SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (Agreement) is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB), with its principal office at 1001 I Street, Sacramento, California 95814 and ZAP JONWAY (ZAP) with its principal place of business at 501 Fourth Street, Santa Rosa, California, 95401.

RECITALS

1. California Health and Safety Code (H&SC) section 43151 (H&SC § 43151) (a) states the following:

   No person who either is a resident of or who operates an established place of business within this state shall import, deliver, purchase, rent, lease, acquire, or receive a new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine for use, registration, or resale in this state unless such motor vehicle engine or motor vehicle has been certified pursuant to this chapter. No person shall attempt or assist in any such action.

2. H&SC section 43152 states the following:

   No person who is engaged in this state in the business of selling to an ultimate purchaser, or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently import, deliver, purchase, receive, or otherwise acquire a new motor vehicle, a new motor vehicle engine, or vehicle with a new motor vehicle engine which is intended for use primarily in this state, for sale or resale to an ultimate purchaser who is a resident of or doing business in this state, or for registration, leasing, or rental in this state, which has not been certified pursuant to this chapter. No person shall attempt or assist in any such act.

3. H&SC section 43153 (H&SC § 43153) states the following:

   No person who is engaged in this state in the business of selling to an ultimate purchaser, or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently sell or offer to sell, to an ultimate purchaser who is a resident of or doing business in this state, or lease or offer to lease, rent, or offer to rent, in this state any new motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine which is intended primarily for use or for registration in this state, and which has not been certified pursuant to this chapter. No person shall attempt or assist in any such action.

4. H&SC section 43154 (H&SC § 43154) (a) states, "Any person who violates any provision of this article shall be liable for a civil penalty not to exceed five thousand dollars ($5,000.00) per vehicle."

5. ZAP manufactured non-California certified electric vehicles and imported the vehicles into California. Between November 13, 2008, and July 13, 2011, inclusive, ZAP Dealers offered for sale and/or sold new, model years 2008-2009, electric motor vehicles with under 7,500 odometer miles (the subject vehicles) for use or registration in California, that were not certified for sale or use in California, pursuant to H&SC, chapter 2 of part 5 of division 26, in that the subject vehicles were not certified by ARB as meeting California emissions standards.

6. ZAP stipulates to the violations of H&SC cited in the foregoing recitals. Pursuant to H&SC § 43154, ZAP is subject to civil penalties.

7. ARB alleges that if the facts described in recital paragraphs (1) through (6) were proven, civil penalties could be imposed against ZAP as provided in H&SC § 43154.

8. ZAP admits the facts described in Recital paragraphs (1) through (6).

9. ZAP has fully cooperated throughout the investigation.

10. In total, 20 uncertified electric vehicles were sold and registered throughout California.

11. Should ZAP decide to import vehicles into California, ZAP will ensure that the vehicles meet all applicable ARB requirements prior to importation.

TERMS AND RELEASE

In consideration of ARB not filing a legal action against ZAP for the violations alleged above, and in consideration of the other terms set out below, ARB and ZAP agree as follows:

1. ZAP shall pay the sum of twenty thousand dollars ($20,000.00) to **the California Air Pollution Control Fund** as a penalty. Twenty-four (24) monthly payments of eight hundred thirty-three dollars and thirty-three cents ($833.33) shall be made upon the fifth (5) day of each month beginning with February 5, 2014, with a final payment due September 5, 2016. If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable without notice or demand.

2. The checks shall be made payable to the California Air Pollution Control Fund and addressed to:

   Erin Blanton
   Air Pollution Specialist
   Air Resources Board
   1001 I Street, P.O. Box 2815
   Sacramento, CA 95812

3. It is agreed that if ZAP at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving ZAP, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against ZAP, or a trustee in bankruptcy, custodian, receiver, or agent is appointed or authorized to take charge of any of ZAP's properties, or if any deposit account or other property of ZAP be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or ZAP takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

4. This Agreement shall apply to and be binding upon ZAP and its successors and assignees, subsidiary and parent corporations, and predecessors, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

5. Now, therefore, in consideration of the payment by ZAP to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases ZAP and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, affiliates, customers, end-users, and suppliers from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs 4 -10, above. The undersigned represent that they have the authority to enter this Agreement.

6. This Agreement constitutes the entire agreement and understanding between ARB and ZAP concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between ARB and ZAP concerning these claims.

7. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.

8. Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.

9. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.

10. Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.

11. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

12. Waiver. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.

(1) **SB 1402 Statement**

Senate Bill 1402 (Dutton, chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (see H&SC section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in H&SC section 43024 (H&SC § 43024). The per vehicle penalty in this case is a maximum of $5000.00 per unit per strict liability violation. The penalty obtained in this case is approximately $1,000.00 per vehicle for twenty vehicles, for a total of $20,000.00. The penalty was significantly reduced because this is an innocent, first violation, ZAP fully cooperated with the investigation and is experiencing financial hardships.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provision being applied is this case is § 43154 because ZAP brought into commerce uncertified electric vehicles into California, in violation of H&SC §§ 43151-43153 and Vehicle Code section 24007 described above.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do not prohibit emissions above a specified level.

(2) ZAP acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at H&SC § 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

(3) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.

(4) The penalty was also based on confidential business information provided by ZAP that is not retained by ARB in the ordinary course of business. The penalty was also based on confidential settlement communications between ARB and ZAP that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and ZAP and reflects ARB's assessment of the relative strength of its case against ZAP, the desire to avoid the uncertainty, burden, and expense of litigation, to obtain swift compliance with the law, and to remove any unfair advantage that ZAP may have secured from its actions.

(5) ZAP represents that it understands the legal requirements applicable to introducing non-California certified vehicles into California.

California Air Resources Board

By: _____

Name: Ellen M. Peter
Title: Chief Counsel
Date: 3/3/2014

ZAP Jonway

By: _____

Name: Chuck Schillings
Title: Co-CEO
Date: 2/11/14