

MONTHLY BULLETIN

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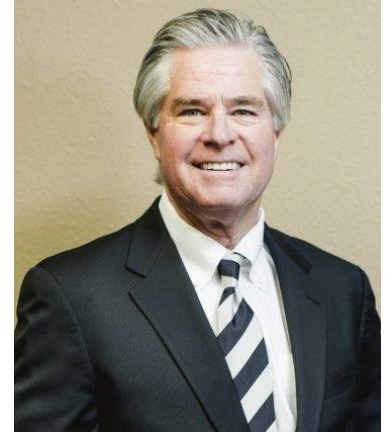
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Chairman's Corner: August Updates

By: Tony Toohey, Auburn Toyota, Chairman, CNCDA

Dear CNCDA Member,

I trust you're all enjoying a productive (and fun) August. As your Chairman, I want to take a moment to express my appreciation for the support CNCDA has received from our 2024 Sponsors. These sponsors and their dedication to our cause have been instrumental in shaping our Association in order to effectively serve our members' needs with a commitment to excellence.



A special thank you to our Diamond Sponsor: Vitu; Platinum Sponsors: Acrisure Dealer Protection Group, ACV Auctions, American Fidelity, Armatus Dealer Uplift, ComplyAuto, Cox Automotive, Epic Insurance Brokers and Consultants, Federated Insurance, National Business Brokers, Reynolds and Reynolds Document Services; Gold Sponsors: Ally Financial Services, Portfolio; and Silver Sponsors: KPA and NADA Retirement.

Their partnerships strengthen CNCDA's efforts to provide top-notch compliance resources, regulatory updates, legislative support, and advocacy efforts for our members. These sponsors are more than supporters; they are allies in our mission, particularly in Sacramento, where we protect and promote dealers' interests at the state Capitol.

I encourage all members to consider exploring opportunities and the services our sponsors provide. Collaborating with them not only enhances your operations but also strengthens our Association.

Additionally, CNCDA is gearing up to commemorate its 100-year milestone in 2024. Please review the following call for submissions notice. I invite you to share any significant achievements and milestones at your dealership with us. Let's celebrate your successes as an integral part of our CNCDA's rich history.

For Dealer Principals: as staff prepares for yearly membership invoicing, please be on the lookout for a personal letter mailed to your dealership. At our last Board of Directors meeting, we discussed the opportunities and legislative effectiveness CNCDA will have with a membership dues increase (spread out over time). We all agreed the Association's need to keep up with rising costs is a huge priority, especially when we realized there hasn't been a dues increase in 12 years. Please take time to read my letter and reach out with questions.

Once again, thank you to our outstanding members and sponsors for your unwavering support and loyalty.

Warm regards,

Tony Toohey
Auburn Auto Group
Chairman, CNCDA

AB 473 Moves to Senate Appropriations

By: Kenton Stanhope, Director of Government Affairs

CNCDA remains in a legislative fight at the State Capitol to protect your dealership. AB 473 (Aguiar-Curry) seeks to protect dealers by updating the franchise laws and stopping the latest abuses by manufacturers on their franchised dealers.

AB 473 will be heard by the Senate Appropriations Committee on August 21. We expect the OEMs to focus their opposition on competition, DC fast charging and subscription provisions to defeat our bill.

We NEED your help! Please [CLICK HERE](#) to call your State Senator to show your SUPPORT for AB 473 before August 18th.

If you want to join the fight to help us pass AB 473, contact CNCDA's Director of Government Affairs, Kenton Stanhope, at kstanhope@cncda.org or (530) 400-8668.

Vehicle Grounded Due to a Recall? Your Rights and Responsibilities

By: Anthony Bento, Chief Legal Officer



Unfortunately, many vehicles that are subject to open recalls do not have an immediate fix. Dealers should know that when this happens, they have important rights and responsibilities.

If the vehicle is new, federal law is clear – you may not sell the vehicle to a customer. However, federal law requires manufacturers to compensate dealers for grounding new vehicles. In particular, 49 USC §30116 (b) states:

“the manufacturer shall reimburse the ... dealer for the reasonable value of the installation [of parts or

equipment] and a reasonable reimbursement of at least one percent a month of the manufacturer's or distributor's selling price prorated from the date of notice of noncompliance or defect to the date the motor vehicle complies with applicable motor vehicle safety standards ... or the defect is corrected.”

In other words, an OEM should pay you at least 1% of MSRP per month for grounding a new vehicle due to an open recall.

If a vehicle is used, the law is less clear. Federal law does not require used vehicles to be grounded if they have an open recall. However, dealers can face liability for selling a used vehicle with an open recall, if they don't disclose the recall status of the used vehicle before the customer buys the vehicle. For example, the California Court of Appeal found that CarMax may have violated California's

Consumer Legal Remedies Act by selling a used vehicle with an undisclosed open recall. (Gutierrez v. CarMax [19 Cal. App. 5th 1234].)

Dealers should also exercise their best judgment when selling used vehicles with an open recall. If you wouldn't want a family member to drive the vehicle, don't sell it.

If you sell a used vehicle with an open recall, you can use a form like Reynolds' LAWCA-RECALL to disclose the recall status of the used vehicle. Using a form to clearly identify the recall status of a vehicle can protect you from potential claims by plaintiffs' attorneys.

Rules Governing Electronic Vehicle Registration in California: A Comprehensive Guide

By: Anthony Bento, Chief Legal Officer



In the state of California, regulations surrounding the collection of the Electronic Vehicle Registration or Transfer Charge (found on line item 1.H. of LAW 553-CA RISC) are stringent. The law strictly forbids dealers from making profits from this charge, as outlined in Vehicle Code section 4456.5(a)(2).

California law sets a cap on the electronic filing charge, tying it to the actual expenses incurred by a dealer for specific services, including license plate processing and temporary license plate creation. The legislation emphasizes that these

charges must not be utilized for unauthorized fees, goods, or additional incentives.

A Brief Historical Context

Understanding these restrictions requires a look back at the history of electronic vehicle registration (EVR). Made virtually compulsory for new car dealers in 2011 through AB 1215, EVR was designed to streamline registration, explicitly forbidding dealers from profiting from it. Consequently, the electronic filing charge emerged solely as a "passthrough" fee. This law also adjusted the document processing charge ("doc fee"), setting different rates for various types of dealers.

However, some first-line service providers (or "EVR providers") began offering unrelated product discounts and rebates to dealers, raising concerns within the CNCDA, as this practice put dealers in a precarious legal position. The original law did not include specific language addressing this issue, prompting a 2016 amendment via AB 605 to rectify this loophole.

Potential Risks for Dealers

If a dealer accepts any financial incentives from an EVR provider, a legal argument could be made that this is akin to unlawfully profiting from the collection of the electronic filing charge. Essentially, customers might assert that they were overcharged, with the overcharge equivalent to the total

financial incentive returned to the dealer. The naming of such incentives doesn't affect this potential liability.

Key Recommendations for Dealers

1. **Compliance with Filing Requirements:** Collect the Electronic Vehicle Registration or Transfer Charge only for electronically filed deals, which should now include almost all transactions.
2. **Limitation on Charges:** The maximum charge for each electronic vehicle registration must be the lesser of the amount your first-line service provider charges you or \$33.
3. **Avoiding Unauthorized Incentives:** Rebates, unrelated service discounts, or any other financial perks are not allowed and should neither be sought nor accepted. If offered, dealers should seek legal guidance from both the service provider's attorney and their own.
4. **Restrictions on EVR Providers:** The law explicitly forbids EVR service providers from making EVR services a prerequisite for receiving discounts on unrelated products/services, consultation fees, or other financial advantages.

By adhering to these guidelines, dealers can avoid unnecessary legal risks and ensure compliance with California's laws governing electronic vehicle registration.

Congratulations to CA's 40 Under 40

By: Autumn Heacox, Communications & Marketing Director



CNCDA congratulates our dealer members who were just named by Automotive News as 40 Under 40 winners for 2023!

Please help us in recognizing the hard work and dedication of Doug Formby (Toyota Marin), Eryn Haugen (Penske Auto Group), Ray Khandan (Stevens Creek Toyota), Ronnie Lownfield (CASA Auto Group), Raed Malaeb, MBA (Westbrook Chrysler Dodge Jeep Ram) Van Nuys), and Savannah Simms (Volvo Palo Alto and McLaren San Francisco)!

We are thrilled you've been recognized as one of California's automotive industry leaders and we appreciate your membership... Cheers!

NESHAP 6H Compliance 2023 Rule Updates

By: Joe Souza, District Manager, EHS Operations – West, KPA

NESHAP 6H REGULATIONS

Compliance Paths

If your facility does surface coating, the U.S. Environmental Protection Agency's (EPA) NESHAP 6H regulations apply. However, knowing what to do can be confusing. Use this guide to make sense of it.

Q: Do you use Hazardous Air Pollutants (HAPs) in your spray coating or painting operations?

YES

If you use HAPs in your operations, you must comply with all NESHAP 6H regulations, including notifications, equipment, maintenance, and training. Effective May 9, 2023, certain notifications must be a part of the EPA's database.

Ready for a change? Because HAPs containing coatings from your operations to be eligible for exemption. Many paint suppliers have "HAP-free" products that help your facility stay compliant.

UNSURE

HAPs are various inorganic coating products including Lead, Nickel, Chromium, Manganese, and Polychlorinated Biphenyls regulated by the EPA's Clean Air Act.

If your paints have HAPs, you need to comply with regulations:

- Review manufacturers' statements to see if they contain HAPs.
- Look at the product's Safety Data Sheet (SDS).

NO

If you can prove that you don't use HAPs in your operations:

- Exempt your operation status to the EPA.
- Maintain an on-site listing of spray coatings.

Not sure what to send?

- Use EPA confirmation of your operation status! Visit EPA's Form for Exemption to the EPA.
- Don't need confirmation? Visit a list of exemptions to the EPA.

Click on the image above to view the full PDF.

The EPA's National Emissions Standard Hazardous Air Pollutants Subpart HHHHHH (NESHAP 6H) Paint Stripping & Miscellaneous Surface Coating Regulations were first created in 2010, updated in 2022, and again this past May. What does that mean? Your coating operations are subject to these rules if they utilize products containing Hazardous Air Pollutants (HAPs).

HAPs are metals such as Lead, Nickel, Cadmium, Chromium, and Manganese, which are known to impact human health. The EPA created NESHAP 6H rules to reduce the emissions of these HAPs from collision center operations.

According to the 2010 rules, facilities using products that contain HAPs in their coating operations must notify the EPA and comply with:

- Training for all surface coating operation employees
- Paint booth filter efficiency
- Paint area and equipment compliance

Effective May 9, 2023, facilities that need to submit new notifications or notifications of changes to operations will need to register in the EPA's Central Data Exchange System (CDX) and submit an electronic report of updates through the EPA's

Compliance and Emissions Data Reporting Interface (CEDRI).

Also, HAPs free coating operations can now submit a "Notification of Exemption" from the rules as opposed to petitioning. Previously facilities that could eliminate HAPs from their operations could petition for exemption from the rules and had to wait for approval.

As collision operations continue to evaluate their NESHAP 6H compliance, they need to keep the following in mind:

- Ensure HAP's products do not sneak back into operations after receiving exemption.
- Contractor coaters that work onsite must meet compliance with 6H rules. It's the employing party's responsibility to ensure all contractors follow the rules.
- Dealers need to evaluate if a "Notification of Change" form regarding changes within their coating operations to the CDX needs submitted. Changes can include ownership changes, paint line, or product changes.
- The EPA has caught on to the deceptive practice of using 3 oz cups as a permanent solution to escape compliance with the rule and is stepping up its enforcement of this practice.

For more information regarding NESHAP 6H compliance, [click here](#) or contact KPA at info@kpa.io.

California Supreme Court Once Again Issues a Decision Undermining the Federal Arbitration Act and Binding Arbitration: What Now?

By: John Boggs, Fine Boggs & Perkins, LLP



Mandatory binding arbitration continues to be among the most dynamic aspects of California's ever-changing employment law. One reason it is so controversial is because binding arbitration is a very important tool to California employers to avoid multi-million-dollar shakedown class action wage and hour lawsuits. On the other hand, destroying arbitration means more shakedown lawsuits and more money for Plaintiffs' lawyers: hence, the great battle.

The hope of employers was that binding arbitration would not only bar class actions, but also bar shakedown Private Attorney General Act ("PAGA") claims. These seemed like a possibility following the June 2022 Viking River Cruises decision from the United States Supreme Court. While the Viking River Cruises decision dismissed the PAGA claims in that case based on preemption by the Federal Arbitration Act, the U.S. Supreme Court left the door open for an attack by California courts or the legislature. The California Supreme Court has now responded to the Viking River Cruises decision and has dealt another blow to binding arbitration. Many hundreds of PAGA cases have been filed against California auto dealers (many repeat cases) since PAGA has been weaponized by California plaintiffs' attorneys and now we expect to see a rise in the filing of such cases.

The Nullification of Viking River Cruises

In Viking River Cruises, the Supreme Court ruled that the current California Supreme Court ruling in *Iskanian* (which held not only that PAGA claims could not be compelled to arbitration, but that California law did not permit parties to waive the right to join claims into a single judicial proceeding) was preempted by the Federal Arbitration Act. Thus, the individual was required to pursue individual relief in arbitration and lacked standing to press claims relating to other aggrieved employees in a judicial PAGA action. Just five weeks after the issuance of Viking River Cruises, the California Supreme Court agreed to review the Viking River Cruises decision by permitting the review of the *Adolph v. Uber Technologies* case.

Now, the California Supreme Court issued its long-awaited decision in *Adolph v. Uber Technologies, Inc.*, holding that an order compelling arbitration of the individual PAGA claims does not strip the plaintiff of standing as an aggrieved employee to litigate claims on behalf of other employees under PAGA. In doing so, the Court disagreed with the U.S. Supreme Court, which held in *Viking River Cruises, Inc. v. Moriana* that the plaintiff lacked standing to litigate PAGA claims on behalf of other employees once the plaintiff's individual claims were ordered into arbitration. The impact of the *Adolph* decision is that employers will still be required to litigate the claims of other employees in court even though the plaintiff's own claims are arbitrated.

What Dealers Can Do Now?

The Adolph decision is another in a long line of cases in which the California Supreme Court has refused to narrow the standing requirements in order to curb abuses of PAGA. Thus, the only realistic relief that employers could achieve from PAGA abuses is through the PAGA reform initiative sponsored by CNCDA.

Given the California Supreme Court's decision to allow employees to pursue PAGA claims despite the binding arbitration agreement and federal preemption by the Federal Arbitration Act, it is more important than ever to support California employers in the ballot initiative to replace PAGA with a better mechanism to redress wage and hours claims. The ballot initiative, led by CNCDA, along with other business groups appears to be the only way that PAGA will be eliminated completely.

In the meantime, dealers should continue using CNCDA's model employment arbitration agreement. Make sure you are using an arbitration agreement with a version that is dated 2022 or later. For those dealers using HR Hotlink, HR Hotlink uses the new agreements.

Also, the reality of this decision is that dealers must comply with all wage and hour laws and be able to prove it. Given that timekeeping violations (including documenting meal periods) and rest period violations are the most frequent bases for PAGA claims, it is more important than ever that dealers make sure they are properly reviewing and remediating timecard issues, as well as meal break and rest period compliance.

The Association and its counsel will continue to follow the developments and will advise you of any changes. If you have specific questions, feel free to contact John Boggs at Fine, Boggs and Perkins LLP at 650.712.8908 or jboggs@employerlawyers.com for the latest available information.

The Showroom Update

By: McKenna Bediamol, Administrative Coordinator



Thank you to Folsom Chevrolet for lending us this *massive* 2023 Chevrolet Silverado F1500 on display in [The Showroom](#)! This vehicle boasts a 3.0L Duramax Turbo Diesel Engine. Drive by 1517 L. St. in Sacramento to get a glimpse!

You can also host an event in The Showroom. It's the perfect event or meeting spot for our colleagues and other groups in Sacramento, offering various amenities such as a video wall, sound system access... and maybe a shiny vehicle display!

If you're interested in displaying your vehicle and advertising your dealership to Sacramento drivers and visitors, or hosting an event, please email Cathy Mason, Director of Operations, at cmason@cncda.org.



MEMBERSHIP AT A GLANCE



Keeping Members Informed

CNCDA stays up-to-date with the latest compliance updates, breaking news, industry issues, & trends. We communicate alerts to our members an average of five times per week.



Policy & Political Advocacy

Our legislative and regulatory affairs team works tirelessly to promote the interests of our dealer members and their customers throughout state government and at the ballot box. We are committed to improving the economic and legal climate to ensure access to modern personal transportation for all Californians.



Educational Webinars & Events

20+

offered to members in 2023.



Legal & Compliance Resources (with in-house attorneys)*

Helping members successfully navigate their dealership operations.

Strength in Numbers

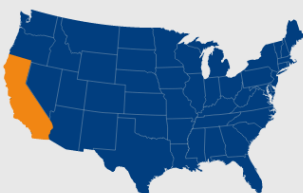


of all California's new car dealers are CNCDA Members.



CNCDA is dedicated to **protecting California's franchised dealer system and the interests of our members.** We continuously evaluate and review the state's franchise laws, safeguarding our dealers against onerous manufacturer requirements.

CNCDA is the Nation's Largest State Auto Dealer Association



Membership Investment

Avg. Dues: \$5/day



For less than a cup of coffee a day, membership delivers a **SIGNIFICANT** return for your dollar.

*Disclaimer: CNCDA does not have an attorney-client relationship with its individual dealer members and therefore cannot offer formal legal advice to dealers. Furthermore, our communications with individual members are not protected by the attorney-client privilege. If you require specific legal advice or other legal services, please contact competent counsel.

Celebrate With Us!



100 YEARS

Celebrate with us as CNCDA marks its 100th year anniversary in 2024!

To honor this historic milestone, we're featuring our members in our various publications throughout the year! If your dealership has celebrated a significant milestone, received accolades or your owner is an award recipient for good works, please share your photos and stories with us to be showcased by our association.

Join the celebration and become part of CNCDA's enduring legacy!

**SEND YOUR
SUBMISSIONS TODAY!**

**communications@cncda.org
(916) 441-2599 x105**



Events



2023 HR Bootcamp Part 3: Discipline Done Right August 17, 2 PM, \$99 for Members

[Click here to register.](#)

Disciplinary actions frequently lead to lawsuits. How you document discipline can be the best evidence to support your defense, or, if done incorrectly, can be the plaintiff's best evidence against you. Proper investigation and documentation is key to winning the battle and avoiding liability. Come join John Boggs and Dave

Reese for Part 3 of the Employment Bootcamp series and learn how to do it right.

CNCDA 2023 Annual Convention Update: State of Emergency in Maui October 8-11, Fairmont Kea Lani, Maui, Hawaii



CNCDA is closely monitoring Maui's State of Emergency. Currently, the Fairmont Kea Lani remains safe and unaffected. We are in close contact with our hotel partners and will continue to monitor and provide updates as they become available.

Our thoughts and condolences are with those whose lives have been affected by this disaster.

[For more information, please visit the County of Maui website.](#)

[For the updates from the Hawaii Tourism Authority, please click here.](#)



All Upcoming Events:



AUGUST 17

HR Bootcamp
Part III
2- 3:30 PM
WEBINAR



OCTOBER 8 - 11

Annual Convention
Fairmont Kea Lani
Maui, HI



DECEMBER 4

New Laws Seminar
8:30- 11:30 AM
NCDA San Diego HQ
San Diego, CA



DECEMBER 5

New Laws Seminar
8:30- 11:30 AM
Hilton Irvine/Orange
County Airport
Irvine, CA



DECEMBER 6

New Laws Seminar
8:30- 11:30 AM
Hilton Garden Inn
Pomona, CA



DECEMBER 7

New Laws Seminar
8:30- 11:30 AM
Sheraton Universal
Universal City, CA



DECEMBER 11

New Laws Seminar
8:30- 11:30 AM
Four Points Sheraton
Pleasanton, CA



DECEMBER 12

New Laws Seminar
8:30- 11:30 AM
DoubleTree by Hilton Hotel
Fresno Convention Center
Fresno, CA



DECEMBER 13

New Laws Seminar
8:30- 11:30 AM
CNCDA HQ
Sacramento, CA



DECEMBER 14

New Laws Seminar
9:30- 11:30 AM
1:30- 3:30 PM
WEBINAR



JANUARY 4

New Laws Seminar
11:00 AM- 1:30 PM
Crown Motors
Redding, CA

STAY UP-TO-DATE

REGISTER FOR EVENTS AT

www.cncda.org/events

Thank You to CNCDA's 2023 Sponsors!

Thank you for investing in CNCDA. We could only accomplish our goals with our committed sponsors' continued support, involvement, and enthusiasm. ***Interested in securing your 2023 CNCDA sponsorship? [Email Rebecca Matulich, Director of Education & Events.](#)***

CNCDA 2023 SPONSORS

DIAMOND



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