2.1, *Master cylinder reservoirs*. ZAP filed an amended Part 573 Report, dated December 9, 2009, related to this noncompliance. NHTSA assigned recall numbers 09V-177/12V-230 and 09V-385 to these recalls, respectively.

In an April 2, 2012 letter, signed by then Co-CEO Steven M. Schneider, ZAP estimated that it would be able to implement a repair remedy by July 15, 2012. That date now appears unrealistic. ZAP engaged Karco Engineering to test ZAP’s repair for the braking distance requirements. According to information NHTSA received informally, the remedied vehicle Karco tested remains non-compliant. ZAP also indicated in its April 2, 2012 letter that it would provide a parts list and procedures to implement a repair remedy to NHTSA by June 15, 2012. That information has not been forthcoming. ZAP has also failed to provide NHTSA with a new Part 573 Report for noncompliance with master cylinder reservoir requirements, despite repeated promises that it would do so. Recent informal inquiries to ZAP have also gone unanswered.

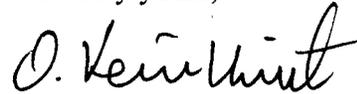
NHTSA is sending you this Special Order Including Requests for the Production of Documents (“Special Order”) because it is seeking further information pertaining to ZAP’s development and implementation of a remedy for the MY 2008 Xebra, and other information relating to the recalls.

Your response must be received by **July 31, 2012**.

This response must be given under oath. 49 U.S.C. § 30166(g)(1)(A). Failure to answer or answering untruthfully may subject you to civil penalties under 49 U.S.C. § 30165.

If you have any questions about the Special Order, please contact Ms. Kerry Kolodziej at (202) 366-5902.

Sincerely yours,



O. Kevin Vincent  
Chief Counsel

Enclosure

cc (w/enclosure):

Mark Abdou  
Libertas Law Group, Inc.  
280 S. Beverly Drive, Suite 204  
Beverly Hills, CA 90212

**NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**  
1200 New Jersey Avenue, SE  
West Building, W41-326  
Washington, DC 20590

In re:	)
	)
MY 2008 ZAP Xebra	)
NHTSA Recall	)
Nos. 09V-177/12V-230 and 09V-385	)

**SPECIAL ORDER  
INCLUDING  
REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

To:

ZAP  
c/o Mr. Alex Wang, CEO  
501 4th Street  
Santa Rosa, CA 95401

This Special Order Including Requests for the Production of Documents (“Special Order”) from the National Highway Traffic Safety Administration (“NHTSA”) is issued pursuant to 49 U.S.C. § 30166(g)(1)(A) and 49 C.F.R. Part 510.7 and 510.8.

ZAP filed reports pursuant to 49 C.F.R. Part 573, *Defect and Noncompliance Responsibility and Reports*, on the noncompliance of the MY 2008 ZAP Xebra with Federal Motor Vehicle Safety Standard (“FMVSS”) No. 122, *Motorcycle brake systems*. NHTSA has assigned recall numbers 09V-177/12V-230 and 09V-385 to these recalls.

NHTSA is sending you this Special Order because it is seeking further information pertaining to ZAP’s development and implementation of a remedy for the MY 2008 Xebra, and other information related to the recalls.

Your response to this Special Order must be provided by **July 31, 2012**. Your response must be signed under oath.

Definitions and Instructions for this Special Order are contained in the attached Appendix.

Respond to the following questions and requests:

**Interrogatories:**

1. Has ZAP developed a repair remedy to bring the MY 2008 ZAP Xebra into full compliance with FMVSS No. 122?
2. If your answer to Interrogatory No. 1 is yes:
  - a. Identify in detail each and every part that is to be installed on MY 2008 Xebra vehicles as part of the remedy under the recall numbers designated by NHTSA as 09V-177/12V-230 and 09V-385 (hereinafter recall numbers 09V-177/12V-230 and 09V-385), including the quantity of each part required, part number of each part, and a description of each part.
  - b. State in detail how each of the parts identified in your response to Interrogatory No. 2(a) will be installed on a MY 2008 Xebra. You do not need to repeat information provided in your response to Interrogatory No. 2(a).
  - c. Describe in detail any adjustments ZAP will make to any MY 2008 Xebra before, during, or after the parts identified in your response to Interrogatory No. 2(a) above are installed as part of the remedy in recall numbers 09V-177/12V-230 and 09V-385.
  - d. State each and every basis, including but not limited to describing in detail each and every test and analysis, and all other relevant materials that ZAP considered or relied upon in determining that the remedy for MY 2008 Xebra vehicles will make the vehicles comply with all requirements of FMVSS No. 122. Also state in detail the method by which the MY 2008 Xebra's compliance to all the requirements of FMVSS No. 122 was determined.
  - e. Identify ZAP's schedule for implementing the repair remedy.
3. If your answer to Interrogatory No. 1 is no:
  - a. State whether ZAP will elect the remedy of repurchasing the MY 2008 Xebra vehicles, and if so, when.
  - b. If ZAP will not elect to repurchase the vehicles, state in detail what ZAP will do to develop and implement a repair of MY 2008 Xebbras that will make the vehicles comply with all the requirements of FMVSS No. 122, including who will perform the work (i.e. ZAP or a third-party) and the date by which all that work will be completed.

4. ZAP delivered a ZAP Xebra to Karco Engineering, LLC (“Karco”) for testing on or about May 16, 2012.
  - a. Describe in detail all testing performed by Karco on a ZAP Xebra, including but not limited to the date the vehicle(s) was tested, the tests performed, the results of the testing, and whether (and, if so, how) the vehicle was modified and/or adjusted in any way during the course of the testing.
  - b. Describe the remedy installed on the Xebra prior to its testing by Karco.
  - c. Has Karco’s testing of the Xebra concluded? If so, when?
  - d. If the testing has not concluded, describe in detail the additional testing Karco will perform on the vehicle and the schedule for the additional testing. When do you expect it to conclude?
  - e. If Karco is performing or has performed any work for ZAP related to the Xebra other than testing it to the FMVSS No. 122 braking distance requirements, describe in detail that work, including whether it has concluded or is ongoing and the date when it concluded or is expected to conclude.
5. On or about June 28, 2012, Karco informed ZAP that the Xebra Karco tested did not meet the requirements specified in FMVSS No. 122, S5.3, *Service brake system—second effectiveness*.
  - a. Has ZAP identified any additional modifications or adjustments to the Xebra that ZAP believes would enable the Xebra to meet the FMVSS No. 122 braking distance requirements, including S5.3? If yes, describe the modification(s) and/or adjustment(s) in detail, including a description of ZAP’s basis for the belief that the modification(s) and/or adjustments would enable the Xebra to meet the FMVSS No. 122 braking distance requirements.
  - b. Has ZAP (or any third-party engaged by ZAP) conducted any subsequent testing regarding the FMVSS No. 122 braking distance requirements? If yes, describe in detail the testing, including the tests performed, the results of the testing, who performed the testing, and whether (and, if so, how) the vehicle tested was different from the vehicle tested by Karco.
  - c. Does ZAP plan any further testing regarding the FMVSS No. 122 braking distance requirements? If yes, describe in detail the planned testing, including who will perform the testing (i.e. ZAP or a third-party), when the testing is expected to occur, and any planned modification(s) and/or alteration(s) that will be made to the vehicle prior to the testing.

6. Identify each owner (including name and address) of a MY 2008 Xebra to whom ZAP has sent, including the date each letter was sent:
  - a. A notification letter for recall number 09V-177.
  - b. A renotification letter for recall number 09V-177.
  - c. A notification letter for recall number 09V-385.
  - d. A renotification letter for recall number 09V-385.
  - e. A notification letter for recall number 12V-230.
7. In an April 2, 2012 letter, signed by ZAP's then Co-CEO Steven M. Schneider and addressed to Harry Thompson of NHTSA ("ZAP's April 2, 2012 letter"), ZAP indicated: "As customers responded to the recall notice, the recall kits were either sent to them at their request, or they brought their vehicles into ZAP and the kits were installed by our mechanics."
  - a. For recall number 09V-177, how many customers were sent a recall kit?
  - b. For recall number 09V-177, how many customers brought their vehicles to ZAP for repair? Did ZAP pay for transportation of those vehicles?
  - c. For recall number 09V-385, how many customers were sent a recall kit?
  - d. For recall number 09V-385, how many customers brought their vehicles to ZAP for repair? Did ZAP pay for transportation of those vehicles?
8. In ZAP's April 2, 2012 letter, ZAP stated that it contracted with R.L. Polk to search for registered owners of the MY 2008 ZAP Xebra using DMV licensing records, and expected that the work would take at least 30 days. ZAP subsequently stated in a May 28, 2012 letter, signed by ZAP's then Co-CEO Steven M. Schneider and addressed to Jennifer Timian of NHTSA, that ZAP was entering into an agreement with R.L. Polk to use R.L. Polk's database to obtain this information.
  - a. Has ZAP obtained a list of owners with addresses from R.L. Polk or using R.L. Polk's database?
  - b. If this work has not been completed, when do you expect it to be completed?
  - c. If ZAP is not using R.L. Polk or R.L. Polk's database to perform this work, describe the process for ZAP to identify current registered owners of MY 2008 Xebra vehicles, including the date when the process was completed or is expected to be completed.

- d. On what date does ZAP anticipate beginning, or on what date did it begin to renotify owners of recall numbers 09V-177 and 09V-385, using an updated owner list based on current state motor vehicle registration records, as was requested by NHTSA in October 2011? On what date does ZAP expect to complete this work, or on what date was it completed?
  - e. On what date does ZAP anticipate beginning, or on what date did it begin to notify owners of recall number 12V-230 using an updated owner list based on current state motor vehicle registration records? On what date does ZAP expect to complete this work, or on what date was it completed?
9. ZAP submitted a quarterly report for the first quarter of 2012 in recall number 09V-177, which was dated May 7, 2012.
- a. State the basis for ZAP's statement in that report that "One vehicle has been successfully completed," including whether ZAP contends that the statement is true as of the date of its response to this Special Order.
  - b. ZAP reported that a total of 105 vehicles have been inspected and remedied. Describe in detail what ZAP did to remedy those vehicles. Include in your description the identity, part number, and a description of each and every part installed; a description of how each part was installed; and any other modification(s) and/or adjustment(s) made to the vehicle. If not all of the vehicles were remedied in the same way, describe each remedy and the number of vehicles remedied in each way.
  - c. Does ZAP contend that, based on its remedy, those 105 vehicles comply with braking distance requirements of FMVSS No. 122? If so, what is the basis of that contention?
  - d. ZAP reported that the date notification to purchasers began was January 2010, and that notification is "CONTINUING." When do you plan to complete the notification process?
10. ZAP submitted a quarterly report for the first quarter of 2012 in recall number 09V-385, which was dated May 7, 2012.
- a. State the basis for ZAP's statement in that report that "All remedies have been completed with this recall." In your answer, explain the basis of your assertion that all remedies have been completed when you reported that a total of 107 vehicles have been inspected and remedied out of a total population of 693 vehicles subject to the recall.

- b. ZAP reported that a total of 107 vehicles have been inspected and remedied. Describe in detail what ZAP did to remedy those vehicles. Include in your description the identity, part number, and a description of each and every part installed; a description of how each part was installed; and any other modification(s) and/or adjustment(s) made to the vehicle. If not all of the vehicles were remedied in the same way, describe each remedy and the number of vehicles remedied in each way.
  - c. Does ZAP contend that, based on its remedy, those 107 vehicles comply with FMVSS No. 122, S5.1.2.1, *Master cylinder reservoirs*? If so, what is the basis of that contention?
  - d. ZAP reported that the date notification to purchasers began was January 2010, and that notification is "CONTINUING." When do you plan to complete the notification process?
11. State whether ZAP will file with NHTSA a new Part 573 Report for the noncompliance with FMVSS No. 122, S5.1.2.1, *Master cylinder reservoirs*, and if so, when.
12. Has ZAP sold any MY 2007 Xebra vehicles in the United States? If yes:
- a. Identify and explain the differences, if any, between the MY 2007 Xebra and the MY 2008 Xebra that ZAP is recalling.
  - b. Explain if and how any such differences are relevant to compliance with FMVSS No. 122.
  - c. State in detail the method by which ZAP certified the MY 2007 Xebra as compliant with FMVSS No. 122.
13. Has ZAP sold any MY 2009 Xebra vehicles in the United States? If yes:
- a. Identify and explain the differences, if any, between the MY 2009 Xebra and the MY 2008 Xebra that ZAP is recalling.
  - b. Explain if and how any such differences are relevant to compliance with FMVSS No. 122.
  - c. State in detail the method by which ZAP certified the MY 2009 Xebra as compliant with FMVSS No. 122.
14. Has ZAP sold any MY 2010 Xebra vehicles in the United States? If yes:

- a. Identify and explain the differences, if any, between the MY 2010 Xebra and the MY 2008 Xebra that ZAP is recalling.
- b. Explain if and how any such differences are relevant to compliance with FMVSS No. 122.
- c. State in detail the method by which ZAP certified the MY 2010 Xebra as compliant with FMVSS No. 122.

**Requests for the Production of Documents:**

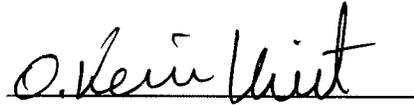
1. If you responded yes to Interrogatory No. 1, provide all documents concerning the repair remedy for recall numbers 09V-177/12V-230 and 09V-385, including all documents providing instructions on how to implement the remedy and/or describing or depicting each part to be installed.
2. Provide a copy of all documents relating to the remedy installed on the ZAP Xebra delivered to Karco on or about May 16, 2012.
3. Provide a copy of all documents (including all reports, data, and emails) relating to any testing or other work performed by Karco related to the ZAP Xebra.
4. Provide a copy of all documents (including emails) reflecting or relating to any communications between ZAP and Karco (including any officers and/or employees of either company) regarding the ZAP Xebra.
5. If you responded yes to Interrogatory No. 5(b), provide a copy of all documents (including all reports, data, and emails) concerning the testing.
6. If you responded yes to Interrogatory No. 8(a), provide a copy of all documents R.L. Polk provided to ZAP containing owner information and/or all documents containing owner information ZAP obtained using R.L. Polk's database.
7. Provide a copy of any instructions and/or written documentation included in a recall kit you sent to customers for recall number 09V-177 and/or 09V-385.
8. Provide a copy of any instructions and/or written documentation used by ZAP mechanics to install a recall kit for a customer that responded to a recall notice for recall number 09V-177 and/or 09V-385 by bringing a vehicle into ZAP.

Failure to respond promptly and fully to this Special Order could subject you to civil penalties of \$6,000.00 per day (up to a maximum of \$17,350,000) pursuant to 49 U.S.C. § 30165 and 49

C.F.R. § 578.6(a)(3) or lead to an action for enforcement of the Special Order. Other remedies and sanctions are available as well.

If you have any questions concerning this matter, please call Ms. Kerry Kolodziej at (202) 366-5902. Please note that this Special Order may be modified, if at all, only in writing.

Dated: July 13, 2012.

A handwritten signature in black ink, appearing to read "O. Kevin Vincent", written over a horizontal line.

O. Kevin Vincent  
Chief Counsel

## APPENDIX

### I. Definitions

To the extent used in this Special Order, the following definitions apply:

#### (A) Business Entity Names

- (1) **“ZAP”** means ZAP d/b/a ZAP Jonway, and any United States-based subsidiaries and affiliates (collectively referred to as “ZAP”), including all of its officers, employees, and agents.

#### Terminology

- (2) **“Affiliates”** means a corporation that is related to another corporation (such as a subsidiary, parent, or sibling corporation) by shareholdings or other means of control.
  - (3) **“Agent”** means an individual, such as a representative, who is authorized to act for or in place of another.
  - (4) **“Employee”** means a person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.
  - (5) **“Officer”** means a person who holds an office of trust, authority, or command, such as a person elected or appointed by the board of directors to manage the daily operations of a corporation, such as a CEO, president, secretary, or treasurer.
- (B) **“Document(s)”** is used in the broadest sense of the word under Rule 34 of the Federal Rules of Civil Procedure, and includes all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, electronic communications (existing in hard copy and/or in electronic storage), invoices, contracts, agreements, manuals, publications, photographs of all types, and all mechanical, magnetic, and electronic records or recordings of any kind. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by the manufacturer or not. If a document is not in the English language, provide both the original document and an English translation of the document.
- (C) **“You”** or **“your”** refers to ZAP, as defined above.

## **II. Instructions**

In order for NHTSA to evaluate this matter, certain information is required. Pursuant to 49 U.S.C. § 30166, please provide numbered responses to the interrogatory and production requests above.

Your response to the Special Order shall be sent to Office of the Chief Counsel (NCC-111), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue, SE, Washington, DC 20590.

Please repeat the applicable request verbatim above your response. After your response to each request, identify the source of the information and indicate the last date the information was gathered.

When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation. Please also be reminded that where a document responsive to a request is not in the English language, both the original document and an English translation of the document must be produced.

You are required to respond to every request listed in this Special Order. If you cannot respond to any specific request or subpart(s) thereof, please state the reason why you are unable to do so. If you are unable to respond because you do not have all or any of the precise information needed to respond, provide an estimate. If, on the basis of attorney-client, attorney work product, or other privilege, you do not submit one or more requested documents or items of information in response to this Special Order, you must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, name and position of the person(s) from, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

The response to this Special Order, including the document requests, must be submitted in duplicate, together with a copy of any confidentiality request, to this office by July 31, 2012.

If you claim that any of the information or documents provided in response to this Special Order constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or is protected from disclosure pursuant to 18 U.S.C. § 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 C.F.R. Part 512, to the Office of Chief Counsel (NCC-111), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue, SE, Washington, DC 20590. You are required to submit two copies of the documents containing allegedly confidential information and one copy of the documents from which information claimed to be confidential has been deleted. Failure to adhere to the requirements of 49 C.F.R. Part 512 will result in a rejection of your request for confidential treatment.

- A. If any information is submitted electronically, the information should be submitted on a CD-ROM that is labeled with the subject matter (Recall Number 09V-177/12V-230 and/or 09V-385) and the date of its submission to NHTSA. Each file should be named and labeled in a manner that readily identifies the request to which the information contained therein is responsive. If a particular file is not provided in a common format (e.g. Word or PDF) and requires the use of special software that is not readily available, you must provide a copy of that software with its submission. If you seek confidential treatment on the basis of Exemption 4 of the Freedom of Information Act for any of the materials you submit, it must follow the procedures set out in 49 C.F.R. Part 512.
- B. The singular includes the plural; the plural includes the singular. The masculine gender includes the feminine and neuter genders; and the neuter gender includes the masculine and feminine genders. "And" as well as "or" shall be construed either disjunctively or conjunctively, to bring within the scope of this Special Order all responses that might otherwise be construed to be outside its scope. "Each" shall be construed to include "every" and "every" shall be construed to include "each." "Any" shall be construed to include "all" and "all" shall be construed to include "any." The use of a verb in any tense shall be construed as the use of the verb in a past or present tense, whenever necessary to bring within the scope of the document requests all responses which might otherwise be construed to be outside its scope.
- C. ZAP's response to this Special Order must be under oath, i.e., accompanied by an affidavit, signed by a responsible officer of ZAP, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of ZAP to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order.