

NATO of California/Nevada

# PREVIEWS

Information for the California and Nevada Motion Picture Theatre Industry

## CALENDAR of EVENTS & HOLIDAYS

**Hanukkah**

December 5-12

**Winter Begins**

December 22

**Christmas**

December 25

**Kwanzaa Begins**

December 26

**New Year's Eve**

December 31

**Happy New Year**

January 1, 2008

**Entry deadline for  
ShoWest/NATO  
Marketing Achievement  
Awards**

January 11

**NATO of CA/NV Board of  
Directors Meeting**

January 15

**Martin Luther King, Jr.'s  
Birthday observed**

January 21

**Food Manager  
Certification Seminar**

Southern California - January 29

Northern California - January 31

**Valentine's Day**

February 14

**ShoWest**

March 10-13

## 2007 Proves Banner Year For NATO of California/Nevada

2007 proved to be a banner year for NATO of California/Nevada with the Association attaining the largest membership in its history, while also allocating record levels of scholarship funding for higher education for member employees and aspiring filmmakers. Under the astute leadership of its Board of Directors, the Association continues to assist its members with aggressive lobbying on behalf of the exhibition industry and maintaining a free flow of information and updates on those important issues that affect our business. More than ever the Association is being called upon to provide information on our ever changing industry.

With your support, since the year 2000, your Association has provided higher education scholarship assistance and made various charitable contributions totaling more than \$1.25 million; something you can all take pride in.

The year has also witnessed a host of challenges for the exhibition community in the face of increasing competition from new, alternative forms of improved home entertainment, online distribution, and other forms of leisure time enticements. But with that, exhibition has responded with many new and exciting innovations to broaden its theatres' appeal as an

entertainment destination for all audiences.

The old business model of our industry is changing - - no longer are theatres just a movie-going venue - - we are seeing the expansion of advance reserved seating, on-site cafes, food service at your seat, valet parking, and the ability of customers to print their own tickets at home. Theatres are also bringing patrons such exclusive events as the Metropolitan Opera live, and the upcoming U2 concert in 3-D. Never in the history of our business have we been able to deliver such a wide array of choices to the public. Together with the growing technological advances in delivery systems and projection capabilities, these types of patron amenities and programming innovations continue to make the theatre going experience unlike any other.

2008 will undoubtedly see further reshaping of how we do business, what is shown in our theatres and how it is shown. It is an exciting time for our industry and it is up to all of us to take advantage of the many new opportunities that will be available to make going to the movies an exciting and rewarding experience for your customers as well.

Best wishes for a happy holiday season and a prosperous 2008! ▼



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# Registrations still being accepted for the NATO of California/Nevada Food Manager Certification Training Seminars Scheduled for January 29 and 31

NATO of California/Nevada members will gather at Regal's South Gate 20 theatre on January 29<sup>th</sup> and at the Regal Hacienda Crossing Theatre on Thursday, January 31<sup>st</sup> for a day-long Food Manager Certification Training Seminar. The all-day class will help theatres fill the requirement found in most states and counties of having at least one employee with food safety certification on every shift.

The day-long class, which is scheduled to begin at 9:30AM, will be conducted by Mr. Jack Koury, a 29 year veteran of the hospitality and service industry. The topics to be covered will include the goals of a sanitation program; the basic principles of a Safety Program; proper cooking and holding temperatures; the identification of personal hygiene practices; savings on food cost through the implementation of a food safety program; how to minimize the risk of an outbreak of food-borne illnesses, and much more. The day will close with an exam, accredited by the American National Standards Institute and the Conference for Food Protection. Following the successful completion of the exam attendees will receive their certification.

Enrollment is available for employees of NATO of California/Nevada members only, at a reduced price of \$50.00 per person. The enrollment fee includes the 8 hour course, lunch, the Concession Professional Food Manager Certification Training Manual and the accredited examination.

Participants are encouraged to register early since training manuals will be sent upon receipt of payment and registration information giving early registrants the advantage of more time to prepare for the seminar and exam. The registration deadline is December 20, 2007.

Payment and registration forms are to be sent to the NATO of California/Nevada office at 11661 San Vicente Blvd., Suite 830, Los Angeles, CA 90049.

**FOOD SAFETY CERTIFICATION  
ENROLLMENT FORM**

Name: \_\_\_\_\_

Member Company: \_\_\_\_\_

Theatre Name: \_\_\_\_\_

Theatre Address: \_\_\_\_\_

Daytime Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

I will be attending:     So. California     No. California

Check payable to NATO of California/Nevada in the amount of \$50 per person to be included with registration form.

## New Developments in FACTA (the Fair and Accurate Credit Transaction Act)



by Gregory F. Hurley,  
Greenberg Traurig  
Orange County

*(Mr. Hurley is currently defending more than a dozen FACTA class actions filed in jurisdictions across the Nation and is preparing an amicus brief for NATO of California Nevada, the National Retail Federation, and The National Council of Chain Restaurants on FACTA issues being appealed. He can be reached at [HurleyG@gtlaw.com](mailto:HurleyG@gtlaw.com) or (949) 732-6614.)*

By now most theater owners have heard about the Fair and Accurate Credit Transactions Act, or "FACTA," and the more than 250 class action lawsuits filed around the country for plaintiffs seeking compensation under FACTA's damage provisions. FACTA states that electronic generated credit card receipts given to customers can not contain more than the last five digits of the card, nor can they show the expiration date of the card. FACTA provides for a minimum penalty of \$1,000 per violation if the business failure to remove this information from the receipt was "willful". Because the statute is new there is little guidance on how it should be interpreted. However, since these FACTA cases began being filed in January of 2007 there are some developments that businesses need to watch in the FACTA arena.

**What Type of Receipts Does FACTA Apply To?** Clearly FACTA applies to the typical electronic receipt handed to a customer at the point of sale. But what about a merchant copy of that receipt that is inadvertently handed to a customer? Is such a receipt, because it was provided to the customer, subject to FACTA? This interesting issue arises in litigation because some plaintiffs have returned to the point of sale claiming they need another receipt and the only receipt the merchant can print at that time is the "merchant copy" with all of the card information shown.

Does FACTA apply to internet receipts? If a web page allows a business to print out a copy of the receipt shown on the customers computer is that receipt subject to FACTA? Apple and other on line vendors are facing litigation on this issue now.

**Are FACTA Classes being certified?** The fear in FACTA cases is that the court will certify the case as a class action. That certification would expose the merchant to liability for EVERY receipt they issued. For some merchants the liability would greatly exceed their net worth. Consequentially, some businesses have successfully avoided class certification by alleging that class certification is inappropriate because the damages would "annihilate" them. Until recently that argument had been very successful, with 8 California courts denying certification of the class. However last month a California judge allowed 2 FACTA classes to be certified, and recently district courts in other states have criticized the California denials of classes. The issue of class certification will continue to be disputed for years. There will be appeals by both plaintiffs and business. NATO has agreed to file an amicus brief in support of the business involved in the first appeal of a California denial of class certification. We will not have the Ninth Circuit's guidance on FACTA class actions for at least another 6 months.

**Legislative Fixes** Recently a bill was introduced into the house to retroactively fix FACTA so that businesses would not be liable for simply leaving the credit card's

expiration date on a receipt. Since 90% of the FACTA claims are based on failure to mask expiration dates such legislation would be very helpful to merchants. Soon NATO members may be asked to assist with the legislative fix by writing letters to their elected representatives and contributing to funding the legislative efforts.

**Can a Franchisor be Liable for a Franchisee's Violation of FACTA?** This question is really if FACTA liability is limited to just the entity that prints out the receipt and hands it to the customer, or can the point of sale software or hardware vendor or service provider be liable? Can the franchisor that suggests to a franchisee that they use the franchisor's credit card system be liable if that system generates non compliant receipts? This issue can expand all the way to point of sale machines owned by others but in use on your premises.

**Is there Insurance Coverage for FACTA Suits?** The answer is a resounding "maybe". Some carriers have picked up defense of these claims conditionally, others have refused completely, many have not responded to tenders. The inevitable lawsuits and third party claims against insurers, as well as the vendors responsible for the point of sale hardware and software, have begun. The issue of indemnity for these claims and violations will be every bit as contentious as the underlying claims.

**The Future** In the coming months there are sure to be more significant developments in FACTA, for example the first FACTA national settlements will be presented, and possibly challenged, and courts will be addressing what constitutes a "willful" violation of FACTA sufficient to expose a business to liability, as well as other issues. Businesses concerned about FACTA should pay close attention to how these issues develop. ▼

### MINIMUM WAGE INCREASE

A reminder that  
California's minimum wage  
increases to \$8.99 per hour  
as of January 1, 2008.

## Golden Globes Returns to Sunday Nights

For the first time in three years, the Golden Globes ceremonies will return to Sunday night. The telecast will take place in Beverly Hills, Sunday, January 13, 2008 on NBC.

The 80<sup>th</sup> Academy Awards will take place on Sunday, February 24, 2008, 5:00pm (PT) and televised on ABC. ▼

## Curtain Rises for On-Demand Opera

*Reprinted from The Hollywood Reporter*

LOS ANGELES (Hollywood Reporter) - The Metropolitan Opera and In Demand Networks have inked a deal to bring all eight new performances from the Met's second season of "Metropolitan Opera: Live in High Definition" to on-demand subscribers in the U.S.

The Met's series of opera performances are transmitted worldwide into movie theaters, and each show will be available within 30 days of its theatrical release to on-demand subscribers in both standard and high-definition formats.

"With this agreement, we are creating the opera equivalent of a Hollywood movie rollout," Met general manager Peter Gelb said. "I think opera fans will be thrilled to play our movie theater transmissions at home on their own schedules."

The on-air schedule kicks off with the Met's production of Gounod's "Romeo et Juliette" on January 16. The production stars Anna Netrebko and Roberto Alagna and is conducted by Placido Domingo.

Other operas slated for release through In Demand Networks are Humperdinck's "Hansel and Gretel," Verdi's "Macbeth," Puccini's "Manon Lescaut" and "La Boheme," Wagner's "Tristan und Isolde," Britten's "Peter Grimes" and Donizetti's "La Fille du Regiment." ▼

## Studios Expand Movie Marketing With Red Tag Trailers

*Reprint from Shootonline, by Ken Liebeskind*

Advertising R-rated movies has benefited from the ability to play online trailers that show restricted content from the movies that isn't used in mainstream advertising. "Red band or red tag trailers allow us to show material we can't show to a general audience," said JP Richards, director of digital marketing at Universal Pictures. "They give viewers the opportunity to see great content they wouldn't normally see. They're taking trailers to the next level."

Trailers are frequently shown in movie theaters, but red tag trailers only play online because theater owners are reluctant to play them to a general audience. "We can't get red band material played with appropriate R-rated movies in theaters across the country," Adam Fogelson, Universal's president of marketing said. "Most theaters don't play them no matter what movie they're playing."

The theaters' decision not to play the trailers has moved them online. "We've used red tag trailers online for most of our R-rated comedy and action films," Fogelson said, including Knocked Up, Dead Silence and The Forty Year Old Virgin.

Most of the time, studios play red tag trailers on their movie sites with age verification forms that assure the trailers aren't being viewed by children. "We like to be able to protect our content and the safest way is to put it our on our own sites," said Amy Powell, senior vice president of marketing at Paramount Pictures, which is playing red tag trailers for Beowulf.

Playing red tag trailers on other sites can be difficult because not all sites utilize the age verification process that is mandated by Motion Picture Association of America (MPAA) guidelines. "We don't play the red tag trailers at other sites unless we can be sure it will be played behind the wall," Powell said. "Some sites have it and some sites don't." She said YouTube and Break.com have it and the studio has played red tag trailers there.

Richards said, "AOL, Yahoo, MSN and Apple live by different rules not dictated by the MPAA, so it's not as easy for them to have red tag content." He said Universal plays green band trailers at these sites that "call out to the red tag material and drive traffic to the site."

One reason the sites might not participate in the age verification process is because "you lose people with the forms," Richards said.

But the studios are amenable to the age verification system, because it enables them to show the R-rated material. "It's a wonderful vehicle to market a movie and show footage you wouldn't be able to see with a green band trailer," Powell said.

This year only about a dozen films have used red tag trailers, according to a spokeswoman for the MPAA. "It only makes sense if there's something extra to show the fans," Powell said. But the opportunity to run red tag trailers online has boosted their use. "Online has been a great place to do it and we'll do more of it," Fogelson said.

The fact that red tag trailers are highly popular will promote their use. "They are some of the most popular features on our web sites," Richards said. "It tends to be the content viewed most frequently within a site and it has a high click through rate on the banners that promote them." ▼



## An Unlimited Area Theater, and Then Some

*By Gene Boecker, NATO of CA/NV Code Consultant*

Certain aspects of the new California Building Code (CBC) should be reviewed for their potential application in new construction and renovation. The new CBC is based on the 2006 edition of the International Building Code (IBC). The IBC contains a few provisions that are very similar to that in the Uniform Building Code (basis for the current – soon to be “old” CBC). There are however a few provisions that are slightly different and whose application is subject to interpretation. The concept of unlimited area buildings is one of those.

An unlimited area building is one in which the allowed building type (discussed further below) is limited in height to one or two stories depending on the type; is equipped throughout with an automatic fire sprinkler system; and, is surrounded by an open space of at least 60 feet. For motion picture theaters, the building must be limited to one story in height (the projection level is almost always a mezzanine and not a story) and must be constructed on Type I or Type II construction.

Type IA, IB IIA, and IIB are buildings in which the entire structural support system, including the roof, is composed of non-combustible materials such as steel, concrete, gypsum board and masonry. In theory, a motion picture theater can be built of unlimited area if it held to these criteria. It should be noted that Type IIB is an unrated, non-combustible construction. There is no fire-proofing required. This provision creates a tremendous cost savings potential for construction.

It may be desirable to have retail or sales offices of various types as a part of the theater building; possibly tenants or integral internal uses. In this case, the flexibility would add to the design possibilities. But these are not “motion picture” uses. They may be allowed as separate unlimited area buildings but can they be combined in a single building?

This question, regarding the application of two differing unlimited area building provisions, was posed to the International Codes Council (ICC). The ICC is the organization responsible for promulgating the IBC. We asked for and obtained a written interpretation by ICC staff that states that they see “no reason why any of the use and occupancies listed in [the IBC] cannot also be located in the same building as the motion picture theater as long as the building is of Type I or II construction.” Consequently, a theater can contain any of the allowed unlimited area building functions within it such as retail and business.

Of course, there are other types of structures that can be unlimited in area as well. Included in this list are buildings of one- or two-story heights with Mercantile (retail sales) and/or Business occupancies. These are often found in lifestyle centers or traditional shopping centers. The sprinkler and open space provisions also apply.

Interestingly, another provision of the code states that two buildings can be treated as if they were one building if together the two buildings meet the code for height and area. Thus, if the two buildings are sitting next to each other, although separate, they can be considered as if they were one. This would allow the 60 foot separation to be reduced to whatever is desired.

Consequently, as long as both buildings are limited to one-story, built of Type I or II construction, fully sprinklered and of the allowed occupancies, and there is at least 60 feet around the combined buildings, the theater can be considered a part of the other building. When considering a new theater as part of an outdoor center or attached to an existing shopping center, this provision can create possibilities not available under the current CBC. Owners, developers, architects and other interested parties should be aware of this option as we move into a new code next year. ▼

## UCLA forecasts slow economy but no recession

*Reprinted from The Sacramento Bee,  
By Dale Kasler*

The California and the national economies will continue sputtering but won't fall into a recession, according to the latest forecast from UCLA.

Economists at the UCLA Anderson Forecast said the damage from the housing market won't be enough to create a recession. The forecast, one of the most widely respected in the state, is in line with earlier predictions from UCLA but acknowledges that things have gotten slower lately.

“Real estate weakness will create a sluggish economy, but will not be enough to tip the state into a recession,” forecasters Ryan Ratcliff and Jerry Nickelsburg wrote.

Ed Leamer, director of the forecast and an expert on the U.S. economy, said “there really is some significant recession risk out there” but the economy should bear up.

Recession is generally defined as two consecutive quarters of shrinking Gross Domestic Product, and GDP grew at an unexpectedly robust 4.9 percent annual rate in the third quarter.

But federal officials and many private analysts are increasingly worried about a recession, with Federal Reserve Chairman Ben Bernanke hinting last week that the Fed might cut interest rates again to keep the economy from stalling out.

Leamer said one reason a recession is unlikely is that the recovery of the past few years has been “very weak” in terms of job creation. In particular, the nation hasn't recaptured the 3 million jobs lost during the 2001 recession, he said. ▼



# LABOR ISSUES & Updates

## Meal/Rest Period Rules Continue to Spawn Employer Questions

California's requirements for providing meal and rest breaks to employees continue to raise numerous employer questions.

Questions center around the specifics of the requirement and how it applies to everyday occurrences in the workplace, as well as when exceptions are permissible.

Knowing and complying with the requirements became even more important for employers following an April California Supreme Court ruling that increased employer liability in cases involving an allegation that the employer violated the requirement to provide a meal or rest break.

The court ruled in *Murphy v. Kenneth Cole Productions, Inc.* that the amount an employer pays a worker for failing to provide the worker a meal break is a wage, not a penalty. Consequently, employees now have more time — up to four years — to sue over an alleged violation.

### Common Questions

Following is a sampling of some common questions and answers as supplied by the California Chamber of Commerce.

#### ***What is the requirement for providing meal and rest breaks?***

A: Non-exempt employees (employees not exempt from overtime and meal/rest break requirements under the federal Fair Labor Standards Act and the California Wage Orders) must be given an opportunity to take a 10-minute paid rest break for every four hours worked and a 30-minute unpaid meal break for shifts longer than five hours. The meal break must begin no later than 4 hours and 59 minutes into the employee's shift.

#### ***What happens if an employee starts lunch hour late (for example, 5 hrs 15 minutes after started workday); what do we do? How do we compensate?***

A: The employee is entitled to an additional hour of pay at straight time for failure to provide the meal within the required time, plus wages for any time actually worked.

#### ***Can an employer grant a longer rest period (15 minutes)? That is our practice.***

A: That is your choice, so long as it is for a minimum of 10 minutes and is taken no later than 3 hours and 59 minutes into the employee's shift.

#### ***Are employers required to monitor employees to make sure they take their scheduled rest breaks?***

A: You are required to make the rest break available. It is paid time, so you do not have to monitor employees, but you should document all steps you've taken to give employees their breaks.

#### ***Must employers monitor meal breaks?***

A: Yes. As the law is currently being interpreted, employers are responsible for ensuring that the employee takes the full 30-minute off-duty meal period (subject to limited exceptions).

#### ***If an employee works more than 10 hours, is the employee required to take the second lunch break or is it at the employee's request?***

A: The second meal period can be waived only by mutual consent of the employer and the employee, if the employee will not work more than 12 hours and only if the first meal period was not waived.

#### ***Can a meal period be less than the full 30 minutes? For example, can they take a 20- or 25-minute meal period?***

A: No, meal breaks must be at least 30 minutes. If the meal break is less than a full 30 minutes, the one hour of premium pay (or wage) must be paid.

#### ***Can employees hold their afternoon break until the end of the day and then leave 10 minutes early?***

A: No.

#### ***If an employee is working a short shift, can the employee waive a meal break?***

A: If the employee's shift can be completed in six hours or less, the employee can waive the meal break. The waiver must be in writing, agreed upon by both the employee and the employer and the employee must be able to revoke the waiver at any time.

#### ***What are the criteria for having an on-duty break and meal waiver?***

A: An on-duty meal period may be used only when the employee cannot be relieved of all duty because of the nature of the work. An example is a security guard in the bank, alone at night.

Consult with legal counsel before using such a waiver. Valid waivers must be in writing. Sample meal break waivers that use the language from the law and regulations are available for CalChamber members under "Forms and Checklists" at HR-California.com.

Source: California Chamber of Commerce Alert

# Film Product Seminar Presented to Packed Houses

The NATO of California/Nevada Fall/Winter Film Product Seminar again had a record turnout, with a full representation from theatres throughout California and Nevada. Joe Peixoto, president of Real D, opened the seminar with a special presentation of 3-D clips from upcoming films as well as clips from NBA and NFL games and concluded his presentation with three numbers from U2's international concert tour which will be shown in theatres in January. All in attendance were truly mesmerized by the magic of the 3-D demonstration. Through the courtesy of Paramount Pictures *Beowulf* was screened in 3-D at the conclusion of the product seminar. All in all over 80 films were screened by the various studios in the luxury of National Amusements The Bridge in Los Angeles and Cinemark's Century Daly City Theatre. On behalf of the Association our

thanks go to Mark Bastian, Raymund Cornelio and Jose Nunez of National Amusements The Bridge::Cinema de Lux and Mike Consolazio and Beatriz Herrera of Cinemark's Century Daly City Theatre, along with the rest of their management teams and staffs for the warm welcome and hospitality that was extended. We also extend appreciation to our seminar breakfast sponsor ACS Enterprises.

As shown in the photos on these pages and many others available in the Meetings and Seminars section of our web site at [www.NATOCaINev.org](http://www.NATOCaINev.org) it was a great opportunity for theatre personnel to have the chance to meet and visit with the studio representatives.

Be sure to check the Association's website for the exact dates of the next Film Product Seminar to be held in April '08.

## Southern California



National Amusements The Bridge:: Cinema de Lux Manager Mark Bastian receives a plaque commemorating a job well done from NATO of CA/NV President Milt Moritz



Sincere appreciation goes to the management team of National Amusements The Bridge::Cinema de Lux from L-R: Victoria Hull, Raymund Cornelio, Mark Bastian, Lucy Rodriguez, Jose Nunez, Daniel Hirschleifer and Sam King



John C. Hall & Rebecca Jansson, Universal; Matt Eide, Pacific Theatres; Sam King, National Amusements; Chuck Sanders and Nickie Sandoval of Universal



Marlene Songin, Joe Peixoto and Rod Archer of Real D



Zach Beebe and Kathleen Hatcher of Overture Films with Barbara Laufer and Jesse Chow of Warner Bros



ACS Enterprises our breakfast sponsors: Wayne Kochanek, Jose Alvarado, Richard Ortega, Patrick ARTiaga, Raul Alvarado and Geoffrey Meehan



Elizabeth Rangel and Dalia Nazari of Mann Theatres with Eugenia Bizarro of REG

## Northern California



Daly City team: (Back Row L-R) Rene Ascencio, Ruth Ann Scuitto, Mike Consolazio, Beatriz Herrera, Rafael Herrera (Front Row L-R) Carlos Ochoa, Salvador Ochoa



NATO of CA/NV President Milt Moritz extends the Association's thanks and a plaque to Mike Consolazio our host manager of Cinemark's Century Daly City 14 Theatre



Eric Tabak and Reynee Scofield of Paramount surround Joseph Depew of Regal



Craig Gildea, Sean Clark, Sharon Davidson, Jessica Wrye and Paul Gunsley of CineLux



Patrick Artiaga of ACS Enterprises with Mike Wegner of Cinemark



Allen Michaan of Renaissance Rialto Theatres with Demetri Panos of Lionsgate



Susana Castellanos and Branden D. Miller of 20th Century Fox with Milt Moritz of NATO of CA/NV



Mike Timko, Theatre Booking Services; Jesse Chow, Warner Bros and Dominique Ta, Walt Disney Studios Motion Pictures

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## INSIDE PREVIEWS

**2007 Proves Banner  
Year for NATO of  
CA/NV**

•

**Space Still Available for  
Food Manager  
Certification Training  
Seminars**

•

**New Developments in  
FACTA**

•

**Curtain Rises for  
On-Demand Opera**

•

**Studios Expand Movie  
Marketing with Red  
Tag Trailers**

•

**An Unlimited Area  
Theatre, and Then Some**

•

**UCLA Forecasts Slow  
Economy but no  
Recession**

•

**Film Product Seminar  
Presented to packed  
Houses**

•

**Labor Issues & Updates**  
Meal Period Rules Continue to  
Spawn Employer Questions

ADDRESS SERVICE REQUESTED

## New Law to Prohibit Social Security Numbers on Paycheck Stubs takes effect on January 1, 2008

As of January 1, 2008, employers will be required to list *only* the last four numbers of an employee's Social Security number, or as an alternative, the employer may list an employee identification number that is not the employee's Social Security number on check stubs.



This change also applies to any electronic wage statements issued to employees.

Some questions have arisen regarding the Social Security number appearing on the paycheck itself. Labor Code Section 226, upon which this legislation is based, speaks to the itemized statement accompanying a paycheck. However, considering the privacy and identity theft concerns that lie behind the change in the law, it would be wise to remove the full Social Security number from the paycheck as well.