

# MONTHLY BULLETIN

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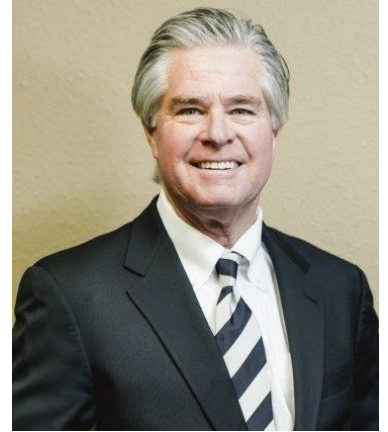
## Chairman's Corner: October Updates

By: Tony Toohey, Auburn Toyota, Chairman, CNCDA

Dear CNCDA Members,

First and foremost, I'd like to express our deepest heartfelt condolences to the entire staff at Berkeley Toyota. We all say time and time again that dealerships are like a family, and even statewide when one of our dealerships hurts, we all feel the pain from this senseless tragedy. **We support your dealership, Berkeley Toyota family, and we are all keeping you at the top of our minds and hearts.**

CNCDA will be addressing how to respond to emergency situations based on new laws that take effect in July of 2024 at our New Laws Seminars this year and we are exploring other educational resources for our members.



On a much, much happier note: Hopefully, you've heard by now that AB 473, CNCDA's motor vehicle franchise bill, was signed by Governor Newsom and will become law January 1, 2024. After months of advocating, negotiating, and engaging with our members, this is a significant victory for dealers across the state and the industry's future.

The passage of AB 473 is a significant step forward in our commitment to a more robust new motor vehicle franchise system for California's new car dealers. Overcoming significant manufacturer opposition, the unanimous passage and signature of AB 473 would not have been possible without the support and guidance from CNCDA leadership and the dedication and engagement of dealer members throughout the state. I want to thank you personally; your help has been invaluable, and because of you, we got this critical bill across the finish line and signed into law.

AB 473 will strengthen and update California's motor vehicle franchise laws by enforcing manufacturer accountability for unlawful treatment of dealers by manufacturers.

Finally, I would also like to thank the author of AB 473, Assemblymember Cecilia Aguiar-Curry (D-Winters). Her steadfast support and commitment to our cause has been second to none. If you know Asm. Aguiar-Curry, personally, please reach out and thank her for being a champion for California dealers.

You can learn more about how AB 473 will impact your dealership next year, new compliance requirements and more at **CNCDA's New Laws Seminars**. Many locations have limited space. Register your team at a location near you ASAP to save your seats.

Thank you for your time, membership, and involvement in our organization and mission.

Best regards,

Tony Toohey  
Auburn Auto Group  
Chairman, CNCDA

## CNCDA Represents Dealer Interests at NAMVBC Conference in Madison

*By: Anthony Bento, Chief Legal Officer*

An important aspect of my job is to provide dealer perspective at key conferences and conventions throughout the country. The National Association of Motor Vehicle Boards and Commissions (NAMVBC) holds one such conference. This year, the conference was held in Madison, Wisconsin.

Every year, NAMVBC convenes panels that include manufacturer, dealer, and government officials to speak about trending issues involving motor vehicle franchise laws. The panels are aimed at educating government officials in attendance on how to evaluate disputes and calibrate regulations impacting dealer/manufacturer relations. This year, several officials from the California New Motor Vehicle Board were in attendance.



In Madison, I had the opportunity to speak on how electric vehicle sales are impacting dealer/manufacturer relations. I emphasized that dealers are committed to selling the electric vehicles their customers want. But I also highlighted how some manufacturer programs create unfair burdens for dealers.

A primary example of this is Ford's Model e program, which requires dealers to build out Ford's public DC fast charging system entirely at the dealer's expense. Other manufacturers may also be interested in using the EV transition to compete unfairly with their franchisees or transform their dealers into agents of the manufacturer.

It's critical for dealer representatives to participate in these meetings, because if we're not there the regulators will only hear the manufacturer's perspective. Last year, I was one of only a handful of dealer representatives in attendance at the NAMVBC conference and the panel speakers were mostly manufacturer representatives. Thankfully, this year many more dealer representatives were in attendance and the panels were much more balanced.

The automotive industry is facing an incredible transformation over the next several decades. Moving forward, CNCDA will continue to advocate on your behalf to hold manufacturers accountable and to create and enforce fair franchise laws. *Pictured (L to R): Bismarck Obando (NMVB), Monica Baumann (Copart), Tim Corcoran (NMVB), Anthony Bento (CNCDA).*

## What is the NADA PAC?

*By: Joshua Heit, Director, NADA PAC*

NADA's political action committee, NADA PAC, is a critical part of NADA's advocacy on Capitol Hill. NADA PAC receives voluntary personal contributions from dealers and managers of NADA-member dealerships and contributes to pro-business candidates for the U.S. House and Senate.



NADA PAC is one of the largest business trade association PACs in the country and is the only PAC representing the interests of all franchised dealers of new cars and trucks. In 2022, NADA PAC raised more than \$2.76 million from more than 1,750 donors.

Of that total, California had 71 donors, contributing \$114,100.

All decisions made by California contributions are made locally. CNCDA and metro ATAEs, California's NADA Directors, Mark Normandin and Matt Browning, Northern California NADA PAC Chair Jessie Dosanjh, and CNCDA Chairman Tony Toohey all participate in calls to determine levels of support for Members of Congress and candidates in California.

If you have any questions, please contact CNCDA or the NADA PAC staff in Washington at 202.627.6755 or [nadapac@nada.org](mailto:nadapac@nada.org). [Click HERE to view more information about the NADA PAC.](#)

### **CNCDA Attends NADA Washington D.C. Conference**

*By: Autumn Heacox, Communications & Marketing Director*

Last month, NADA's Washington D.C. Conference brought together dealers and association leaders from across the U.S. to discuss various developments and challenges facing the automotive industry this year, nationwide.

CNCDA's dedicated members, Mark Normandin, Ted Nicholas, Hilary Haron, Ellena Sweet, John Oh, Kim Mesfin, and Matt Browning, traveled cross-country to meet with California's various congressional

representatives who shape the laws that directly impact our franchised new car dealer members.

Alongside these engaged dealers, the CNCDA team, President Brian Maas, Chief Legal Officer Anthony Bento, and Director of Communications & Marketing Autumn Heacox, engaged in numerous productive interactions with a wide array of Congressional members from both sides of the political spectrum. These conversations were pivotal in influencing the regulatory landscape for our dealer members. Additionally, a NextGen reception was held for members to meet and network.



Congressional Offices CNCDA dealers and staff had appointments with included:

U.S. Senator Alex Padilla, CA, Congresswoman Zoe Lofgren (CA-18), Congresswoman Michelle Steel (CA-45), Congressman Jim Costa (CA-21), Congressman Doug LaMalfa (CA-01), Congresswoman Julia Brownley (CA-26), Congressman David Valadao (CA-22), Congressman Ami Bera, M.D. (CA-06), Congressman John Duarte (CA-13), Congresswoman Linda T. Sánchez (CA-38), Congressman J. Luis Correa (CA-46), House Speaker Kevin McCarthy (CA-20)

Legislation Positions and Summaries:

**FTC REDO ACT** (CNCDA position: Support) This act aims to improve the car-buying experience and reduce paperwork for consumers and small businesses, ultimately enhancing the efficiency of the auto sales process and reducing the time it takes to purchase a vehicle.

**EPA Requirements** (CNCDA position: Oppose) CNCDA is encouraging one nationwide standard for all states to adhere to when implementing (hopefully) a gradual transition to EVs based on consumer demand.

**Supply Chain Disruptions Relief Act** (CNCDA position: Support) This act addresses challenges caused by global disruptions by providing extended time to replace vehicle inventories due to pandemic-related trade interruptions, aiding dealers in replenishing their inventory.

**Fight Rising Catalytic Converter Theft** (CNCDA Position: Support) Specifically in CA, CNCDA proactively passed a legislative solution last year to combat catalytic converter theft while allowing dealers to bill customers for the optional work performed. We support other states and NADA at the federal level in doing the same.

**The So-Called “Right to Repair” Bill** (CNCDA Position: Oppose) We oppose this bill as it may raise concerns about consumer privacy, security, and safety, impacting the automotive industry by compelling manufacturers to share sensitive data with third parties.

Our advocacy efforts during these meetings directly influence federal policies and regulations that significantly impact the livelihood of our dealer members.

By being part of CNCDA, our members gain access to a powerful platform that champions their interests on the national stage, ensuring the continued success of their businesses. We thank all the dealers who took the time to advocate on behalf of all our members.

## Member Spotlight: Inder Dosanjh

*By: CNCDA Staff*

Last month, Inder Dosanjh was recognized by California's New Motor Vehicle Board (NMVB) with a resolution honoring him for his service on the Board and his work in the industry.

Inder Dosanjh started California Automotive Retailing Group in 2003 after a successful career in the automotive industry. He originally started his career in the car business as a mechanic in Modesto, California. Since 2003, because of hard work and dedication, The Dosanjh Family group of dealerships created a strong presence in the San Francisco Bay area, encompassing 17 different manufacturers, including Chevrolet, Chrysler, Dodge, Jeep, Ram, Volkswagen, Cadillac, INFINITI, Nissan, GMC, Acura, Buick, Toyota, Wagoneer, and Ford.



Congratulations, Inder, for all your achievements and for your service to our state on behalf of all franchised California new car dealers; the award is well deserved!

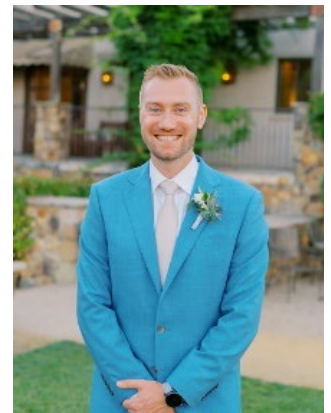
## Meet NextGen Member: Scott Normandin

*By: CNCDA Staff*

Meet NextGen member Scott Normandin, Used Car Manager at Normandin Chrysler Jeep Dodge Ram, San Jose. As part of our Steering Committee, Scott played an integral role in defining our mission and goals at our retreat last month.

His dealership's roots date to 1875, two decades before the advent of the American auto industry, and dates to the horse-and-buggy days. Founder Amable Normandin, a blacksmith and sleigh maker from Montreal, opened it as a buggy-making shop.

Scott is now the sixth generation in his family business, and we couldn't be more grateful for his family's membership and participation in our mission.



## The California Courts and the Legislature Continue the Assault on Binding Arbitration

By: John Boggs, Fine Boggs & Perkins, LLP

CNCDA has been at the forefront of enforcing binding arbitration agreements in California courts for many years. CNCDA believes that binding arbitration is a great benefit to dealers in helping stop class and/or representative claims, such as pursuant to the Private Attorney General Act (PAGA), which pose huge potential liability to Dealers; but are, many times, a mere legalized form of extortion with little to no evidentiary support. Plaintiffs' attorneys and unions have fought hard to get California courts and the legislature to do everything possible to all but destroy binding arbitration as an option for employers.



Recently, we have seen various courts issue anti-arbitration decisions in an attempt to nullify the protections of binding arbitration. The judicial hotspot these days regarding arbitration arises in the context of PAGA claims. California law provides for the assessment of civil penalties against employers who violate wage and hour provisions of the Labor Code. These civil penalties—which typically provide for a recovery per violation per employee—may be recovered by the state's labor enforcement authorities, such as the state Labor Commissioner. However, in 2004, the Legislature passed the Labor Code Private Attorney General Act of 2004 (better known as "PAGA"), which deputizes employees to sue their employers for Labor Code violations to recover these civil penalties on behalf of the state. While the bulk of the civil penalties collected in a PAGA action must be remitted to the state, a portion of the recovery is allocated to the aggrieved employees.

Prior California law under *Iskanian v. CLS Transportation Los Angeles, LLC*, held that, since PAGA actions are prosecuted on behalf of the state of California, no portion of a PAGA claim could be compelled into arbitration under a pre-dispute arbitration agreement with an employer. Thus, plaintiffs' attorneys used PAGA to avoid arbitration agreements and class action waivers, which employers require as a condition of employment.

In June 2022, however, the landscape changed when the United States Supreme Court issued its *Viking River Cruises, Inc. v. Moriana* decision, holding that the Federal Arbitration Act preempted *Iskanian's* rule that "PAGA actions cannot be divided into individual and non-individual claims" where the parties have agreed to arbitrate individual claims. Under *Viking River*, the representative PAGA plaintiff's individual PAGA claims may be compelled into arbitration.

A question apparently left open by the U.S. Supreme Court in *Viking River* was whether the plaintiff, whose individual PAGA claims were compelled into arbitration, retained standing to litigate the representative PAGA claims in court. The high court determined that, at least in that case pending in federal court, the representative claims must be dismissed. However, as highlighted in Justice Sotomayor's concurring opinion, the issue of the state statute's construction on standing is one of state law for ultimate decision by the California Supreme Court.

In *Adolph v. Uber Technologies, Inc.*, the California Supreme Court decided this open question, holding that where a plaintiff has brought a PAGA action comprising individual and non-individual

claims, an order compelling arbitration of the individual claims does not strip the plaintiff of standing as an aggrieved employee to litigate claims on behalf of other employees under PAGA. The Court reasoned that “[a]rbitrating a PAGA plaintiff’s individual claim does not nullify the fact of the [Labor Code] violation or extinguish the plaintiff’s status as an aggrieved employee....”

The *Adolph* opinion left unanswered the question of whether the court proceedings on the non-individual representative claims should be stayed or could proceed at the same time as the arbitration proceedings on the individual PAGA claims. While the Court recognized that trial court proceedings could be stayed until arbitration is complete, *Adolph* did not mandate that a stay of court proceedings be imposed under most circumstances. Indeed, one appellate court opinion has since refused to direct a stay of court proceedings and instead remanded the issue to the superior court to make the stay determination in the first instance. See *Barrera v. Apple American Group LLC*.

Another question left unanswered by *Adolph* is whether an arbitration award on an individual PAGA claim that is decided against the PAGA representative plaintiff will preclude recovery in the court proceedings on the non-individual representative PAGA claims. At least one Court of Appeal decision determined that such an award against the plaintiff would bar recovery in the trial court proceedings. See *Rocha v. U-Haul Co. of California*. However, another Court of Appeal decision in *Gavriloglou v. Prime Healthcare Management, Inc.*, declined to find issue preclusion under analogous circumstances.

In September 2023, the 1<sup>st</sup> District Court of Appeal issued its decision in *Doe v. Superior Court*, in which arbitration fees were due on September 1st and would be deemed late on October 3rd. The employer placed the check in the mail to AAA on September 30th, and the payment was actually delivered to AAA on October 5th. The trial court found, applying the normal mailing rule, that mailing the payment prior to the end of the statute’s 30-day grace period constituted timely payment. The Court of Appeal, however, reversed, holding that the employer materially breached the arbitration agreement by failing to ensure that AAA received the payment by October 3rd. The reasoning was based on the statutory purpose, which was to “deter employers from strategically withholding payment of arbitration fees so that they could no longer stymie the ability of employees to assert their legal rights. To do this, the Legislature established strict breach provisions for nonpayment that did not involve any inquiry into the intent or good faith of an employer or the reasons for nonpayment. Any untimely payment constituted a material breach regardless of the circumstances or status of the arbitration proceedings. The Legislature further sought to provide employees clear guidance in the event of untimely payment and to have such breaches strictly enforced.”

Finally, the California legislature has at least two new bills that are intended to deter binding arbitration. We are waiting to see whether the Governor will sign those bills. If signed, binding arbitration will become even more difficult.

**Bottom line:** Make sure you have the most up-to-date binding arbitration offered by CNCDA. Make sure that all arbitration fee payments are received by the arbitration service provider within 30 days after the due date or you will lose the right to arbitrate. Make sure you file a Petition to Compel Arbitration prior to having your legal counsel do anything in a new case, or you could face a waiver of the right to arbitrate. California is not favorable to binding arbitration. Dealers must do everything correctly in using and enforcing binding arbitration agreements, as any small deviation from the rules could mean denial of arbitration when a lawsuit is filed. Of course, one of the very important things [dealers can do is to support the ballot initiative to repeal PAGA by donating to the campaign](#) to pass

that ballot measure. Dealerships should continue to require arbitration as a condition of employment and, if faced with a PAGA lawsuit, should compel the representative plaintiff's individual PAGA claim into binding arbitration. Although plaintiffs' attorneys are actively seeking to prevent a stay of trial court proceedings, strong arguments exist that the court proceedings on non-individual representative PAGA claims must be stayed until arbitration is complete on the individual claims.

*If you have any questions about employment arbitration, please contact the Association's employment counsel John P. Boggs ([jboggs@employerlawyers.com](mailto:jboggs@employerlawyers.com)) of Fine, Boggs & Perkins, LLP (650.712.8908).*

### The Showroom Update

*By: McKenna Bediamol, Administrative Coordinator*

The Showroom never looked so good in red! We're giving a huge thank you to member, Roseville BMW, for lending us the luxurious BMW 760i xDrive! Offering 4.4-liter, twin-turbo V-8 OR 8 speed automatic powertrains (18/26/21 mpg), you'll certainly cruise around town in style.

The Showroom at CNCDA's HQ is the perfect venue for Sacramento events. CNCDA offers various amenities, including catering, food, and beverage options from local vendors (with an additional fee), and you just might get a stunning vehicle as your backdrop. Reserve The Showroom today.

To host an event, display your vehicle, and advertise your dealership, email Cathy Mason, Director of Operations, at [cmason@cncda.org](mailto:cmason@cncda.org).



### Explore 2024 Sponsorship Benefits

*By: Rebecca Matulich, Director of Education & Events*

CNCDA is **the nation's largest state auto dealer association** with 1,200+ active dealer members. Become a sponsor today!

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View [2024 Sponsorship Opportunities Guide](#) or [email Rebecca Matulich](#).



### CNCDA's 100-Year Celebration

By: Autumn Heacox, Communications & Marketing Director

LAST CALL: CNCDA celebrates its 100th year anniversary in 2024. To honor this historic milestone, **share your dealership story and milestones by filling out [THIS FORM](#)** and email it with any photos to [communications@cncda.org](mailto:communications@cncda.org). We look forward to celebrating YOU in 2024!



## Upcoming Events

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<b>DECEMBER 4, 2023</b> SAN DIEGO	<b>DECEMBER 5, 2023</b> ORANGE COUNTY	<b>DECEMBER 6, 2023</b> POMONA
<b>DECEMBER 7, 2023</b> LOS ANGELES	<b>DECEMBER 11, 2023</b> PLEASANTON	<b>DECEMBER 12, 2023</b> FRESNO
<b>DECEMBER 13, 2023</b> SACRAMENTO	<b>DECEMBER 14, 2023</b> WEBINAR	<b>JANUARY 4, 2024</b> REDDING

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**All Upcoming Events:**

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 <p><b>OCTOBER 8 - 11</b> Annual Convention Fairmont Kea Lani Maui, HI</p>	 <p><b>NOVEMBER 9</b> WIN the Buy/Sell Deal 2:00- 3:00 PM WEBINAR</p>	 <p><b>DECEMBER 4</b> New Laws Seminar 9:00- 11:30 AM NCDA San Diego HQ San Diego, CA</p>
 <p><b>DECEMBER 5</b> New Laws Seminar 9:00- 11:30 AM Hilton Irvine/Orange County Airport Irvine, CA</p>	 <p><b>DECEMBER 6</b> New Laws Seminar 9:00- 11:30 AM Hilton Garden Inn Pomona, CA</p>	 <p><b>DECEMBER 7</b> New Laws Seminar 9:00- 11:30 AM Sheraton Universal Universal City, CA</p>
 <p><b>DECEMBER 11</b> New Laws Seminar 9:00- 11:30 AM Four Points Sheraton Pleasanton, CA</p>	 <p><b>DECEMBER 12</b> New Laws Seminar 9:00- 11:30 AM DoubleTree by Hilton Hotel Fresno Convention Center Fresno, CA</p>	 <p><b>DECEMBER 13</b> New Laws Seminar 9:00- 11:30 AM 1:30- 4:00 PM CNCDA HQ Sacramento, CA</p>
 <p><b>DECEMBER 14</b> New Laws Seminar 10:00- 11:30 AM 2:00- 3:30 PM WEBINAR</p>	 <p><b>JANUARY 4</b> New Laws Seminar 11:30 AM- 1:00 PM Crown Motors Redding, CA</p>	<p><b>STAY UP-TO-DATE</b> REGISTER FOR EVENTS AT</p> <p><a href="http://www.cncda.org/events" style="background-color: #00a0e3; color: white; padding: 5px; border-radius: 10px;">www.cncda.org/events</a></p>

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Please email [Rebecca Matulich](#), Director of Education & Events for more information.

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