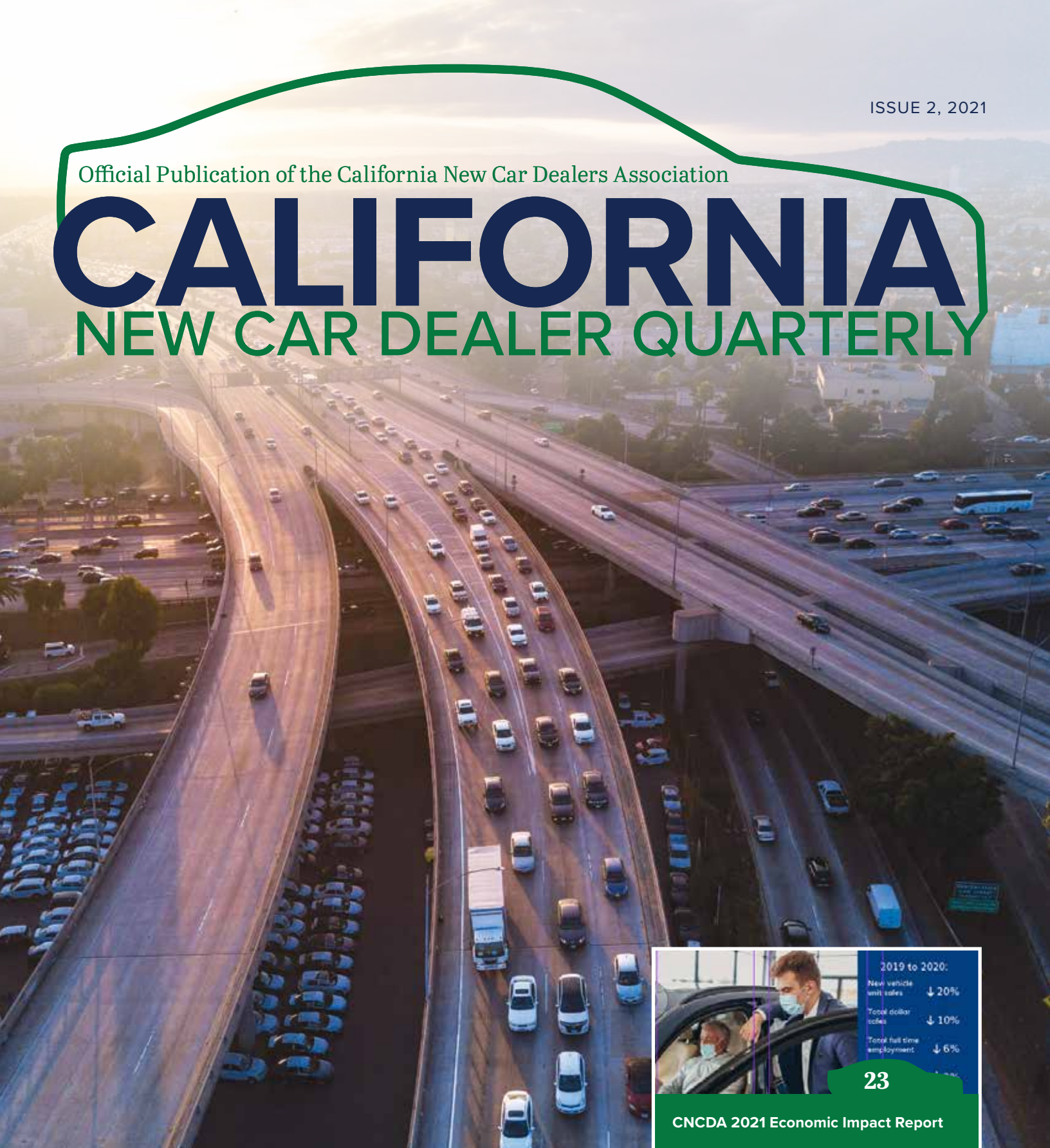


Official Publication of the California New Car Dealers Association

CALIFORNIA

NEW CAR DEALER QUARTERLY



2019 to 2020:	
New vehicle unit sales	↓ 20%
Total dollar sales	↓ 10%
Total full time employment	↓ 6%

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- 14** A Dangerous Precedent: Volvo Appears Committed to Direct Sales
- 16** CNCDA Annual Convention

FERRUZZO



Ferruzzo & Ferruzzo, LLP began providing legal representation to new car and truck dealers nearly four decades ago. Over the course of that time, one of the central goals of the firm has been to remain rooted in our client relationships. With the strength of over 20 attorneys, we provide a spectrum of legal services to support every aspect of running and owning your new car and/or truck dealership. Each member of our team is available to service the needs of you and your dealership.

Business Transactions

- Buy-Sell Agreements
- DMV, BAR and other governmental approvals
- Lender flooring and capital loan agreements
- Entity formation and structure
- Shareholder Agreements
- Manufacturer approvals and relations
- NMV non-profit association representation

Estate Planning

- Succession planning for business continuation
- Family estate planning (wills and trusts)

Tax

- Property tax planning, audits and appeals
- Federal estate and gift tax controversies with IRS
- EDD audits

Business Litigation

- Consumer Legal Remedies Act lawsuits
- Sales and Service Agreements
- Disputes before the CA New Motor Vehicle Board
- Consumer claims regarding the sale/lease of autos
- Manufacturer audit disputes
- Hearings before the AQMD, RWQC and OSHA

Real Estate

- Dealership site acquisitions and lease agreements
- Lender opinion letters
- Relocations

Employment Practices

- Arbitration agreements
- Wage and hour class action lawsuits
- Private Attorneys General Act (PAGA) claims



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For more information on the firm, see the Manning, Leaver, Bruder & Berberich, LLP website at:

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PRACTICE AREAS

LITIGATION

- General trial
- Consumer class action defense
- New Motor Vehicle Board representation
- DMV accusations
- Bureau of Automotive Repair representation

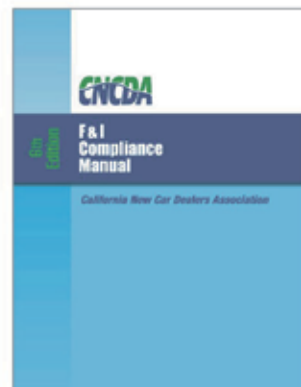
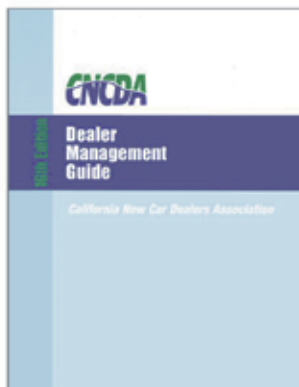
TRANSACTIONAL

- Buy/sell agreements
- Real estate sales and leases
- Formation of entities
- Loans and construction process
- Franchise and business opportunities

COMPLIANCE

- General regulatory compliance
- F&I training
- Advertising review
- DMV/BAR licensing
- Production of manuals¹

¹The firm has authored a number of compliance manuals, including: CNCDA Management Guide, CNCDA Franchise Law Manual 6th edition of CNCDA F&I Compliance Manual, NADA Dealer Guide on federal advertising requirements, and MLBB California Auto Dealer Advertising Law Manual.





President's Message

BRIAN MAAS
President
California New Car Dealers Association



We **Can't Wait** to
See You at This
Year's Convention!



As we begin to anticipate some normalcy this year, CNCDA staff and dealer leadership are excited to announce that registration for CNCDA's Annual Convention is now open!

While this is one of my favorite CNCDA events, this year, the convention takes on an even more critical role in bringing our members together, focusing on Reuniting California's Dealer Community. After a long and trying 18 months, providing a venue to unify dealers and discuss critical shifts in the industry will be more important than ever.

With great dealer and sponsor engagement in 2018, we will be returning this year to the beautiful island of Maui from October 3–6 at The Fairmont Kea Lani. This luxurious resort is known for its five-star accommodations, first-class service and stunning views, capturing all Maui has to offer.

I'm excited to bring our attendees compelling speakers, discussion topics, and activities that will resonate with everyone, providing value and fun for all. As our agenda continues to evolve, we are eager to bring you content relevant to your day-to-day business efforts and experts who can provide insights into what we can expect next in the industry. Our developing speaker lineup so far includes:

1. Automotive News Publisher, Jason Stein
2. CNN Hero, Robyn Benicasa
3. Edmunds Journalist, Jessica Caldwell
4. Millennial Expert, Matt Britton

With cautious optimism that health and safety restrictions will be more relaxed come October, this is a great opportunity to join CNCDA leadership, staff, and your peers from throughout the state to catch up on the latest developments in the California retail automotive industry while networking with fellow dealers from across the state.

To receive an Early Bird registration discount of \$100, don't wait — register now by visiting cncda.org/events/. I look forward to seeing you, your employees, and your families on the island of Maui this fall!

For more information on the 2021 Annual Convention and to register, visit: cncda.org/events/. ◀

Brian Maas
President, CNCDA



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- 2 RESULTS**
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- 3 KNOWLEDGE**
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- 4 LEGAL STRATEGIES**
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- 5 EARNINGS**
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- 6 REPUTATION**
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- 7 LAW FIRM ADVANTAGE**
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WHAT OUR CALIFORNIA DEALER CLIENTS SAY:

- ▶ Bellavia Blatt was incredibly helpful with the Warranty and Labor Increase process. They have assisted McKenna with 8 Warranty Labor Rate increases and 5 Warranty Parts increases. Each time they amaze me with how simple the process is and the substantial increase they are able to obtain for our Parts and Service Departments. The flat rate fee is reasonable, and the Team at Bellavia Blatt are professional and easy to work with!! Thank you from the Team at McKenna.

CINDY PIRTLE

McKenna Auto Group
Fixed Operations Director
Norwalk, South Bay, and Huntington Beach, California

- ▶ Ken did a great job. We are pleased with the results.

GEORGE HAY

Jim Burke Ford Lincoln
VP General Manager at the Automall
Bakersfield, California

- ▶ Bellavia Blatt and team did a great job assisting our dealership group in obtaining an increase in our warranty labor rate and parts mark up. They were professional and thorough in helping us navigate through the process and working with the manufacturer should any discrepancies arise! I highly recommend Bellavia Blatt for your warranty and parts analysis and submission!

ERNE CAMPORA

Stead Automotive Group
Walnut Creek Ford
Walnut Creek, California

- ▶ We are very pleased with the work performed by Bellavia Blatt. We received the maximum parts and labor rate possible and the fees were very reasonable (substantially less than Armatus).

DARREN ANDERSON

Lehmer's Concord Buick GMC
Concord, California

- ▶ Once again Bellavia Blatt has gone above and beyond to help us increase our Warranty gross profit. "We are so happy that we chose Bellavia Blatt to submit for our California AB179 increase. Gary did an amazing job and got us approved in less than a day with a huge increase in our rate!" Thanks again for all the help!

MATT CLANCY

Team Nissan
Parts & Service Director
Oxnard, California



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David Simpson
Simpson Chevrolet of Irvine

First Look: CNCDA Priority Bills



Alisa Reinhardt
Director of Government Affairs

Right up until the very last minute of February 19th, the Legislature's bill introduction deadline, members were putting bills across the desk in a flurry of activity. Lawmakers have introduced a total of 2,497 bills this year, and we are watching almost 500 of them that could affect dealerships. Of those 500, in consultation with the CNCDA Legislative Committee members, we have identified our top 10 priority bills for immediate dealer engagement. Although the Legislature's focus will remain primarily on measures related to combating the negative effects of the pandemic, we see renewed attention on issues like privacy, zero-emission vehicles, and consumer protection.

CNCDA Top Ten as of 3/15/21

1. **SB 361 (Umberg, D-Orange County): Modernizes the vehicle retailing process.**

SB 361 is CNCDA's sponsored bill. Authored by Senator Tom Umberg, an Orange County legislator that chairs the Senate Judiciary Committee, the bill modernizes the vehicle retailing process. It removes the last hurdle for online transactions by allowing dealers to get customer signatures electronically.

2. **AB 80 (Burke, D-Marina del Rey): Partial deductibility of expenses paid with PPP funds.**

AB 80 provides partial PPP tax conformity by exempting the first \$150,000 of expenses that businesses paid with PPP funds. Despite other business groups deciding to support the \$150,000 cap, we are one of the few groups continuing to fight to remove or raise the cap.

3. **AB 1211 (Muratsuchi, D-Torrance): New DMV licensing category for electric bus subscriptions.**

In a revival of last year's AB 326, AB 1211 would create a separate licensing scheme under the law so that a company called Canoo can offer their small electric buses to consumers in a subscription-like manner, with a proposed regulatory scheme that raises serious consumer protection and franchise law concerns.

4. **SB 324 (Limón, D-Santa Barbara): Massive fines for noncompliant mail advertisements.**

SB 324 would provide government enforcement ability and fines of \$1,000-\$1,000,000 per violation for businesses that send out unsolicited commercial mail advertisements and fail to include a toll-free number



AB 84/SB 95 would make an **employer’s obligation** to provide COVID-19 paid **sick leave** retroactive to Jan. 1, 2021, and **mandates** that any **employee** who requests a **retroactive payment** must be paid upon request **by the employee** if the employee was **absent** for a **qualifying** reason.



that can be used to opt-out from those advertisements and that do not contact their mail delivery service to ensure that recipients who opt out no longer receive the company’s commercial mail advertisements.

5. SB 346 (Wieckowski, D-Fremont): Requires dealers to provide additional disclosures related to OEM-installed and OEM-operated in-vehicle cameras.

This bill aims to require dealers to “prominently inform” vehicle purchasers about the operation of any in-vehicle cameras during the vehicle purchase process, with no additional information as to how that warning should be given. CNCDA’s perspective is that vehicle manufacturers should be responsible for informing customers about vehicle technology-specific features via the owner’s manual instead of requiring dealers to provide a notice that will differ for each consumer depending on which vehicle trim level they purchase.

6. AB 84 (Committee on Budget) and SB 95 (Skinner, D-Berkeley): Mandates up to 80 hours of COVID-19 paid sick leave retroactive to Jan. 1, 2021.

AB 84/SB 95 would make an employer’s obligation to provide COVID-19 paid sick leave retroactive to Jan. 1, 2021, and mandates that any employee who requests a retroactive payment must be paid upon request by the employee if the employee was absent for a qualifying reason. CNCDA is part of a CalChamber-led coalition with over 100 other California businesses to oppose this measure.

7. AB 782 (Cooper, D-Elk Grove): Prohibits dealers from selling EVs unless OEMs certify that no child labor was involved in producing vehicle components.

AB 782 would bar dealers from selling vehicles unless they can certify that any cobalt found in the vehicles (contained in EV batteries) was not mined or refined using

child labor. The author is trying to combat the issue of child mining in the Congo, an honorable goal. However, dealers have no involvement in the manufacture of vehicles. They do not know where various vehicle components are sourced, so including dealers within this bill’s purview is unworkable.

8. AB 1382 (Patterson, R-Fresno): Modernizes the DMV by creating virtual field offices.

Assembly Member Patterson has been pushing for years for a total overhaul of the DMV and its processes. AB 1382 is an effort to help modernize the DMV by creating virtual field offices that would allow for the electronic completion of certain transactions, including low-emission vehicle decal applications and title transfer transactions.

9. AB 1218 (McCarty, D-Sacramento; Berman, D-Menlo Park; Medina, D-Riverside): Attempts to codify the Governor’s Executive Order to bar the sale of new gas-powered vehicles by 2035.

This bill is an effort to put into statute Governor Newsom’s Executive Order prohibiting the sale of new gas-powered vehicles in California by the year 2035. AB 1218 also requires vehicle manufacturers to decrease vehicle greenhouse gas emissions annually or face civil penalties.

10. AB 1287 (Bauer-Kahan, D-Livermore; C. Garcia, D-Bell Gardens): Prohibits businesses from pricing products differently based on a consumer’s gender.

This bill is an effort, tried many times in the past, to prohibit businesses from charging more for “pink” products than “blue” products. This year, the authors have pledged that there will be no private right of action in the bill, removing many of CNCDA’s concerns with the proposal. However, we will be watching this issue closely.

CNCDA will be actively engaging on these and many other issues in what is already shaping up to be a very active legislative session. ◀

A Dangerous Precedent: Volvo Appears Committed to Direct Sales



Anthony Bento
Director of Legal and Regulatory Affairs

As you may know, in January 2019, CNCDA filed a petition at the New Motor Vehicle Board (NMVB) against Volvo, which alleged that Care by Volvo (its vehicle “subscription” program) violated California law. Our principal concern with Care by Volvo was (and still is) that Volvo is attempting to use the program to illegally compete against its dealers. Volvo offers its most popular vehicles via two-year lease bundled with insurance, maintenance, and wear and tear coverage through the program. The bundle is offered at a price that substantially undercuts dealer lease offerings.

To add insult to injury, dealers were coerced into acting as delivery agents for vehicles sold by Volvo through Care by Volvo. Dealers had no opportunity to apply trade-ins to the vehicle’s price and could not include optional products.

Following the filing of CNCDA’s petition against Volvo, I spoke at the National Association of Dealer Counsel (NADC)’s April 2019 conference about the danger Care by Volvo represents to our industry. At the April 2019 conference, several attendees were convinced that vehicle subscription programs were a fad and that they were already fading. I argued that some manufacturers (including Volvo) were using subscription programs as a justification to compete directly with their franchisees.

In the months following my presentation at the NADC conference, concerns about Care by Volvo receded from the front of my mind. They were replaced by more pressing matters, such as daily COVID compliance alerts. And in April 2020, the DMV ended its investigation into Care by Volvo (ordered by the NMVB due to our petition). The DMV concluded that Volvo was illegally competing

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Our Volvo **petition's** outcome was a **victory** for **California dealers**, but it increasingly appears that Volvo's **corporate bigwigs** could not care less about the **DMV or California law**. Less than one year after the issuance of the DMV's findings that **Volvo was illegally** competing against its dealers by **directly retailing** vehicles through **Care by Volvo**,

with its dealers through the Care by Volvo program. Throughout the process, Volvo repeatedly accused us of overreacting and harming the interests of California Volvo dealers. But after the DMV found that Volvo was violating California law, it publicly committed to indefinitely suspend Care by Volvo in California.

Our Volvo petition's outcome was a victory for California dealers, but it increasingly appears that Volvo's corporate bigwigs could not care less about the DMV or California law. Less than one year after the issuance of the DMV's findings that Volvo was illegally competing against its dealers by directly retailing vehicles through Care by Volvo, Volvo issued several major press releases proudly announcing that it intended to sell electric vehicles exclusively online from Volvo's website. It even mentioned the integration of Care by Volvo into this direct distribution model.

When a dealer signs a franchise agreement and invests millions in facilities and personnel, the dealer does so with a justifiable assumption that he or she is partnering with the manufacturer as an independent dealer, not as the manufacturer's delivery agent. Volvo's actions undermine this basic assumption and set an extremely dangerous precedent for our industry.



In the coming weeks and months, CNCDA will continue to evaluate Volvo's plans to retail electric vehicles. Admittedly, there is a lot we do not know currently. But CNCDA will continue to vigorously defend California's franchise laws. ◀



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The Top Five Most Common Mistakes Found in a Dealership Website “Audit”



Nick Brunotte, Director, Digital Solutions, DHG
Tyler Rauch, Senior Manager, Digital Solutions, DHG



While no two digital marketing footprints are the same, there are some common themes, particularly when conducting website “audits.” Websites are a foundational element of any digital marketing strategy, and they can also represent one of the larger fixed expense line items in your budget.

Among other things, your website represents an organic SEO opportunity, a knowledge platform for your customers and your 24/7 showroom. The money that your dealership and your vendors spend in the digital space is designed to funnel your customers to the website and, ultimately, further down the path to purchase.

When you conduct your monthly review of website metrics, you likely consider items like page views, bounce rates and average session duration, but how often do you tie the poor (or positive) performance metrics to the health of your website? Poor conversion and website metrics are often due to the following:

- 1. Inconsistent Information:** Your customers are visiting your website to learn something about your dealership, whether it is detailed on vehicle features or operating hours for service. You don’t want something like varying hours of operation across platforms to cause any roadblocks to someone visiting your dealership. Whatever it may be, customers should be able to see information correctly and consistently, regardless of where they choose to find the answer.
- 2. Outdated Blog Posts:** Blogs provide endless opportunities to boost your organic SEO content, enhance search result rankings and inform your customers. Content older than a year is less relevant

and may highlight old models, features no longer offered, etc. Therefore, content should remain relevant, timely and informative.

- 3. Blank Specials Pages:** Few people visit your website expecting to pay full price for a vehicle. More often than not, they will browse your “Specials” section to decide if they are still “just shopping” or leaning toward some intent to purchase. This moment can make or break the decision to stay or leave.
- 4. Outdated Research Pages:** It can be difficult to maintain model accuracy during model year changeovers, but customers still visit the online showroom to conduct their own research. Align your research pages with current models, may feature new technology or are arriving soon. This is also an opportunity to align your site content with the manufacturer’s message regarding product announcements.
- 5. Aging Site Copy:** It’s unlikely that a brand-new 2019 vehicle is still available in 2021, but your website might even reflect this to your customers. Your site copy can date your dealership, so be mindful of the last time it was reviewed for accuracy. Now more than ever, it is vital to keep the copy updated to reflect the changing times.

Issues like these may require a conversation about accountability, but they may represent something more. For years, our team has been reviewing dealerships’ digital marketing efforts with the ultimate goal of helping deliver additional profitability through efficiency-focused digital solutions. For more information, reach out to us at dealerships@dhg.com. ◀

CALIFORNIA'S NEW CAR DEALERS ARE DRIVING THE CALIFORNIA ECONOMY



ANNUAL CONTRIBUTIONS OF CALIFORNIA NEW CAR DEALERS

Total sales	\$115.40 billion
Average sales per dealership	\$82.00 million
Percent of total statewide sales tax collected	13%
Number of new car dealerships	1,407

DEALERS PROVIDE JOBS IN CALIFORNIA

Total payroll for all new car dealerships	\$9.10 billion
Total number of new car dealership employees	135,072

DEALERS PLAY AN IMPORTANT ROLE IN THE STATE AS LOCAL BUSINESS AND CIVIC LEADERS

Total taxes collected or paid	\$9.80 billion
Total spent for products and services from other California businesses	\$2.65 billion
Donations to charitable and civic organizations	\$49.95 million

2020 VEHICLE SALES

New vehicles sold*	1,639,166
Used retail vehicles sold	1,407,000
Total new and used vehicles sold	3,046,155

* New vehicles sold based on California registrations.

This report provides an in-depth analysis of the economic impact of California new car and truck dealers on the State's economy. It includes estimates of employment, personal income, and tax collections generated by California new car dealers. Also included is a review of dealership financial statistics and operations. This report was prepared by Auto Outlook, Inc., an independent automotive market analysis firm, and was sponsored by the California New Car Dealers Association. The report was compiled based on data collected from new car dealerships throughout the state, as well as government sources.

ECONOMIC REPORT IMPACT 2021



2019 to 2020:

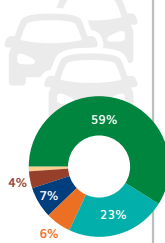
New vehicle unit sales	↓ 20%
Total dollar sales	↓ 10%
Total full time employment	↓ 6%
Total payroll	↓ 2%
Total charitable contributions	↑ 3%

The Contributions of California's Franchised New Car Dealers



2020 DEALERSHIP SALES

	AVERAGE DEALERSHIP	INDUSTRY TOTAL
New vehicle department	\$48.70 million	\$68.52 billion
Used vehicle department	\$19.00 million	\$26.73 billion
Service department	\$4.48 million	\$6.30 billion
Parts and accessories department	\$6.05 million	\$8.51 billion
Finance & insurance department	\$3.06 million	\$4.31 billion
Other departments	\$0.71 million	\$991.94 million
Total dealership sales	\$82.00 million	\$115.40 billion



Average sales tax and VLF generated on the sale of a new vehicle in Los Angeles: \$5,079.81

TAXES

	AVERAGE DEALERSHIP	INDUSTRY TOTAL
State sales tax	\$4.76 million	\$6.69 billion
Federal payroll taxes	\$1.59 million	\$2.24 billion
State payroll taxes	\$368,000	\$517.78 million
Real estate taxes	\$153,000	\$215.27 million
Other state and local taxes	\$102,000	\$143.51 million
Total taxes collected or paid	\$6.97 million	\$9.80 billion

VEHICLE SALES (SUMMARY FOR AVERAGE DEALERSHIP)

	UNITS SOLD	\$ PER UNIT	TOTAL
New vehicles	1,165	\$41,803	\$48.70 million
Used vehicles	1,000	\$19,000	\$19.00 million

CORONAVIRUS IMPACTS

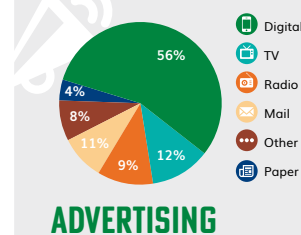
	AVERAGE DEALERSHIP	INDUSTRY TOTAL
Additional expenses incurred to comply with regulations related to COVID-19	\$59,300	\$83.44 million
Added costs incurred to allow for online sales and remote delivery of vehicles	\$22,100	\$31.09 million
Total vehicle sales revenue lost due to COVID-19	\$3.85 million	\$5.42 billion
Total parts and service revenue lost due to COVID-19	\$725,000	\$1.02 billion
Number of workdays lost by employees due to COVID-19 related health issues	260	365,820

EMPLOYMENT & PAYROLL

	AVERAGE DEALERSHIP	INDUSTRY TOTAL
Full time employees	91	128,037
Part time employees	5	7,035
Total employees	96	135,072
Annual payroll	\$6.47 million	\$9.10 billion
Percentage of dealerships that provide access to health insurance for employees	97%	97%
Workers' compensation premiums per employee	\$1,495	\$1,495
Workers' compensation premiums paid	\$136,045	\$191.41 million

Total spent for products and services from other California businesses

AVERAGE DEALERSHIP	\$1.88 million
INDUSTRY TOTAL	\$2.65 billion



ADVERTISING

In 2020, California new car dealers collectively spent over \$1.11 billion on advertising.

CHARITABLE GIVING

In 2020, California new car dealers made over \$49.95 million in donations to charitable and civic organizations, including:



CNCDA IS HERE FOR YOU

During this trying and unprecedented time, CNCDA has worked tirelessly to keep our members informed with the most up-to-date information about the ever-changing landscape of health and safety orders impacting your businesses across California and in local jurisdictions. Navigating this challenging environment has been and continues to be our number one priority for our members and the California automotive retail industry.

While we understand the hardships you are facing in this time of economic uncertainty, your membership is now more important than ever. Providing compliance support on how to operate your businesses, including sales, employment, health and safety, are at the forefront of CNCDA's efforts.

The exclusive, timely and critically valuable guidance that CNCDA has been able to provide to its members during this time underscores more than ever why we are here – **to serve our members and support California's community of new car dealers.**



cncda.org

DURING THE COVID-19 CRISIS, CNCDA HAS PROVIDED THE FOLLOWING TO OUR MEMBERS:

- Coronavirus Dealership Resources webpage
- Member exclusive Coronavirus resources and documents including:
 - More than 50 Daily Coronavirus Updates
 - Member Toolkit, *Restarting California's New Car Dealerships in the Wake of COVID-19*
 - Coronavirus compliance guidance and materials on vehicle sales, health requirements, employees, government benefits, forms and notices, vehicle registration and franchise issues
 - Free Coronavirus webinars

IN 2019, CNCDA ACCOMPLISHED ONE OF ITS BIGGEST VICTORIES BY PASSING AB 179, ACHIEVING THE FOLLOWING FOR OUR MEMBERS:

- Retail warranty reimbursement relief that's been critically needed for years
- Strengthened California's franchise laws
- Addressed inappropriate treatment of dealers by manufacturers
- Enforced manufacturer accountability for unlawful actions against dealers
- Conformed California franchise laws to recent actions in other states

CNCDA CONTINUES TO PROVIDE AND ENHANCE THE FOLLOWING EXCLUSIVE BENEFITS FOR OUR MEMBERS:

- Access to CNCDA Comply, which houses more than 30 resources:
 - Compliance Manuals
 - Monthly Bulletins
 - Capitol, Regulatory and Legal Updates
 - Legislative Summaries
- Access to industry and educational information including:
 - Frequent Dealer Alerts on timely and urgent industry and franchise-specific information
 - Compliance webinars and educational webinars

The unparalleled disruption that our great industry faces will prove challenging, but we look forward to continuing to serve our members now and in the months ahead to foster the critical rebound of California's automotive retail industry.

Thank you for being part of the nation's largest state automobile dealer association, joining a community of more than 1,100 fellow dealers who are committed to getting back to business and protecting and promoting the interests of franchised new car dealers.

CNCDA Launches Truck Dealer Committee and Begins Close Collaboration with Newly Created TDAC



Anthony Bento
Director of Legal and Regulatory Affairs



TDAC was **recently** created to **serve** as a voice **for commercial** truck **dealerships** in California.



During the past several months, CNCDA has expanded our outreach to California's heavy-duty truck dealers. CNCDA held our inaugural meeting of CTD (California Truck Dealers), a CNCDA board of directors committee, on Dec. 2, 2020. Chaired by KC Heidler (President & CEO of Tom's Truck Center and CNCDA Board member), CTD is designed to enhance CNCDA's outreach to California's heavy-duty truck dealers.

CTD's inaugural meeting included Tom Bertolino (NorCal Kenworth), Kim Mesfin (Affinity Truck Center), and Matt Schrap (South Bay Truck Center and California Fleet Solutions). Alisa Reinhart (CNCDA's Director of Government Affairs) joined me during the meeting to discuss CNCDA's planned 2021 advocacy efforts.

Following CTD's meeting, Matt Schrap invited Alisa and me to speak on CNCDA's advocacy and compliance efforts at the Truck Dealer Alliance of California's (TDAC) March 3, 2021 meeting. TDAC was recently created to serve as a voice for commercial truck dealerships in California. During the meeting, Alisa discussed how CNCDA's legislative priorities would impact commercial heavy-duty truck dealers, and I spoke on an important compliance issue affecting commercial heavy-duty truck dealers.

I am excited to continue to work with KC, Matt, Tom and Kim (and all other California truck dealers) to listen to their unique concerns and provide the value of CNCDA membership. ◀



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THANK YOU FOR INVESTING IN THE CALIFORNIA NEW CAR DEALERS
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INVOLVEMENT, AND ENTHUSIASM OF OUR COMMITTED SPONSORS.

The CNCDA's Scholarship Foundation 2.0 Vision — Retooling our Legacy.



Danielle Whitmore
Scholarship Foundation and Outreach Manager



It's almost here, but we couldn't wait to tell you about the Scholarship Foundation 2.0!

Together, the California New Car Dealers Association (CNCDA) and its Scholarship Foundation have a rich history of supporting students interested in automotive industry careers. For 26 years, we have fueled a vision to fill the fierce and valuable demand for auto technician and management roles critical to California's retail automotive industry. Since its inception, the Scholarship Foundation has awarded scholarships to 1,326 students — totaling \$1,091,437. This funding has encouraged a skilled 21st-century workforce, providing jobs that offer a stable, living wage and a rewarding lifelong career while serving California's franchised new-car dealers' needs.

In 2019, the Scholarship Foundation Trustees and CNCDA staff began working to reimagine the Scholarship program's vision and direction, including providing more substantial and equitable awards geographically, ultimately creating more impact in the communities that our dealer members serve.

New strategies for the 2021-22 school year include:

- More significant awards in larger amounts of \$5,000 per student recipient.
- Four student recipients per region, totaling 20 winners statewide.
- One statewide winner will receive an additional \$5,000.

Providing equity among CNCDA's five key regions of the Golden State through more targeted outreach and increased applicants will ensure top-tier candidates are awarded funds and are committed to the industry long-term.



Stay Tuned for the 2.0 application launch date! Please also know we welcome and encourage your support in getting the word out!



CNCDA is excited to enhance our relationships with dealer members and your hiring staff. Building and strengthening partnerships that expand the Scholarship Foundation legacy, support the industry's future, continue to provide value to students and dealerships and satisfy the Scholarship Foundation 2.0 approach is of critical importance to CNCDA's Scholarship Foundation as we advance.

The CNCDA Scholarship Foundation's work is being administered and managed by CNCDA's Scholarship and Outreach Manager, Danielle Whitmore, hired in February of this year. The California New Car Dealers Association is funding the program and generous donations from dealers, partners and friends of the industry.

Stay Tuned for the 2.0 application launch date! Please also know we welcome and encourage your support in getting the word out! Help us connect top-tier candidates to the Scholarship Foundation so we can support skilled workers at your dealerships! ◀

For more information, visit cncda.org/about/foundation/ or contact Danielle Whitmore at dwhitmore@cncda.org.

The Road to the Sale is Changing. It's Now Virtual.



Ellena Sweet
CNCDA NextGen Member

If we learned anything in 2020 in the time of COVID-19, it's that the internet can do marvelous things. We can have practically anything delivered to our door with a few swipes of a screen, even vehicles. We've also learned as consumers that we scrutinize every step of the process, especially delivery fees, transaction fees, and pretty much any other kind of fee that can be added to a purchase. These fees can even stop a consumer from choosing a store or item.

So why are dealers still trying to push the old sales model? Now, more than ever, is the time to modernize the road to the sale. Otherwise, dealers might find themselves without any sales at all. With the added pressure from virtual competitors like Carvana and Vroom, more and more customers are not only looking for but are expecting a transparent and seamless sales process. The word of yesteryear was "trust," today, it's "transparency." A customer wants to trust the dealer, but there needs to be transparency in the buying process.

Those virtual competitors are hitting dealers where it hurts with advertisements that continually chastise our long wait times and "hidden" fees. If dealers can't meet customers online with an easy-to-use digital sales process that is also transparent, customers will simply move on to the next website. In today's car-buying environment, it's much easier to move from website to website than it is to hop from lot to lot.

Consumers no longer shop only in their immediate area. They are price shopping dealers up and down the state and even across the country to find the best deals. The perception of saving a few hundred dollars has customers continuously evaluating all of the options in front of them. However, it has been repeatedly proven that a customer is more inclined to shop with a dealership with a simpler process, even if it means paying a little bit more.

The "old school" Road to the Sale always had the dealership or salesperson control the situation. The dealership was in control of the narrative from greeting, needs assessment, vehicle selection and delivery. Consumers, through the power of the internet, now have access to endless amounts of information as well as the prerogative to take their business elsewhere with just a few clicks of a keyboard. Whether we want to believe it or not, the consumer now has the most control over the situation. Dealers must relinquish control to the consumer. Through transparency and an influx of digital information, the customer feels that they know they are getting the best deal. And the best part is, they walk away feeling in control and happy. Those will become your best return and referral customers.

Through the power of technology, dealers have an opportunity to modernize their sales staff. Allowing BDC teams to work from home or to have a service that automatically tracks customer information means that on-site staff now have the time to be productive where it counts. There is a constant push for salespeople to follow up calls and emails and ask for referrals, but there is hardly ever enough time. Now, we have an opportunity to make time.

Dealers are at a pivotal point in the history of car buying. By continuing to push an antiquated sales model, we have begun to alienate our customer base. Dealers must recognize that our customers are constantly evolving, and we need to evolve with them. By adopting and utilizing new technological processes, we can communicate with the customer how they prefer, and we can begin to salvage the relationships we've spent years cultivating. Digital retailing is the future transaction if dealers have any hope of staying relevant in the years to come. ◀



UPCOMING EVENTS

APRIL VIRTUAL DEALER DAY 2021

Date: Wednesday, April 21, 2021
9:00 am - 12:00 pm PST
Location: *Virtual*
Registration Fee: \$99 CNCDA Members

CNCDA ANNUAL CONVENTION REGISTRATION OPENS REUNITING CALIFORNIA'S DEALER COMMUNITY

Date: Monday, April 5, 2021
Location: *Fairmont Kei Lani
Maui, HI*

COMING IN 2021

CNCDA ANNUAL CONVENTION REUNITING CALIFORNIA'S DEALER COMMUNITY

Date: October 3 - 6, 2021
Location: *Fairmont Kei Lani
Maui, HI*

MEMBER APPRECIATION DINNER

Date: Monday, November 15, 2021
6:00 pm - 10:00 pm PST
Location: *WP24, Los Angeles*

STAY UP TO DATE ON UPCOMING EVENTS AT WWW.CNCDA.ORG

CCPA Opt-Out Requests: Hey CRM, You're Doing It Wrong!



Hao Nguyen
General Counsel, ComplyAuto



One evening over a Zoom call, I asked a friend in law enforcement what the most ridiculous assignment he received was. Rather than focusing on any one event, he said speeding tickets stood out because of how many times he got this response: "I'm sorry, officer; I didn't know how fast I was going." He said it was comical that these folks thought it would work because "ignorance of the law is never an excuse." I thought it was the perfect line to introduce this article.

With the California Consumer Privacy Act (CCPA) now in its second year, the California Attorney General's office now expects businesses to have a firm grasp on the CCPA. Not only does the CCPA grant consumers the ability to submit to businesses a request to know, to opt-out and delete personal information, businesses should now know how to:

1. Verify the consumer's request (in which the requirements vary on the type request);
2. Fulfill or reject these requests (while considering if they meet verification requirements or if any exemptions apply); and
3. Notify the consumer that you were processing and have completed the request;
4. Notify any vendor of the request (again, requirements to verify vary on the type of request and now, whether the vendor is a "third party" or a "service provider")

Maybe some leniency was granted by enforcement officials in the beginning when California businesses as a whole were collectively getting their "sea legs" to comply with these laws. But now, as my friend so aptly put it, ignorance of these laws will no longer be an excuse. Of all of the confusing aspects of the CCPA, what has continually stymied both businesses and vendors alike is the definition of the phrase "opt-out." Specifically, some Customer Relationship Management (CRM) software cannot fulfill these requests correctly and avail you of significant legal liability when receiving an "opt-out" request from you or on your behalf.

To fully understand what is happening, you will need to know what an "opt-out" truly is under the CCPA and what the consumer is asking you to do when submitting an opt-out request.

Traditional Meaning of "Opt-Out"

Before the CCPA, the phrase "opt-out" was most prevalently used in the context of marketing under the federal Telephone Consumer Protection Act (TCPA) and the CAN-SPAM Act, with the former revolving around phone calls and text messages and the latter regarding email advertisements. In both instances, an "opt-out" meant that the consumer no longer wants to be contacted for marketing or promotional purposes. Usually, a text message would have an opt-out function, or an email would have a kind of "unsubscribe" link that removes them from the email list.



By **redefining** what we generally **understand** as a sale associated with **money** (the authors could have probably **easily defined** the term “**share**” or “**sharing**” instead), dealers are most likely selling a consumer’s PI without even **knowing** it. For example, when a **dealer** works with third-party **marketing or advertising** agencies. Dealers give these agencies the consumer’s PI in exchange for the **valuable services** that they **provide** to the dealer, such as mailers, email **campaigns** and the like.



Meaning of “Opt-Out” Under the CCPA

Whether the authors of the CCPA did this on purpose to confuse us is up to debate, but what we do know is ... it’s confusing. To understand what an “opt-out” is under the CCPA, we need to know what “selling” means under the CCPA.

“Sale,” “selling,” or “sold” means the selling, transferring or sharing of a consumer’s personal information (PI) by the business to another business or third party for monetary or other valuable consideration. By redefining what we generally understand as a sale associated with money (the authors could have probably easily defined the term “share” or “sharing” instead), dealers are most likely selling a consumer’s PI without even knowing it. For example, when a dealer works with third-party marketing or advertising agencies. Dealers give these agencies the consumer’s PI in exchange for the valuable services that they provide to the dealer, such as mailers, email campaigns and the like.

In an opt-out request under the CCPA, the consumer is directing a business, which currently sells the consumer’s PI to stop selling their PI in the future.

What is an “Opt-Out” Request under the CCPA?

Let’s say there are two categories of vendors in an opt-out request: the “Sources” and their “Third Parties.” Sources are vendors who store all of the customer’s personal information on your behalf (think DMS and CRM),

and for purposes of this analogy, let’s make these Source vendors “faucets.” When turned on, the water that flows from these faucets is the consumer’s PI. Third Parties are those vendors who tap into the source vendor’s database to receive the PI to use on behalf of the dealer. To continue our analogy, let’s make these Third-Party vendors “flowers.”

The faucets pour water on these flowers and you, the gardener, allow this to happen. The dealer is allowing the Source vendors to push consumer PI to these Third Parties.

In an opt-out request, the consumer asks the dealer to prevent the future sharing or transfer of the consumer’s PI. Put another way, the consumer is asking you to turn off the water to prevent the water from flowing from the faucet to the flowers.

Some CRMs and Dealer Management Systems (DMS) have been fulfilling these requests correctly. “John Smith” sent an opt-out request to your dealership? Great — log in to your CRM or DMS portal, enter John Smith’s name and any other identifying information, check a “do not share” or “opt-out” box, and no longer will John Smith’s PI be shared with any third parties in subsequent data pulls/pushes or API integrations. This is a relatively easy fix, in my opinion, because plenty of vendors have done this. ComplyAuto has successfully convinced multiple large DMS and CRM systems to begin implementing changes to fulfill an opt-out request in this fashion.

The Wrong Way to Fulfill an Opt-Out Request

Some popular CRMs are directing dealerships to completely delete a customer or provide functionality in their software that deletes a customer. This is problematic — and may avail your dealership of significant legal liability under other state and federal laws.

Note that this is an opt-out request and NOT a deletion request. Remember, the consumer is asking the gardener to shut off the water. It doesn't matter that the faucet still has water nor that the flowers have wet soil (because this is not a deletion request). Rather, the gardener needs to only concern himself with turning the water off, and the Source vendors must put in place a mechanism to prevent the future selling or sharing of the consumer's PI.

Concerns that Arise When Opt-Out Requests are Fulfilled Incorrectly

The CRMs believe that deleting the information is sufficient to fulfill an opt-out request (after all, how do you share or transfer information that you don't have?), but this "using a hammer to kill ants" approach presents far more issues than it resolves:

1. Record Retention Issues

As you know, there are many record retention laws in California that span a wide range: from the comprehensive deal jacket to the simple repair order. The dealer may run afoul of record retention laws by deleting the customer's information depending on what information was deleted. The CRM holds a host of data, including email/text communications, customer/salesperson notes, and other data relevant in the context of record retention rules, litigation holds or defending against potential fraud and litigation.

The dealer cannot simply delete this data because this is not a deletion request. Furthermore, the CCPA has specific exemptions to protect against deleting customer information in deletion requests. Conflating the opt-out and deletion requests in this manner creates a host of legal issues.

2. Potential CCPA Violations

In the short-term, deleting customer PI would prevent the future sharing or transfer of the customer's PI. However, what if the person gets put back into the CRM by submitting another lead to the dealer? Because there is no signal to opt-out — and usually no way for the dealership to track this in the CRM — the dealer would violate the CCPA once they share/transfer this customer's PI after they are put back into the CRM. Contrary to popular belief, simply interacting with the dealer is not enough to constitute the customer's intent to opt back into the sale or sharing of customer information.



As you **know**, there are many record retention **laws in California** that **span** a wide range: from the comprehensive **deal jacket** to the **simple** repair order.



What's even more damaging, in our opinion, is these CRMs are specifically instructing dealers that this is how you would opt a customer out under the CCPA, which is not accurate.

What Do I Do?

Contact your DMS or CRM and verify if they have a mechanism in place to adequately fulfill opt-out requests. Rather than just the functionality, ask them specifically what is being done with the customer's PI: Is the customer merely being flagged to prevent the selling or sharing of their PI? Or are they being completely deleted from the database?

If enough dealerships bring this issue to their attention, they would be more apt to make significant changes to the way they are fulfilling these requests for their California clients.

ComplyAuto: A Purpose-built Solution for your Auto Group or Single-Point Dealership

Looking for a full suite of privacy compliance tools for your dealerships? Backed by decades of dealer and legal automotive experience, ComplyAuto offers a full solution for dealers to comply with privacy laws like the CCPA. We stand by our solution and offer each of our clients our ComplyAuto Compliance Guarantee, which states that we'll pay for any state-enforced penalties while you're using our software. Restrictions apply. For more information, please go to complyauto.com/compliance-guarantee/. Our goal is to take CCPA compliance out of your hands so your staff can go back to what matters, which is selling cars. ◀

Please visit our website to learn more about our suite of tools.

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DOES YOUR FLSP AFFECT YOUR CSI?

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These reviews can be found on Yelp.

★ ★ ★ ★ ★ 3/1/2021

South San Francisco, CA

“This is my third vehicle purchase where the dealership has used this company. It’s the third time I have had to go to DMV to unscrew what they have screwed up.”

★ ★ ★ ★ ★ 1/20/2021

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