

**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OZDEN AUTO REPAIR, MUSTAFA OZDEN, Owner,

Automotive Repair Dealer Registration No. ARD 258691

Smog Check Station License No. RC 258691

Lamp Station License No. LS 258691, Class A

Brake Station License No. BS 258691, Class C

and

MUSTAFA OZDEN,

Smog Check Inspector License No. EO 134514

Smog Check Repair Technician License No. EI 134514

Brake Adjuster License No. BA 134514, Class C

Lamp Adjuster License No. LA 134514, Class A

Respondents.

Case No. 77/17-13202

OAH No. 2019071021

PROPOSED DECISION

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter remotely on September 30 and October 1, 2020.

Michael B. Franklin, Deputy Attorney General, represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair.

Michael B. Levin, Attorney at Law, represented respondent Mustafa Ozden, who was present throughout the hearing.

The matter was submitted for decision on October 1, 2020.

FACTUAL FINDINGS

1. Complainant Patrick Dorais filed the Accusation in his official capacity as Chief of the Bureau of Automotive Repair (Bureau or BAR), Department of Consumer Affairs.

2. Respondent Mustafa Ozden, Owner, doing business as Ozden Auto Repair, (respondent), holds Automotive Repair Dealer Registration No. ARD 258691 (registration) issued on July 2, 2009, and Smog Check Station License No. RC 258691 (station license) issued on September 1, 2009. The facility is located at 864 23rd Street,

Richmond. The registration and station license will expire on June 30, 2021, unless they are renewed. On August 13, 2013, the Bureau certified respondent as a STAR Station and the certification will remain active unless the registration and/or station license is revoked, canceled, the licenses become delinquent or the certification is invalidated.

3. On July 14, 2010, the Bureau issued Lamp Station License No. LS 258691, Class A, and Brake Station License No. BS 258691, Class C, to respondent. These licenses will expire on June 30, 2021, unless renewed.

4. In 2001, the Bureau issued an advanced emission specialist license to respondent Mustafa Ozden (respondent Ozden). In January 2014, the license was renewed as Smog Check Inspector License No. EO 134514 and Smog Check Repair Technician License No. EI 134514. The smog check inspector license and smog check repair technician license will expire on January 31, 2022, unless renewed.

5. In 2000, the Bureau issued Lamp Adjuster License No. LA 134514, Class A, and in 2001, the Bureau issued Brake Adjuster License No. BA 134514 to respondent Ozden. On February 8, 2006, both licenses were revoked. Respondent Ozden reapplied and the brake adjuster license was re-issued on April 19, 2010, and the lamp adjuster license was re-issued on June 21, 2010. These licenses will expire on January 31, 2022, unless renewed.

Undercover Operation No. 1, November 14, 2017

6. A Bureau representative documented a 1997 Acura to fail brake and lamp inspections. The Bureau representative installed undersized left front and right rear brake rotors and rendered the right front headlight out of adjustment. In that condition, the vehicle could not pass a brake or lamp inspection.

7. On November 14, 2017, a Bureau undercover operator drove the 1997 Acura to the facility for smog, brake, and lamp inspections. The undercover operator was given an estimate that did not list the individual costs for the brake and lamp inspections. A licensed smog technician performed a smog check inspection which passed. Respondent Ozden performed the lamp and smog inspections. He walked around the vehicle, checked the torque on the lug nuts and he used a flashlight to inspect the undercarriage of the vehicle. He did not remove the wheels to perform the brake inspection.

8. Following the inspections, respondent Ozden gave the undercover operator an invoice, a smog check vehicle inspection report, a certificate of compliance brake adjustment certificate (brake certificate) and a certificate of compliance lamp adjustment certificate (lamp certificate). The brake certificate had the boxes checked for satisfactory condition of the brake lining shoes and drums/rotors which requires removal of the wheels to confirm. The invoice did not include the correct ARD registration number, failed to state the separate labor prices for the brake and lamp inspections, failed to list that the brake and lamp certificates were issued, failed to state what kind of certificate a \$8.25 charge was for, and failed to list the subtotal for labor for the brake, lamp, and smog inspections. The undercover operator paid \$168, retrieved the vehicle, and left the facility.

9. Upon reinspection of the Acura on November 29, 2017, a Bureau representative found that the vehicle still failed the brake inspection because of the undersized left front brake and right rear brake rotors and the vehicle failed the lamp inspection because the right front headlight was still out of adjustment. The vehicle was still not in a condition to receive the lamp and brake certificates.

Undercover Operation No. 2, April 5, 2018

10. A Bureau representative documented a 2005 Toyota to fail brake and lamp inspections. The Bureau representative installed undersized right front and left rear brake rotors and rendered the right front headlight out of adjustment. In that condition, the vehicle could not pass the brake or lamp inspections.

11. On April 5, 2018, a Bureau undercover operator drove the 2005 Toyota to the facility for smog, brake, and lamp inspections. The undercover operator was given an estimate that did not list the individual costs for the brake and lamp inspections. A licensed smog technician performed a smog check inspection which passed.

12. An unidentified male employee performed the brake and lamp inspections. The employee checked the exterior lights by walking around the vehicle with the headlights and emergency flashers on. The employee raised the Toyota onto a lift, checked the lug nut torque on all four wheels and inspected the undercarriage of the vehicle with a flashlight. The employee adjusted the headlights with an optical-type headlight aimer; he did not remove the wheels from the vehicle to perform the brake inspection. Respondent Ozden did not perform the brake and lamp inspections on the vehicle and he remained at his desk/counter.

13. Following the inspections, respondent Ozden gave the undercover operator an invoice, a smog check vehicle inspection report, a brake certificate and a lamp certificate. The brake certificate had the boxes checked for satisfactory condition of the brake lining shoes and drums/rotors which requires removal of the wheels to confirm. The invoice did not include the correct ARD registration number, failed to state the separate labor prices for the brake and lamp inspections, failed to list that the brake and lamp certificates were issued, failed to state what kind of certificate the

\$8.25 charge was for, and failed to list the subtotal for labor for the brake, lamp, and smog inspections. The undercover operator paid \$160, retrieved the vehicle, and left the facility.

14. Upon reinspection of the Toyota on April 9, 2018, a Bureau representative found that the vehicle still failed the brake inspection because of the undersized right front brake and left rear brake rotors. The vehicle was still not in a condition to receive the brake certificate. The vehicle passed the lamp inspection because the right front headlight was in specification.

Undercover Operation No. 3, October 28, 2018

15. A Bureau representative documented a 2002 Honda to fail brake and lamp inspections. He installed undersized left front and right rear brake rotors and rendered both front headlights out of adjustment. In that condition, the vehicle could not pass the brake or lamp inspections.

16. On October 28, 2018, a Bureau undercover operator drove the 2002 Honda to the facility for smog, brake, and lamp inspections. The undercover operator was given an estimate that did not list the individual costs for the brake and lamp inspections. A licensed smog technician performed a smog check inspection which the vehicle passed.

17. An unidentified male employee performed the brake and lamp inspections. The employee checked the exterior lights by walking around the vehicle with the headlights and emergency flashers on. He raised the Honda onto a lift and checked the lug nut torque on all four wheels. He did not look at the undercarriage of the vehicle. The employee adjusted the headlights with an optical-type headlight

aimer. The employee did not remove the wheels from the vehicle to perform the brake inspection. Respondent Ozden remained at his desk/counter and did not perform the lamp or brake inspections.

18. Following the inspections, respondent Ozden gave the undercover operator an invoice, a smog check vehicle inspection report, a brake certificate and a lamp certificate. The brake certificate had the boxes checked for satisfactory condition of the brake lining shoes and drums/rotors which requires removal of the wheels to confirm. The invoice did not include the correct ARD registration number, failed to state the separate labor prices for the brake and lamp inspections, failed to list that the brake and lamp certificates were issued, failed to state what kind of certificate the \$8.25 charge was for, and failed to list the subtotal for labor for the brake, lamp, and smog inspections. The undercover operator paid \$160, retrieved the vehicle, and left the facility.

19. Upon reinspection of the Honda on November 9 and 16, 2018, a Bureau representative found that the vehicle still failed the brake inspection because of the undersized left front brake and right rear brake rotors. The Bureau representative found that although the headlights had been adjusted, they were still out of specification. The vehicle was still not in a condition to receive the brake or lamp certificate.

20. An Accusation was issued and respondents filed timely appeals.

21. At hearing, Gregory Bernes, BAR Program Representative, explained that it is the duty of a facility to verify that all lamps and brakes operate properly during inspections before issuing certificates. A proper brake inspection requires removal of the wheels, performing measurements of the brake pads and rotors with an

instrument, conducting a visual inspection, and operating the vehicle to verify that it can stop safely within a designated distance. A proper lamp inspection requires the use of a headlight aiming device to verify that the lights are within specifications. A technician signs and dates the lamp and brake inspection certifications under penalty of perjury.

According to Bernes, there were only two licensed technicians associated with the facility during the relevant period. Respondent Ozden signed the brake and lamp certificates and not the unlicensed person who actually performed the brake and lamp inspections. During an interview with Bernes, respondent Ozden confirmed that he was the only licensed brake and lamp adjuster at the facility. Therefore, his statements that he had performed the inspections were not truthful. Respondent Ozden did not say that he supervised anyone during the inspections. In any event, BAR does not permit a licensee to supervise an employee who performs an inspection and then sign the certification as if he had performed it.

Bernes confirmed that there are some vehicles that do not require the removal of the wheels to take the measurements required for a proper brake inspection because they have brakes large enough to be visible. However, none of the undercover vehicles' brakes were visible without removing the wheels.

Prior Disciplinary Considerations

22. On February 8, 2006, a decision in the matter of Accusation 77/05-53 became effective and revoked respondent Ozden's brake and lamp adjuster licenses. His technician license was revoked and placed on probation for three years. The underlying facts were that respondent was employed as a manager at a lamp and brake inspection facility. The Bureau conducted undercover investigations at the

facility. An unlicensed individual performed the brake and lamp inspection, and respondent contended that the unlicensed individual was merely a helper. It was determined that respondent Ozden had aided and abetted an unlicensed person to fraudulently issue three brake certificates and three lamp certificates.

23. On June 10, 2009, the Bureau issued a citation to respondent Ozden for issuing a smog certificate of compliance to an undercover vehicle with a missing fuel evaporative canister. On November 24, 2009, the Bureau issued another citation to respondent for issuing a smog certificate of compliance to an undercover vehicle with the ignition timing adjusted beyond specification.

Respondents' Evidence

24. Respondent Ozden has owned the facility for 11 years. He performs approximately two lamp and brake inspections daily. He employs one smog technician and an unlicensed automobile mechanic who has extensive experience and knowledge on rebuilding engines and transmission work.

25. According to respondent Ozden, he performs the brake and lamp inspections and his mechanic assists him. The mechanic has worked at the facility for five years and respondent trusts his work. Respondent states that he can see the testing bay from his desk/counter. He has the mechanic remove the wheels from the vehicles and respondent conducts the inspections. When necessary, he uses a flexible induction connection with a camera to conduct inspections and there is no need to remove the wheels. However, he estimates that 70 percent of the vehicles that he inspects do not require the removal of the wheels. As part of his inspections, the vehicle is placed on a scissors lift so that respondent can conduct a visual inspection of the vehicle's undercarriage.

Respondent Ozden stated that he performs the lamp inspections “most of the time,” and he tells the mechanic what to do and how to make the adjustments and respondent signs the certificate. Respondent insists that he is always in the facility with the mechanic.

26. Respondent Ozden wants to continue operating his business and seeks to be placed on probation. He stated that he would have expected a warning from BAR in order to give him an opportunity to correct his mistakes. He needs to support his family. He believes that this process has not been fair. If he is allowed to keep his licenses, he promises to conduct brake and lamp inspections by appointments only and he will spend the time and provide more detail in his work orders. He insists that he will remove all the wheels for every inspection. He admits that he will still have assistance from his mechanic who will set up the vehicles and remove the wheels. Respondent also promised to perform all lamp inspections on all vehicles.

Respondent Ozden acknowledged that if the mechanic performed the inspections and respondent signed the certifications, then that is a violation. Respondent accepts that he made mistakes, if BAR says that he made mistakes. He states that he is the only person running the shop and did not spend enough time on the inspections and he will be more cautious in the future and he has learned his lesson.

Respondent Ozden requests that BAR consider that given the large number of inspections that he performs annually, these are the only three documented cases, and he has failed numerous other vehicles.

27. Respondent Ozden provided several character letters including from his daughter; customers John Herriman, Ikram Shah, Mutlu Ozer, Jaime Gonzalez, and

Jaime Romo; Frank Sieger, his former professor at John F. Kennedy University; and a business partner, Elson Chan. They described respondent as a skilled and knowledgeable mechanic who carefully explains all costs and charges for parts and labor. They also described him as honest, professional, friendly, a hard worker, polite, and providing quality service.

Costs

28. The Bureau certified investigation costs in the amount of \$6,618.50, and Department of Justice prosecution costs in the amount of \$11,153.75. The costs of investigation and enforcement are reasonable and were established pursuant to the appropriate certifications that comply with California Code of Regulations, title 1, section 1042, subdivisions (b)(2) and (b)(3). The costs amount to a total of \$17,772.25.

LEGAL CONCLUSIONS

1. The standard of proof applied in deciding this matter is preponderance of the evidence. (*Imports Performance et al. v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.)

Respondent's Automotive Repair Dealer Registration

FIRST, EIGHTH, AND SEVENTEENTH CAUSES FOR DISCIPLINE (UNTRUE OR MISLEADING STATEMENTS)

2. Business and Professions Code section 9884.7, subdivision (a)(1), authorizes the suspension, revocation or placing on probation of an automotive repair dealer registration for the acts or omissions related to conducting the business of the

automotive repair dealer which are done by the dealer, technician, employee, partner, or officer of the automotive repair dealer, including if an automotive repair dealer makes or authorizes any statement that the dealer knows, or in the exercise of reasonable care should have known, is untrue or misleading.

3. Cause exists, pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), to discipline respondent's registration. Specifically, respondent, as an automotive repair dealer, knew or should have known, that untrue or misleading statements were made with the issuance of the brake and lamp certificates, in that three vehicles were certified when they could not legally pass brake and/or headlight inspections, as set forth in Factual Findings 6 through 9 regarding the 1997 Acura (first cause for discipline), Factual Findings 10 through 14 regarding the 2005 Toyota (eighth cause for discipline), and Factual Findings 15 through 19 regarding the 2002 Honda (seventeenth cause for discipline).

SECOND, NINTH, AND EIGHTEENTH CAUSES FOR DISCIPLINE (FRAUD)

4. Business and Professions Code section 9884.7, subdivision (a)(4), authorizes the suspension, revocation or placing on probation of an automotive repair dealer registration for the acts or omissions related to conducting the business of the automotive repair dealer which are done by the dealer, technician, employee, partner, or officer of the automotive repair dealer, including, if an automotive repair dealer engages in any conduct that constitutes fraud.

5. Cause exists, pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), to discipline respondent's registration. Specifically, respondent, as an automotive repair dealer, issued certificates of compliance without performing the necessary inspections, adjustments, and repairs in compliance with the Bureau's

regulations, as set forth in Factual Findings 6 through 9 regarding the 1997 Acura (second cause for discipline), Factual Findings 10 through 14 regarding the 2005 Toyota (ninth cause for discipline), and Factual Findings 15 through 19 regarding the 2002 Honda (eighteenth cause for discipline).

THIRD, TENTH, AND NINETEENTH CAUSES FOR DISCIPLINE (VIOLATIONS OF REGULATIONS)

6. Cause for discipline of respondent's automotive repair dealer registration exists for violating the Bureau's regulations, pursuant to Business and Professions Code section 9884.7, subdivision (a)(6), as that section interacts with California Code of Regulations, title 16, sections 3305, subdivision (a) (failure to perform brake and lamp inspection), 3353, subdivision (a) (failure to list individual costs of brake and lamp inspections on invoice), 3356, subdivision (a)(1) (failure to show the correct ARD registration number on invoice), 3356, subdivision (a)(2)(A) (failure to state labor prices for the brake and lamp inspections on the invoice), 3356, subdivision (a)(2)(B) (failure to list that the brake and lamp certificates were issued on the invoice and failure to state what kind of certificate the \$8.25 charge was for), 3356, subdivision (a)(2)(C) (failure to list the subtotal for labor for the brake, lamp, and smog inspections on the invoice), and 3373 (making false and misleading information on brake and lamp certificates when vehicles did not meet the specifications), as set forth in Factual Findings 6 through 9 regarding the 1997 Acura (third cause for discipline), Factual Findings 10 through 14 regarding the 2005 Toyota (tenth cause for discipline), and Factual Findings 15 through 19 regarding the 2002 Honda (nineteenth cause for discipline).

FOURTH, ELEVENTH, AND TWENTIETH CAUSES FOR DISCIPLINE (FAILURE TO DESCRIBE ALL SERVICE WORK DONE AND PARTS SUPPLIED ON THE INVOICE)

7. Cause exists, pursuant to Business and Professions Code section 9884.8, which requires recording of certain information on the invoice, to discipline respondent's automotive repair dealer registration. Specifically, respondent failed to describe all service work done on the invoice, failed to separately state the price for service work on the invoice, and failed to show the correct ARD registration number on the invoice, as set forth in Factual Findings 6 through 9 regarding the 1997 Acura (fourth cause for discipline), Factual Findings 10 through 14 regarding the 2005 Toyota (eleventh cause for discipline), and Factual Findings 15 through 19 regarding the 2002 Honda (twentieth cause for discipline).

FIFTH, TWELFTH, AND TWENTY-FIRST CAUSES FOR DISCIPLINE (FAILURE TO PROVIDE CUSTOMER WITH WRITTEN ESTIMATE)

8. Business and Professions Code section 9884.9 requires licensees to provide customers with a written estimate containing required information. Cause exists, pursuant to Business and Professions Code section 9884.9, subdivision (a), to discipline respondent's registration. Specifically, respondent failed to provide a customer with a written estimate for labor for a specific job, as set forth in Factual Findings 6 through 9 regarding the 1997 Acura (fifth cause for discipline), Factual Findings 10 through 14 regarding the 2005 Toyota (twelfth cause for discipline), and Factual Findings 15 through 19 regarding the 2002 Honda (twenty-first cause for discipline).

THIRTEENTH AND TWENTY-SECOND CAUSES FOR DISCIPLINE (AIDING AND ABETTING AN UNLICENSED PERSON)

9. Business and Professions Code section 9889.3, subdivision (f), authorizes the Director to impose discipline on a licensee who aids and abets an unlicensed person. Cause exists, pursuant to Business and Professions Code section 9889.3, subdivision (f), to discipline respondent's registration. Specifically, respondent allowed an unlicensed person to perform brake and lamp inspections for purposes of issuing brake and lamp certificates, as set forth in Factual Findings 10 through 14 regarding the 2005 Toyota (thirteenth cause for discipline), and Factual Findings 15 through 19 regarding the 2002 Honda (twenty-second cause for discipline).

Respondent's Brake and Lamp Station and Adjuster Licenses

SIXTH, FOURTEENTH, AND TWENTY-THIRD CAUSES FOR DISCIPLINE (VIOLATIONS OF REGULATIONS)

10. Cause exists, pursuant to Business and Professions Code section 9889.3, subdivision (c), as that section interacts with California Code of Regulations, title 16, sections 3305, subdivisions (a)(1)-(5) (failure to perform brake and lamp inspections) and 3373 (making false and misleading information on brake and lamp certificates when vehicle did not meet the specifications), to discipline respondent's brake and lamp station licenses and respondent Ozden's brake and lamp adjuster licenses for violations of regulations, as set forth in Factual Findings 6 through 9 regarding the 1997 Acura (sixth cause for discipline), Factual Findings 10 through 14 regarding the 2005 Toyota (fourteenth cause for discipline), and Factual Findings 15 through 19 regarding the 2002 Honda (twenty-third cause for discipline).

**SEVENTH, FIFTEENTH, AND TWENTY-FOURTH CAUSES FOR DISCIPLINE (FAILURE
TO PERFORM PROPER BRAKE AND LAMP INSPECTIONS)**

11. Business and Professions Code section 9889.16 authorizes the Director to impose discipline on a licensee who fails to perform a proper brake or lamp inspection. Cause exists, pursuant to Business and Professions Code section 9889.16, to discipline respondent's brake and lamp station licenses and respondent Ozden's brake and lamp adjuster licenses. Specifically, respondent improperly performed brake and lamp inspections for purposes of issuing fraudulent brake and lamp certifications, as set forth in Factual Findings 6 through 9 regarding the 1997 Acura (seventh cause for discipline), Factual Findings 10 through 14 regarding the 2005 Toyota (fifteenth cause for discipline), and Factual Findings 15 through 19 regarding the 2002 Honda (twenty-fourth cause for discipline).

**SIXTEENTH AND TWENTY-FIFTH CAUSES FOR DISCIPLINE (AIDING AND
ABETTING AN UNLICENSED PERSON)**

12. Cause exists, pursuant to Business and Professions Code section 9889.3, subdivision (f), to discipline respondent's brake and lamp station licenses and respondent Ozden's brake and lamp adjuster licenses. Specifically, respondent allowed an unlicensed person to perform brake and lamp inspections for purposes of issuing brake and lamp certifications, as set forth in Factual Findings 10 through 14 regarding the 2005 Toyota (sixteenth cause for discipline), and Factual Findings 15 through 19 regarding the 2002 Honda (twenty-fifth cause for discipline).

Other Matters

13. Business and Professions Code section 9884.7 provides that the Director may discipline the registration for all places of business operated in California by respondent, upon a finding of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer. The evidence established that respondent engaged in repeated and willful violations of the law.

14. Health and Safety Code section 44072.8, provides that when a license has been revoked or suspended under the Motor Vehicle Inspection Program, it constitutes cause to suspend or revoke any additional license issued under the Motor Vehicle Inspection Program. There is no evidence that any other licenses were issued to respondents under the Motor Vehicle Inspection Program.

15. Business and Professions Code section 9889.9, provides that the revocation or suspension of a lamp or brake station license or lamp or brake adjuster license constitutes cause to suspend or revoke any additional license issued under provisions governing lamp or brake adjusters. There is no evidence that any other such licenses were issued to respondents.

Disciplinary Considerations

16. Cause for discipline against respondents having been established, the issue is the appropriate discipline to impose. Under the Bureau's guidelines, the recommended maximum penalty for the most egregious violation is revocation. The Bureau has set forth factors to be considered in determining the appropriate discipline in its Disciplinary Guidelines. Factors in aggravation include: prior warnings from the Bureau; prior office conferences with the Bureau; prior history of citations; prior history

of formal disciplinary action; evidence that the unlawful act was part of a pattern or practice; and evidence of any other conduct which constitutes fraud or gross negligence. Factors in mitigation include: evidence of voluntary participation in retraining; evidence of voluntary purchase of proper diagnostic equipment and manuals; absence of prior disciplinary action; evidence that the violation was not part of a pattern or practice; evidence of retraining and initiation of steps to minimize recurrence; and evidence of substantial measures to correct business practices to minimize recurrence.

17. The factors in aggravation and mitigation have been considered. Respondent Ozden provided some mitigating evidence. However, respondent has demonstrated a pattern of failing to properly perform brake and lamp inspections. It is undisputed that respondent did not remove the wheels to perform brake inspections on the three vehicles. He does not appear to grasp the seriousness of his failure to properly perform brake inspections. The rules and regulations regarding the conduct of brake and lamp inspections are designed to protect the public from harm that can result from the operation of unsafe vehicles. Three undercover vehicles were certified by respondent as thoroughly inspected and safe for operation when they were not. Additionally, respondent failed to list the estimates of the individual costs of the inspections, failed to show the correct registration number, failed to state the separate labor prices, failed to list the subtotal, and failed to state what a specific charge was for. Although these may seem to be minor, they provide additional evidence of his failure to pay attention to statutory requirements.

18. In addition, despite having a prior disciplinary action involving the use of an unlicensed individual to perform brake and lamp inspections, respondent Ozden continues to engage in this practice. His belief that supervising his employee is

sufficient is not borne out by the evidence given that the work performed by his employee did not meet the BAR's regulations. Protection of the public compels revocation of respondents' brake and lamp station licenses and brake adjuster and lamp adjuster licenses.

19. Upon consideration of the record as a whole, it is determined that allowing respondent Ogden to keep the automotive repair dealer registration, smog check station license, and his technician licenses on a probationary basis for a period of three years, subject to appropriate conditions set forth below, will adequately protect the public and impress upon respondent the importance of following the Bureau's required procedures.

Cost Recovery

20. Business and Professions Code section 125.3, provides that a respondent may be ordered to pay the Bureau "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The Bureau's certification constitutes prima facie evidence of its costs, as set forth in Factual Finding 28.

21. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court sets forth standards by which a licensing board must exercise its discretion to reduce or eliminate costs awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his position in this case, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to

pay, and whether the scope of the investigation was appropriate to the alleged misconduct of the licensee.

22. The *Zuckerman* factors have been considered and do not support a reduction of the Bureau's cost recovery in the amount of \$17,772.25. Respondents shall be responsible to pay the total cost recovery.

ORDER

A. Lamp Station License No. LS 258691, Class A, issued to respondent Mustafa Ozden, Owner, doing business as Ozden Auto Repair, is revoked.

B. Brake Station License No. BS 258691, Class C, issued to respondent Mustafa Ozden, Owner, doing business as Ozden Auto Repair, is revoked.

C. Lamp Adjuster License No. LA 134514, Class A, issued to respondent Mustafa Ozden is revoked.

D. Brake Adjuster License No. 134514, Class C, issued to respondent Mustafa Ozden is revoked.

E. Automotive Repair Dealer Registration No. ARD 258691 and Smog Check Station License No. RC 258691 issued to respondent Mustafa Ozden, Owner, doing business as Ozden Auto Repair, are revoked. However, the revocation is stayed and respondent is placed on probation for three years on the following terms and conditions:

1. Obey All Laws

During the period of probation, respondent shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by respondent.

2. Quarterly Reporting

During the period of probation, respondent shall report either by personal appearance or in writing as determined by BAR on a schedule set by BAR, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. Report Financial Interests

Respondent shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by BAR during the period of probation, report any financial interest which respondent may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.

4. Access to Examine Vehicles and Records

Respondent shall provide BAR representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or repairs, up to and including the point of completion. Respondent shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

5. Tolling of Probation

If, during probation, respondent leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondent shall notify BAR in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All provisions of probation other than training requirements and that respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license is conducted or performed during the tolling period.

6. Violation of Probation

If respondent violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary order provided in the decision. Once respondent is served notice of BAR's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

7. Maintain Valid License

Respondent shall, at all times while on probation, maintain a current and active license with BAR, including any period during which suspension or probation is tolled. If respondent's license is expired at the time the decision becomes effective, the license must be renewed by respondent within 30 days of that date. If respondent's license expires during a term of probation, by operation of law or otherwise, then upon renewal respondent's license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active license during the period of probation shall also constitute a violation of probation.

8. Cost Recovery

Respondent shall pay the Bureau \$17,772.25 for the reasonable costs of investigation and enforcement of case No. 77/17-13202. This amount shall be paid to the Bureau within 60 days of the effective date of this decision, unless the Bureau, upon a request from respondent, allows payment to be made in installments. Any agreement for a scheduled payment plan shall require full payment to be completed no later than six months before probation terminates. Respondent shall make payment by check or money order payable to the Bureau of Automotive Repair and shall indicate on the check or money order that it is for cost recovery payment for case No. 77/17-13202. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full cost recovery payment has been made. The Bureau reserves the right to pursue any other lawful measures in collecting on the costs ordered and past due, in addition to taking action based upon the violation of probation.

9. Completion of Probation

Upon successful completion of probation, respondent's affected registration and license will be fully restored without restriction, if respondent meets all current requirements for registration or licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to BAR.

10. License Surrender

Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, respondent may request that the stay be vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.

Respondent may not petition the Director for reinstatement of the surrendered license, or apply for a new license under the jurisdiction of BAR at any time before the date of the originally scheduled completion of probation. If respondent applies to BAR for a license at any time after that date, respondent must meet all current requirements for licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

F. Smog Check Inspector License number EO 134514 and Smog Check Repair Technician License number EI 134514 issued to respondent Mustafa Ozden are

revoked. However, the revocation is stayed and respondent is placed on probation for three years on the terms and conditions set forth below:

1. Obey All Laws

During the period of probation, respondent Mustafa Ozden shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by respondent.

2. Quarterly Reporting

During the period of probation, respondent Mustafa Ozden shall report either by personal appearance or in writing as determined by BAR on a schedule set by BAR, but no more frequently than once each calendar quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

3. Report Financial Interests

Respondent Mustafa Ozden shall, within 30 days of the effective date of the decision and within 30 days from the date of any request by BAR during the period of probation, report any financial interest which respondent may have in any other business required to be registered pursuant to section 9884.6 of the Business and Professions Code.

4. Access to Examine Vehicles and Records

Respondent Mustafa Ozden shall provide BAR representatives unrestricted access to examine all vehicles (including parts) undergoing service, inspection, or

repairs, up to and including the point of completion. Respondent shall also provide BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

5. Tolling of Probation

If, during probation, respondent Mustafa Ozden leaves the jurisdiction of California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction of California, respondent shall notify BAR in writing within 10 days of the dates of departure and return, and of the dates of cessation and resumption of business in California.

All provisions of probation other than training requirements and that respondent obey all laws, shall be held in abeyance during any period of time of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California. All provisions of probation shall recommence on the effective date of resumption of business in California. Any period of time of 30 days or more in which respondent is not residing or engaging in business within the jurisdiction of California shall not apply to the reduction of this probationary period or to any period of actual suspension not previously completed. Tolling is not available if business or work relevant to the probationary license is conducted or performed during the tolling period.

6. Violation of Probation

If respondent Mustafa Ozden violates or fails to comply with the terms and conditions of probation in any respect, the Director, after giving notice and opportunity to be heard may set aside the stay order and carry out the disciplinary

order provided in the decision. Once respondent is served notice of BAR's intent to set aside the stay, the Director shall maintain jurisdiction, and the period of probation shall be extended until final resolution of the matter.

7. Maintain Valid License

Respondent Mustafa Ozden shall, at all times while on probation, maintain a current and active license with BAR, including any period during which suspension or probation is tolled. If respondent's license is expired at the time the decision becomes effective, the license must be renewed by respondent within 30 days of that date. If respondent's license expires during a term of probation, by operation of law or otherwise, then upon renewal respondent's license shall be subject to any and all terms and conditions of probation not previously satisfied. Failure to maintain a current and active license during the period of probation shall also constitute a violation of probation.

8. Completion of Probation

Upon successful completion of probation, respondent Mustafa Ozden's affected license will be fully restored or issued without restriction, if respondent meets all current requirements for licensure and has paid all outstanding fees, monetary penalties, or cost recovery owed to BAR.

9. License Surrender

Following the effective date of a decision that orders a stay of invalidation or revocation, if respondent Mustafa Ozden ceases business operations or is otherwise unable to satisfy the terms and conditions of probation, respondent may request that

the stay be vacated. Such request shall be made in writing to BAR. The Director and the BAR Chief reserve the right to evaluate respondent's request and to exercise discretion whether to grant the request or take any other action deemed appropriate or reasonable under the circumstances. Upon formal granting of the request, the Director will vacate the stay order and carry out the disciplinary order provided in the decision.

Respondent may not petition the Director for reinstatement of the surrendered license, or apply for a new license under the jurisdiction of BAR at any time before the date of the originally scheduled completion of probation. If respondent applies to BAR for a license at any time after that date, respondent must meet all current requirements for licensure and pay all outstanding fees or cost recovery owed to BAR and left outstanding at the time of surrender.

10. Notification to Employer

When performing services that fall within the scope of his license, respondent Mustafa Ozden shall provide each of his current or future employers a copy of the decision and the underlying Accusation before commencing employment. Notification to respondent's current employer shall occur no later than the effective date of the decision. Respondent shall submit to BAR, upon request, satisfactory evidence of compliance with this term of probation.

G. Any additional license issued under the licensing provisions for lamp and brake adjusting stations to respondent Mustafa Ozden is revoked.

H. Any additional license issued under the licensing provisions for lamp and brake adjusters to respondent Mustafa Ozden is revoked.

DATE: October 26, 2020

Signed Copy on File

REGINA BROWN

Administrative Law Judge

Office of Administrative Hearings