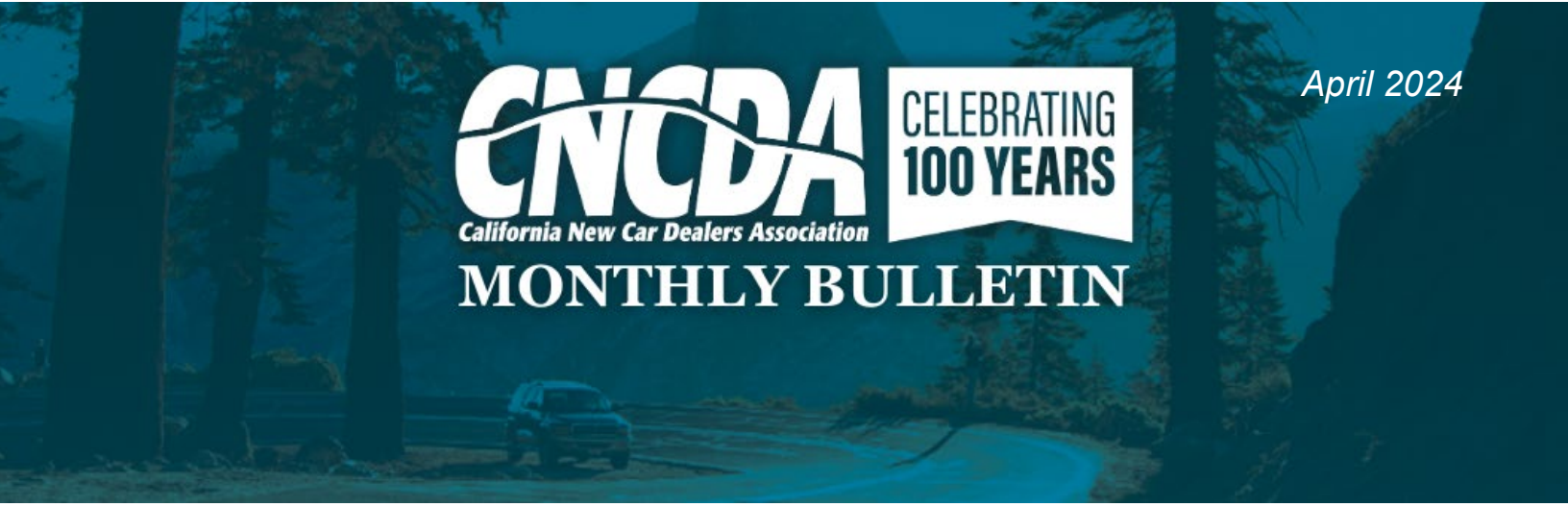


April 2024

Contents

Chairman's Corner

By: David Simpson, Chairman, CNCDA

Dear CNCDA Members,

I would like to extend my heartfelt gratitude to the dealers and sponsors who joined us for our 2024 Dealer Day in Sacramento. Your support and active participation significantly contributed to the success of our annual advocacy day, and I sincerely appreciate your invaluable contributions.

At Dealer Day, we witnessed an impressive display of commitment with 92 dealers taking over 90 legislative meetings within a 2.5-hour timeframe. This participation is truly commendable and underscores the dedication of our members to advancing our industry's interests.

A key focus at Dealer Day centered around the urgent need to fix the Private Attorneys General Act (PAGA). We emphasized the importance of pursuing a legislative solution while maintaining momentum on our ballot measure effort. We demonstrated our strength to the legislature, reinforcing our commitment to effecting meaningful change.

I am particularly pleased to note the strong turnout of over 20 CNCDA NextGen dealers who gathered for a reception the evening before Dealer Day. It was inspiring to see the next generation of dealer leaders coming together to discuss the future of California's automotive industry. As a father, I was proud to have my two sons in attendance, and I am confident that their involvement, along with that of their peers, sets a promising tone for the future of our association.

At the Legislative Roundtable the morning of Dealer Day, we heard perspectives from Assemblymember Josh Hoover, District 7; Assemblymember Laurie Davies, District 74; Assemblymember Damon Connolly, District 12; and longtime association friend, Assemblymember Dr. Jasmeet Bains, District 35. These representatives reiterated the need for our industry to ensure a robust business environment in California.

During the luncheon, we had the privilege of hearing from Assemblymember Cecilia Aguiar-Curry, District 7, Rob Stutzman from Stutzman Public Affairs, and NADA Vice Chairman Thomas Castriota. Their insights into the political landscapes of California and our nation highlighted the crucial economic role franchised dealers play. I also had the honor of paying tribute to my longtime mentor and friend, Richard Stricklen, whose wisdom continues to inspire us all.

In closing, thanks to all who attended 2024 Dealer Day. Your active engagement is vital to our advocacy efforts, and I am grateful for your support. Together, we continue to strengthen our industry and advocate for policies that promote growth. I hope you will join us next year at 2025 Dealer Day.

Warm regards,

David Simpson
Chairman, CNCDA
Simpson Buick GMC Cadillac of Buena Park
Simpson Chevrolet of Garden Grove
Simpson Chevrolet of Irvine

Expanded Dealer Rights at the New Motor Vehicle Board

By: Anthony Bento, Chief Legal Officer

CNCDA's 2023 franchise bill (AB 473) made many significant improvements to California law.

As discussed in greater detail in CNCDA's 2023 Legislative Summary these new dealer protections include:

- Stronger protections against manufacturers competing against their own franchisees
- First-in-the-nation restrictions on OEM EV fast charger requirements
- New rights for dealers to request OEM allocation formulas
- Broader OEM indemnification requirements
- Transparency for OEM vehicle reservation systems

In addition to the rights discussed above, AB 473 expanded dealer rights at the California New Motor Vehicle Board (NMVB). For those of you who are unaware, the NMVB is a state agency that adjudicates disputes between dealers and manufacturers. It's a great resource for dealers that are seeking to enforce their franchise law rights, but the authority for the NMVB to hear protests is limited.

Thankfully, AB 473 expanded dealer rights at the NMVB to include new protests involving the following:

- Unlawful vehicle allocation.
- Unlawful manufacturer policies related to facilities, equipment, or DC fast charging.
- Unlawful manufacturer competition.

Also, in any of the above-mentioned protests, manufacturers have the burden of proof to establish that their policy is lawful, which is incredibly helpful for dealers when they're in the unfortunate position of needing to challenge illegal manufacturer actions.

If you're interested in learning more about your rights under California franchise law, look for information in your inbox shortly to register for our upcoming Franchise Law Webinar, which will be held next month. And as always, you can call our legal hotline at 916-441-2599.

PAGA Reform Update: Advocacy Efforts Underway

By: Autumn Heacox, Director of Communications & Marketing

As CNCDA navigates California's ever-changing legislative landscape, we'd like to keep you informed of collective and ongoing efforts to prioritize reforming California's Private Attorneys General Act (PAGA).

In recent weeks, numerous meetings have been held with legislators, in addition to associations' advocacy days at the Capitol (including our Dealer Day). These discussions have focused on the critical need for fixing PAGA and the detrimental impact it has on California businesses and workers alike.

CNCDA President, Brian Maas, along with our coalition members, have been at the forefront of these conversations, engaging with legislators and emphasizing the urgency of addressing PAGA's flaws. In fact, last week, Brian had the honor of speaking at the California Assisted Living Association's (a new coalition member) Advocacy Day, where he underscored the importance of fixing PAGA to protect businesses and workers in every sector.

New groups continue to join our coalition to lend financial support and advocate for PAGA reform. This amplifies our collective voice and increases pressure on policymakers to act. The coalition is supporting the already-qualified ballot measure to reform PAGA which is eligible for the November 2024 ballot. At the same time, we are fundraising for our public affairs campaign to provide a legislative solution that would avoid the need for a costly ballot campaign.

PAGA's current lawsuit-first approach has proven to be ineffective and burdensome for businesses across the state. Predatory lawsuits, often over minor technical violations, drain resources from non-profits, small businesses, and employers. This system not only hampers our ability to serve our communities effectively but also threatens the viability of essential organizations.

The group is advocating for an end to the lawsuit-first class-action approach and supports expanding existing Division of Labor Standards Enforcement (DLSE) processes. By redirecting resources to the DLSE, we can expedite claim resolution and ensure workers receive fair compensation and employers, like yourselves, are not taken advantage of.

The participation (either financially or in terms of advocacy) from our members directly influences policymakers and strengthens our efforts. Together, we can drive sensible reforms that benefit workers and employers alike.

The deadline for a legislative PAGA deal to occur is June 27, 2024. If an agreement for a solution has not occurred by then, we will shift our focus to November's ballot measure campaign. As always, we will keep members informed of any and all developments as they occur. If you are interested in donating to CNCDA's PAGA Public Affairs Campaign, click HERE.

Claims That Dealers Cannot Charge for Catalytic Converter Marking Are Meritless

By: Anthony Bento, Chief Legal Officer

Recently, we've become aware that some plaintiffs' attorneys are claiming that SB 55 limits the ability of dealers to charge for catalytic converter marking. As background, the legislature last year passed SB 55, which generally requires dealers to pre-mark catalytic converters before sale or offer marking as an optional product. You can read our comprehensive compliance guidance on SB 55 on CNCDA Comply here.

The assertion that dealers cannot charge for catalytic converter marking is meritless. The ability of a dealer to charge for catalytic converter marking is supported by both the text of the bill and legislative history.

A dealer's ability to price catalytic converter marking is implicitly addressed in SB 55 by Vehicle Code section 24020(b)(3), which states that a dealer does not need to mark a catalytic converter if the dealer offers catalytic converter marking as an optional product and the customer declines the offer. Catalytic converter marking must be disclosed as a "body part marking product" in accordance with Sections 2981 and 2982.2 of the Civil Code, which specifically relates to the disclosure of prices of theft deterrent devices on the precontract disclosure statement and installment sales contract. These disclosure requirements (as well as the entire concept of offering the service as an optional product) is inconsistent with the idea that the marking must be free.

Moreover, the legislature clearly contemplated that dealers would charge for this service. For example, a dealer's ability to charge for the service is discussed in the Senate Floor Analysis of SB 55, which states that dealers may charge different amounts for catalytic converter marking depending on the complexity of the service. ("For the more difficult-to-access converters, services will cost more (~$100 or more) and a consumer might prefer to invest in some other anti-theft device.")

In sum, SB 55 does not limit how a dealer prices catalytic converter marking – it simply requires dealers to either mark a catalytic converter prior to sale or provide customers with the *option* to purchase catalytic converter marking at the time of sale. That being said, if a dealer chooses that latter pathway, they should ensure that they're providing customers with a genuine option to purchase the product. For example, a dealer should not require a customer to opt-out of purchasing catalytic converter marking as a requirement to purchase a vehicle.

If you have any questions about this or any other compliance topic, do not hesitate to contact our legal hotline at 916-441-2599.

New Arbitration Agreements Should be Signed When Employee is Rehired or Transferred to Another Dealership

By: John Boggs, Fine Boggs & Perkins, LLP

When a Dealership rehires a former employee or transfers an employee to a sister dealership that is separately incorporated, does the employee's prior agreement to arbitrate disputes follow the employee to his or her new employment? Following the trend of California courts to issue decisions limiting employers' rights to demand binding arbitration of employment-related disputes, the Second District Court of Appeal in Los Angeles recently answered "No" to that question, holding that a rehired employee was not bound by an arbitration agreement signed during her first stint with the company.

When the plaintiff in Vazquez v. SaniSure Corp. was hired in 2019, she signed a stack of "new hire" documents which included a broad arbitration agreement requiring that she and the company submit any disputes for resolution by binding arbitration. She left the company in May 2021, only to be rehired four months later in September. The company did not, however, require that she complete a new set of the "new hire" documents.

Vazquez's second stint of employment with the company ended in July 2022. In October, she filed a class action lawsuit against her former employer, asserting claims that arose solely out of her second stint of employment. The trial court denied the employer's motion to compel arbitration, finding that "SaniSure failed to show that Vazquez agreed to arbitrate claims arising from that stint of employment. Nor did the company show the existence of an implied agreement to submit claims arising from that second stint to arbitration; the agreement covering Vazquez's first stint of employment terminated in May 2021, and there was no evidence that the parties intended it to apply thereafter."

The Court of Appeal affirmed, agreeing with the trial court's conclusion that the original arbitration agreement did not apply to the employee's second stint with the company: *"Vazquez signed arbitration agreements during her first stint of at-will employment with SaniSure. But she revoked these agreements by terminating her employment in May 2021. The causes of action in Vazquez's lawsuit are based on events that allegedly occurred only during her second stint of employment with SaniSure. As SaniSure concedes, Vazquez did not sign a second set of arbitration agreements during that stint of employment. Thus, for her claims to be subject to arbitration, SaniSure must show that the parties agreed that the agreements Vazquez signed during her first stint of employment would apply to her second. [¶] SaniSure has not done so."*

This case highlights the need to follow best employment practices when rehiring an employee. Regardless of whether the Dealership feels it has "current" paperwork on the employee from a prior stint of employment, the Dealership should ensure that the rehired employee completes all onboarding paperwork, including arbitration agreements, at-will employment agreements, pay plans, etc. The same applies when an employee transfers from one Dealership to another. The key is to ensure that the employee is bound by these critical agreements in his or her "new" position with the company.

A Dealership's right to require an employee to arbitrate claims helps to level the playing field in employment litigation. Arbitration is a much more friendly environment for employers to litigate employment-related claims as it places a retired judge in charge of making decisions instead of relying on the "lottery wheel of justice" that is the jury system. Having a binding arbitration agreement also helps stop class and other collective claims, so overall it significantly reduces legal risk, especially for high-profile cases. Ensuring that a binding arbitration agreement exists will ensure that these benefits of arbitration are not lost by a Dealership.

The association and its counsel will continue to monitor the developments and notify dealers if anything changes. If you have specific questions, contact John Boggs at Fine, Boggs, and Perkins LLP at 650.712.8908 or jboggs@employerlawyers.com for the latest information.

CNCDA's Legal Hotline: Another Member Benefit to Help You Understand and Follow the Law

By: Crissy Hodgson, CNCDA Senior Staff Counsel

It's Monday morning; you get to the dealership, pour a cup of coffee, and settle in for a productive day. Before you can take the first sip, your finance manager pops in to ask you whether she needs to refund the sales tax on a Lemon Law buyback. Then your new salesperson stops by to ask if she can sell a used car with an open safety-recall. Or your office manager asks how long he needs to keep physical copies of service drive records after he has scanned them. At the same time, your EV sales manager is drawing up the contract for a 2024 Ford Escape Plug-in Hybrid and wants to know which line of the 553 to record the $7,500 Federal Clean Vehicle Tax Credit the customer was able to transfer to the dealership. Need answers to these types of questions? CNCDA is here to help!

Members can call CNCDA's legal hotline at (916) 441-2599 or legalhotline@cncda.org for basic compliance information, like answers to the questions above. The hotline is currently staffed by myself, Crissy Hodgson, CNCDA's Senior Staff Counsel, and supported by Anthony Bento, CNCDA's Chief Legal Officer. I'm happy to answer your legal compliance questions on topics ranging from advertising to sales, financing, insurance, warranties, franchise law, privacy, service, signage, sales and use tax, document retention, etc. For employment law questions, we refer our members to John Boggs and his team at Fine, Boggs and Perkins, LLP, who provide complimentary employment law compliance information to CNCDA members.

Hot topics for the legal hotline in 2024, have included questions about:

- How to submit 2023 Clean Vehicle Tax Credit seller reports to the IRS
- How to sign up for the IRS's new Clean Energy Online system to submit time-of-sale reports for new and used EV sales that qualify for the Federal Clean Vehicle Tax Credit
- California's new catalytic converter marking law
- California's new in-vehicle camera disclosure requirements

If you have a question about legal compliance, call or email us. Although our legal team is small, we strive to respond promptly to member inquiries during CNCDA's business hours.

Please remember, CNCDA does not have an attorney-client relationship with its individual dealer members and therefore cannot offer formal legal advice to dealers through our hotline or otherwise. Our communications with individual members are not protected by the attorney-client privilege. However, if you need legal advice or other legal services, we are happy to provide referrals to qualified attorneys.

If you have any questions, please contact Crissy Hodgson, CNCDA Senior Staff Counsel, at chodgson@cncda.org or call (916) 441-2599 x126.

So, You Decided to Use GPS and Dashcams in Dealership Vehicles to Protect Yourself? Be Careful Not to Jump from the Pot into the Frying Pan

By: John Boggs, Fine Boggs & Perkins, LLP

Dealers in today's California business environment must worry about the risk of lawsuits almost as much as selling and servicing vehicles. Dealers must be vigilant to protect against lawsuits from third parties related to the operation of dealership-owned vehicles, such as a parts delivery truck. We have seen many cases holding employers liable for employee accidents involving dealership-owned vehicles, and, at times, the claims are rejected by insurance companies, leaving the dealership facing the liability on its own.

Given these issues, many dealerships have decided to install GPS and dashcams in their company-owned vehicles to gain an advantage in defending against legal claims and for other legitimate business reasons. But wait: When companies think something is a good idea, usually the government disagrees. And this is certainly the case when it comes to the use of GPS and dashcams. User beware!

The federal government, through the National Labor Relations Board (NLRB), issued a complaint against Stern Produce Company, Inc. charging it with unfair labor practices because it had placed a camera in the company work trucks. The NLRB case revolved around two scenarios. In one, a self-professed union supporter employee received a text from his supervisor after the employee covered the camera during his meal break. The text stated that the company's policy that covering the camera was a violation of company policy. The second incident involved another self-proclaimed pro-union employee who got written counseling for mistreatment of a co-worker. The NLRB concluded that these actions constituted unfair labor practices because they created an impression of surveillance of pro-union activity and were motivated by anti-union animus. While the NLRB has traditionally limited itself to unionized employees, that is no longer the case. The NLRB often now files claims against non-union employers arguing that the same rules apply.

The NLRB has traditionally held that an unfair labor practice occurs if the employer creates the impression that it is monitoring an employee or employees in their pro-union activity. Board precedent also holds that an employer who disciplines an employee because of the employer's "anti-union animus" commits an unfair labor practice. The Board in this case, after examining two brief

workplace incidents, found the employer guilty of two unfair labor practices, one of each type. An unlawful impression of surveillance arises if an employer's conduct would lead a reasonable employee to believe that his "union or other protected activities had been placed under surveillance." The Board found such an impression of surveillance here based on a single phrase in one text message on a subject the manager never mentioned again.

In this case, the employer sought a review of the NLRB's decision before the United States Court of Appeals for the District of Columbia. The appellate court disagreed with the government (NLRB). The Court of Appeals, in large part, based its decision on the well-written disclosure to employees regarding the use of monitoring equipment (in this case a camera, but it would also include a GPS tracker, for example). This case makes clear that if an employer uses technology like dashcams and/or GPS, it should clearly disclose that the monitoring is not intended to monitor protected activities, including any pro-union activities. The appellate court also examined whether the employer would have known that the employee was engaging in pro-union activities at the time and whether the employee had a reasonable, good-faith belief that there was surveillance of union activities. It is very clear from the appellate court's decision that the Board can pursue these claims against employers and may win depending upon whether the proper notices and procedures were followed by the employer.

Also, in California, it is a crime to track the whereabouts of employees without their consent. Thus, the use of GPS technology poses a risk of criminal prosecution if not done properly. Dealers should make clear that GPS tracking is intended to track the vehicle, not the employee. Also, dealers should have a standard consent form signed by all employees who will be subject to having a GPS tracker in vehicles they drive for work.

The lesson for dealers is that if you use dashcams or GPS trackers, make it clear that you are not surveilling the employee's actions but instead have them track and protect property to avoid the risk of liability. Also, make sure that proper disclosures are made in writing to avoid privacy violations. The NLRB has made clear that it intends to pursue claims like this against all employers (not just unionized employers) and the NLRB generally dislikes the use of surveillance technology. Dealers should, therefore, make sure their policies reflect the limitations of the use of surveillance technology and that proper disclosure is made to all employees subject to such technology.

The association and its counsel will continue to monitor the developments and notify dealers if anything changes. If you have specific questions, contact John Boggs at Fine, Boggs, and Perkins LLP at 650.712.8908 or jboggs@employerlawyers.com for the latest information

Legislative Relationship Building 365 Days a Year

By: Kenton Stanhope, Director of Government Affairs

Coming off a very successful Dealer Day, many of you are looking for ways to keep the momentum going and build relationships with your elected officials. The following are some quick tips on relationship building year-round:

- **Click "like."** Follow your elected officials on social media and interact with their posts.
- **Take action!** Be sure to respond when you receive a legislative alert from CNCDA asking

for you to send an email or make a phone call to your legislator's office.

- **Sign up.** Go to your elected official's website and sign up for their newsletter.
- **Keep them in the loop.** Send the legislator email updates on your dealership and things that you are doing in the community. The best way to contact them will be located on their website.
- **Support.** Give a political contribution and attend their fundraisers. Just remember, during fundraisers:
  - DON'T say or imply that the contribution is made in exchange for their support of any legislation, past, present, or future.
  - DON'T discuss specific legislation or say that someone else will be by to discuss specific legislation.
- **Extend an invitation**. Invite them to your dealership and give them a tour.
- **Attend.** When your legislator has an event, be there! Like any relationship building, the more exposure, the better.
- **Partner up.** Hosting a community event such as a toy drive or doing an educational class such as financial literacy webinar? Reach out to the elected official's office and see if they would like to participate.

These are just a few examples of ways to engage. Questions? Please contact Kenton Stanhope, CNCDA Director of Government Affairs, at kstanhope@cncda.org or Andrea Daugherty, CNCDA Political Engagement Manager, at adaugherty@cncda.org.

CNCDA PAC: How We Punch Outside Our Weight Class

By: Andrea Daugherty, Political Engagement Manager

Strategic advocacy efforts equal a strong dealer voice in our state Capitol. These efforts simply cannot be achieved without the direct support of our dealer principals. One of the most effective tools in our tool chest is a robust political action committee.

The California New Car Dealers Association Political Action Committee (CNCDA PAC) is the political arm of the California New Car Dealers Association. Its sole purpose is to elect candidates who truly understand the important role business plays in our state and the positive impact it has on the economy. As it becomes increasingly difficult for companies to do business in California, it is vital that we help elect candidates who understand and support us.

The CNCDA PAC receives political contributions from dealerships throughout the state and uses those funds to support dealer-friendly officeholders and candidates running for state office. These funds are separate from dues and need your direct support to ensure this account is strong.

How you can help:

- If your dealership hasn't done so already, make your PAC contribution today!
- Already a donor? THANK YOU! We appreciate your support. We still need your help. We hope you will join the **Chairman's Club** or level up with an additional contribution.

- **You will receive a personalized email this month indicating how far away you are from the next Chairman's Club level. When you get the email, please take action!**
- **A list of Chairman's Club donors will be featured in our May bulletin.**

The recent Primary elections have significantly impacted our PAC reserves. The time to act is NOW. Your contribution is needed more than ever. Join your peers in making a difference!

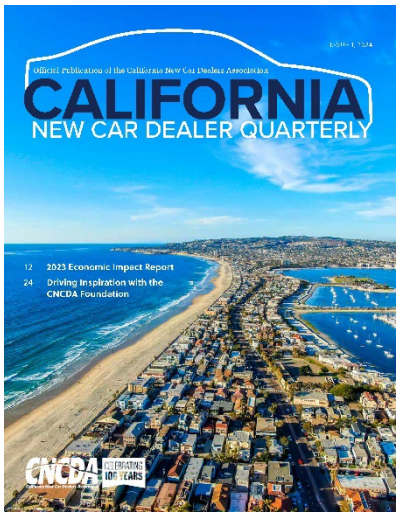
Do you have questions about the PAC or contributing? Please contact Andrea Daugherty, CNCDA Political Advocacy Manager, at adaugherty@cncda.org.

Q1 2024 California New Car Dealer Quarterly Magazine

By: Autumn Heacox, Director of Communications & Marketing

Please be on the lookout for our next issue of California New Car Dealer Quarterly, hitting mailboxes now. Featured in this issue:

- Q4 2023 Auto Outlook Report
- Your New 2024 Officers and Board of Directors
- Our 2023 Annual Economic Impact Report
- A Special Thank You to Our Yearly Sponsors
- Required Inspections at Your Dealership
- Driving Inspiration with the CNCDA Foundation



A digital copy of the magazine can be read here. If you would like a print version, please email me, aheacox@cncda.org, and we will send you one right away. Thank you!

ElectrifiQ EV Training Opportunity Only for CNCDA and NADA Members

2024 Dealer Day Recap and Photos

By: CNCDA Staff

CNCDA would like to sincerely thank all the members and sponsors who came to our 2024 Dealer Day in Sacramento last month. To view more photos from the event, please click here.

Upcoming Events

By: Rebecca Matulich, Director of Events & Partnerships

THANK YOU to CNCDA's 2024 and Dealer Day Sponsors

Thanks to our sponsors, CNCDA can protect and promote California's franchise dealers. View 2024 Sponsor Levels or email Rebecca Matulich, Director of Events & Partnerships, for more information.