STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING Whether there has been a violation of the Securities Act of Washington by: ECO Motor Company, Inc.; David Joner Respondents.	)))))))	Order No.: S-09-361-11-FO01 ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND FINAL ORDER TO CEASE AND DESIST, TO IMPOSE FINES, AND TO CHARGE COSTS

THE STATE OF WASHINGTON TO: **ECO Motor Company, Inc.; David Joner**

On October 14, 2011, the Securities Administrator of the State of Washington issued Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, to Impose Fines, and to Charge Costs, order number S-09-361-11-SC01, hereinafter referred to as "Statement of Charges." The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing, hereinafter referred to as "Notice of Opportunity for Hearing" and an Application for Adjudicative Hearing, hereinafter referred to as "Application for Hearing," were served on Respondents ECO Motor Company, Inc. and David Joner on November 11, 2011. The Notice of Opportunity for Hearing advised Respondents ECO Motor Company, Inc. and David Joner that a written application for an administrative hearing on the Statement of Charges must be received within twenty days from the date of receipt of the notice. Respondents ECO Motor Company and David Joner each failed to request an administrative hearing within twenty days of receipt of the Statement of Charges and Notice of Opportunity for Hearing, either on the Application for Hearing provided, or otherwise.

The Securities Administrator therefore will adopt as final the following Findings of Fact and Conclusions of Law as set forth in the Statement of Charges and enter a final order against the Respondents to cease and desist from violations of the Securities Act, to impose fines, and to charge costs.

The Securities Administrator makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Respondents

1. ECO Motor Company, Inc. ("ECO") is a Delaware corporation incorporated on June 29, 2007. During the period relevant to this Final Order, ECO maintained places of business at 12835 Newcastle Way, Unit 205, Newcastle, Washington 98056 and 5806A 119th Avenue SE, Suite 261, Bellevue, Washington 98006.

2. David Joner ("Joner") is a Washington resident. Joner is ECO's Chief Executive Officer.

Nature of the Offering

3. Beginning no later than November 1, 2007, ECO offered up to 400,000 shares of its common stock at $2.50 per share. According to ECO's private placement memorandum ("PPM"), the offering was limited to accredited investors as "defined in Rule 501 promulgated under the Securities Act of 1933." Furthermore, the PPM represented that the offering was being made pursuant to "Regulation D, Rule 504 of the 1933 Act." Pursuant to the PPM, the minimum investment amount was $50,000, though ECO reserved the right to accept a smaller amount.

4. Beginning no later than January 1, 2008, ECO offered and sold at least $372,000 worth of its stock to at least six Washington residents. At least one of ECO's investors was not accredited as that term is defined in Regulation D, Rule 501. Joner instructed this investor to indicate that she was an accredited investor on an investor questionnaire.

5. In 2005, Joner and several members of his family designed an automobile with two wheels in front, one in the rear, and seating for two. This car was ultimately called the EMC3 Commuter (the "Commuter"). Prior to ECO's stock offering, ECO engaged a Snohomish, Washington resident to construct prototypes of the Commuter that ECO could take to auto shows.

6. Several of ECO's investors are auto enthusiasts and learned of ECO through personal or professional relationships with this Snohomish resident. These investors either became interested in the Commuter after initially discussing the Commuter with the Snohomish resident or became interested when they learned that Joner and ECO planned to mass produce the Commuter. When these investors inquired about investment opportunities in ECO, the Snohomish resident referred them to Joner. In addition, two investors learned of ECO's offering through family members who had invested.

7. Joner met with each of ECO's investors to discuss ECO, the Commuter, and the stock offering. Joner told investors that ECO would use investor funds for "business expenses," that the Commuter would be permitted to use car pool lanes, that ECO might eventually produce electric and hybrid models of the Commuter, that the Commuter would attain a fuel efficiency of approximately forty miles per gallon, that the cars would be manufactured in China in order to reduce costs, and that ECO might have a public offering of its stock in the future. Joner told at least one investor that the initial shipment of Commuters from China would consist of five thousand cars. Furthermore, Joner told at least one investor that car dealerships had expressed interest in selling the Commuter.

8. Joner showed computer-generated renderings of the Commuter to at least one investor prior to his purchase of ECO stock.

9. Each investor received a PPM dated November 1, 2007 prior to investing. The PPM stated that the Commuter was "unique and timely," classified as a motorcycle, and was expected to retail for $13,500. The PPM also said that ECO estimated that the Commuter would achieve fuel efficiency of eighty miles per gallon.

10. The PPM identified risks arising from illiquidity, management being vested in a small number of key personnel, significant competition in the sale of vehicles, dilution resulting from future issuances of stock, dependence on a foreign manufacturer, and fuel efficiency claims not materializing, among others.

11. The PPM advised investors that the proceeds of the offering would be used to expand marketing, sales and distribution capabilities, to purchase or lease equipment, to implement ECO's manufacturing plan, and to provide working capital. It further stated that ECO believed that the maximum offering proceeds would fund its operations for nine to twelve months. This section of the PPM did not specifically discuss spending the offering proceeds on the costs of bringing a passenger vehicle to market, such as testing and permit acquisition to ensure compliance with regulations enforced by the National Highway Traffic Safety Administration and the Environmental Protection Agency, despite the fact that ECO had not fulfilled such obligations when the offering began. In fact, the PPM does not identify these obligations at all.

12. The PPM represented that 1,960,000 shares of ECO stock had been issued, some of which had been issued to the "founding directors and management in exchange for intellectual property, technical knowledge, material and capital."

13. The PPM represented that ECO had a "Letter of Intent" to form an "Equity Joint Venture" with a Chinese manufacturer. If ECO and the manufacturer reached a final agreement, ECO anticipated issuing 40,000 additional shares of its stock to the manufacturer. This letter of intent addressed timelines, "general business concepts," and the production of initial vehicles for use in trade shows and for testing purposes.

14. The PPM provided unaudited financial statements of ECO dated October 31, 2007, consisting of a balance sheet, a statement of loss from the date of incorporation to October 31, 2007, and a statement of cash flows covering the same period. This portion of the PPM was not updated. The balance sheet showed total assets of $253,065 and $149,225 due to shareholders on loans they had made to ECO.

15. Under the heading, "Management's Discussion," the PPM discussed ECO's belief that the Commuter would succeed. ECO based this belief on the Commuter's estimated fuel efficiency of eighty

miles per gallon, ability to utilize carpool lanes in most states, its expected reputation as an ecologically friendly vehicle, and its anticipated retail price of $13,500.

16. The PPM further discussed ECO's plan for success under the heading, "The Opportunity." Here, ECO introduced its intention to outsource manufacturing, delivery, and other aspects of ECO's operations to "existing entities specializing" in those areas in order to minimize costs and to "simplify management." Elsewhere in the PPM, ECO provided a list of businesses with whom ECO had begun negotiating agreements or with whom ECO anticipated negotiating such agreements. Based on then-current negotiations, ECO estimated a cost of $5,000 per vehicle based on landed vehicle manufacture cost, outsourced operations and services, and delivery.

17. ECO also discussed utilizing the internet and product placement to generate interest in the Commuter. The PPM represented that "[ECO] will present its car to the public through strategic placement in major motion pictures and television."

18 The PPM stated that ECO expected to have five hundred dealerships located throughout the United States each of which would agree to purchase ten vehicles per month at $10,000 each. ECO planned to enter into these agreements during the first six months of the Commuter's production. Based on these figures, the PPM anticipated annual sales for the first full year of $600,000,000 and a first annual gross profit of $270,000,000. The PPM stated that ECO's target for vehicles shipped was 25,000 in 2008, 80,000 in 2009, and 200,000 in 2010.

19. The PPM also provided a discussion of ECO's management personnel. The PPM described Joner as a "successful [e]ntrepreneur [who] has owned and operated several businesses catering to the automotive industry." Brief biographies of chief operating officer Pete Brewer, and chief financial officer Dave McCray were also provided. Further, the PPM listed six individuals who would be responsible for various aspects of ECO's business, such as part operations and service operations. None of the biographical

information in the PPM described any experience in manufacturing or negotiating with manufacturers for any of ECO's management personnel.

20. ECO provided a brief discussion of its anticipated relationships with its "partners," those entities to whom certain aspects of ECO's business would be outsourced in an attempt to minimize costs. The PPM provided a list of companies with whom ECO planned to collaborate. As of the PPM's date, agreements had not been finalized with these entities. The PPM provided only the companies' names and the aspect of ECO's business for which each entity would be engaged.

21. Investors generally paid by check, though at least one purchase of ECO stock was made by wire transfer. ECO made two offers of stock to investors who allowed ECO to use a trailer they owned to transport a Commuter prototype to auto shows. In these offerings, one share was offered for each dollar of transportation cost incurred. ECO sold at least $2,000 of its stock in one of these offerings to an investor for transportation costs incurred.

22. Due to poor communication within ECO and ECO's misapprehension of China's business culture, ECO has not entered into a contract with a Chinese manufacturer to date. Production of the Commuter on the scale discussed in the PPM has not taken place. At least one auto dealership has sued ECO and Joner. The dealership paid ECO $11,000 as a deposit for being awarded a "sales and service agreement." ECO failed to grant the dealership the agreement and failed to deliver vehicles to the dealership. On or around February 9, 2011, the dealership secured a default judgment against ECO and Joner. Furthermore, ECO's investors have not received any return on their purchase of ECO stock.

<u>Misrepresentations and Omissions</u>

23. If ECO's offering had been fully subscribed, ECO would have had approximately $1.253 million in total assets. Respondents did not disclose risks arising from such gross undercapitalization, including but not limited to, complete cessation of operations.

24. The PPM did not identify the costs of bringing a passenger vehicle to market, such as testing and permit acquisition to ensure compliance with regulations enforced by the National Highway Traffic Safety Administration and the Environmental Protection Agency.

25. Respondents did not disclose risks arising from its management personnel's lack of experience in manufacturing and in negotiation with manufacturers.

26. Respondents did not disclose the risk that they might not be able to find a manufacturer that could produce the Commuter at the price presented in the PPM.

27. Respondents did not disclose the possibility of complications (including, but not limited to, delays and litigation) arising from the importation of completed vehicles from a foreign country to at least one investor. Moreover, the PPM did not disclose the requirements for importation of completed vehicles from a foreign country or that ECO had not obtained the permits needed to import completed vehicles when the offering began.

28. Respondents did not disclose what precautions ECO had taken to ensure that ECO did not violate other parties' intellectual property rights or what precautions ECO had taken to ensure that any intellectual property created by ECO was properly protected, despite the fact that stock had been issued as compensation for contributing such intellectual property. Moreover, the PPM did not identify the intellectual property for which stock was given.

29. ECO had no basis to support its representation in the PPM that the Commuter would likely achieve a fuel efficiency of eighty miles per gallon, later amending that figure in communications with investors.

30. Respondents did not disclose the significant points of the letter of intent discussed in paragraph thirteen of the Findings of Fact (including, but not limited to, the identity of the Chinese

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manufacturer) in the PPM and failed to disclose such significant points verbally to at least one investor prior to his investment in ECO.

31. Respondents did not provide investors current financial statements for ECO. At least one investor bought ECO stock when the financial statements in the PPM were over one year old. Furthermore, the entry of $149,225 due to shareholders on loans made to ECO on the balance sheet was inaccurate. The correct amount due to shareholders on loans made to ECO prior to the beginning of the offering was in excess of $300,000.

32. The $5,000 cost per vehicle to ECO included in the PPM and discussed in paragraph sixteen of the Findings of Fact did not include the cost of quality control, warranty, duty, and product liability insurance. ECO estimated that these expenses would increase ECO's cost per vehicle by $1,092 for Commuters with manual transmissions, and by $2,117 for Commuters with automatic transmissions.

33. Respondents did not disclose the assumptions underlying its representation that the Commuter would be marketed to the public "through strategic placement in major motion pictures and television" and had no basis to expect that they could successfully achieve such product placement. When ECO included that statement in the PPM, Joner had only held casual conversations with people who had attempted such product placement. Moreover, Respondents did not disclose that the auto manufacturers with whom ECO would compete for product placement opportunities, such as Ford and General Motors, have significantly greater resources and connections to the entertainment industry than ECO.

34. Respondents did not disclose material facts concerning the entities that would be ECO's "partners" as discussed in paragraph twenty of the Findings of Fact. Respondents did not disclose those entities' key personnel, financial states, or explain why they were qualified to work with ECO. Furthermore, Respondents failed to disclose that one of the identified partners, Awto Solutions Consultants, Inc., was

owned by Joner and was administratively dissolved by the Washington Secretary of State's office on March 1, 2007, eight months before the date of the PPM.

35. The statement in the PPM that Joner was a "successful entrepreneur" was misleading. Respondents failed to disclose that in the three years prior to the date of the PPM, Joner had been sued for consumer debts at least twice and that Joner's credit union sued him in 2004 after paying an overdraft on Joner's account in excess of $10,000 for which Joner failed to reimburse the credit union. Moreover, Respondents failed to disclose that a former partner of Joner's sued Joner and others in 1994, asserting rights to property of the business he formed with Joner. This partner secured a default judgment against Joner that Joner did not satisfy until 2006.

36. Although Respondents claimed to be making the offering pursuant to Regulation D, they did not disclose that ECO had not filed a Notice of Exempt Offering with the Securities and Exchange Commission or with the Securities Division.

37. Respondents did not discuss shareholders' voting rights with investors prior to receiving their funds.

<u>Registration Status</u>

38. ECO Motor Company, Inc. is not currently and has not previously been registered to sell its securities in the State of Washington and has not filed a claim of exemption from registration.

39. David Joner is not currently registered as a securities salesperson or broker-dealer in the State of Washington and has not previously been so registered.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the following Conclusions of Law are made:

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1. The offer or sale of stock described above constitute the offer and/or sale of a security as defined at RCW 21.20.005(14) and (17), formerly RCW 21.20.005(10) and (12).

2. The offer and/or sale of said securities is in violation of RCW 21.20.140 because no registration for such an offer and/or sale is on file with the Securities Administrator of the State of Washington.

3. The offer and/or sale of said securities were in violation of RCW 21.20.010 because, as described in paragraphs twenty three through thirty seven of the Findings of Fact, Respondents made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

4. David Joner has violated RCW 21.20.040 by offering or selling said securities while not registered as a securities salesperson or broker-dealer in the State of Washington.

FINAL ORDER

Based upon the foregoing and finding it in the public interest:

IT IS HEREBY ORDERED that Respondents ECO Motor Company, Inc. and David Joner and their agents and employees shall each cease and desist from offering and/or selling securities in any manner in violation of RCW 21.20.140, the section of the Securities Act of Washington requiring registration.

IT IS FURTHER ORDERED that Respondents ECO Motor Company, Inc. and David Joner and their agents and employees shall each cease and desist from violating RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.

IT IS FURTHER ORDERED that Respondent David Joner and his agents and employees shall each cease and desist from violating RCW 21.20.040, the broker-dealer and securities salesperson registration section of the Securities Act of Washington.

IT IS FURTHER ORDERED that Respondents ECO Motor Company, Inc. and David Joner shall be jointly and severally liable for and shall pay a fine of $10,000.

IT IS FURTHER ORDERED that Respondents ECO Motor Company, Inc. and David Joner shall be jointly and severally liable for and shall pay investigative costs of $5,000.

AUTHORITY AND PROCEDURE

This FINAL ORDER is entered pursuant to the provisions of RCW 21.20.110 and 21.20.390, and is subject to the provisions of RCW 21.20.120 and Chapter 34.05 RCW. Respondents have the right to petition the superior court for judicial review of this agency action under the provisions of Chapter 34.05 RCW. For the requirements for Judicial Review, see RCW 34.05.510 and sections following. Pursuant to RCW 21.20.395, a certified copy of this Order may be filed in Superior Court. If so filed, the clerk shall treat the Order in the same manner as a Superior Court judgment as to the fine, and the fine may be recorded, enforced, or satisfied in like manner.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

SIGNED and ENTERED this ___5th__________ day of ______December____________________ 2011.

William M. Beatty
Securities Administrator

Approved by:

Suzanne Sarason
Chief of Enforcement

Presented by:

Edward R. Thunen
Enforcement Attorney