BerkeleyLaw
UNIVERSITY OF CALIFORNIA
California Constitution Center

University of California, Berkeley
School of Law – 337B Law Building
Berkeley, CA 94720-7200
510-664-4953
carrillo@law.berkeley.edu

20 Jun 2022

Honorable Thomas J. Umberg, Chair
Senate Judiciary Committee
1021 O Street, Room 3240
Sacramento, CA 95814

Honorable David D. Cortese, Chair
Senate Committee on Labor, Public Employment and Retirement
1021 O Street, Room 6740
Sacramento, CA 95814

Re: Policy analysis of AB 983

Dear members of the California Legislature:

The California Constitution Center respectfully submits the attached policy analysis for consideration at your respective June 22 and 28, 2022 committee hearings on AB 983 to assist you in the policymaking process.

I write in my academic capacity only to make a fair academic presentation of the facts and law, and not for political or campaign purposes. This does not advance a position or promote a vote; it neither supports nor opposes any candidate for elective office or any political party; nor does it campaign for or support or oppose any measure that has qualified for the ballot. Titles and insignia are for identification only. This does not state a University of California position, and nothing herein implies the support, endorsement, advancement, or opposition of the University; this reflects only the personal and academic opinions of the author, and the author speaks for themselves only in their individual academic capacities and not as representatives of the University or any of its offices or units.

Respectfully submitted,

David A. Carrillo, J.S.D.
Executive Director
California Constitution Center

Analysis of Assembly Bill 983 June 2022

Summary of conclusions

Assembly Bill 983 would rewrite the statutory scheme governing personal service contracts in the music industry by revising several core aspects of such contracts:

- Eliminating a record label's statutory right to recover damages when an artist terminates a recording contract under the Labor Code's seven-year limit on the length of personal services contracts without delivering all contractually promised recordings.
- Replacing that right with a narrow obligation that an artist who terminates their recording agreement after seven years without delivering all contractually promised recordings repay contractual advances "directly and solely" related to the undelivered recordings, so long as those payments are credited to the artist's royalty account.
- Restricting option periods to 12 months after an album's release.

AB 983 prohibits parties from waiving any of the statutory proscriptions and provides that any contract that conflicts with the statute is void.

This analysis evaluates a retroactive version of AB 983. Previous subdivision (g) ("This section shall apply to existing and future recording agreements and employment contracts.") was amended out in the Senate on June 14, 2022. If AB 983 is made retroactive it will be constitutionally suspect for impairing contracts between record labels and music artists by retroactively restructuring those contracts. Making this act retroactive may be unconstitutional under the California and federal constitutional provisions that bar states from passing laws that impair private contracts.

This is so because a retroactive AB 983 will substantially impair record labels' contracts with recording artists. California and United States high court decisions hold that legislation significantly altering contractual duties to benefit a narrow class of special interests is constitutionally suspect.[1] AB 983 would do so by rewriting existing contracts to the sole benefit of recording artists. Doing so retroactively would serve no significant and legitimate public purpose; instead it merely alters existing contractual obligations to benefit special interests at the expense of record labels. A retroactive version of this law likely will be challenged as a severe governmental interference with existing contractual relationships, and as discussed below it is unlikely to survive that attack. More so, this act may be an opportunity for California courts to expand a distinct California contracts clause analysis, which AB 983 is even more likely to fail.

[1] *See, e.g.*, *Sonoma Cty. Org. of Pub. Emps. v. Cty. of Sonoma* (1979) 23 Cal.3d 296, 308–09; *Alameda Cty. Deputy Sheriff's Ass'n v. Alameda Cty. Emps. Ret. Ass'n* (2020) 9 Cal.5th 1032, 1075; *see also Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234, 249–50; *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.* (1983) 459 U.S. 400, 412.

Analysis

1. Existing law subjects recording contracts to the "Seven Year Rule."

In a typical recording contract a music artist agrees to provide exclusive recording services to a record label and deliver a set number of recordings. The record label shoulders the costs of artist development; finances the production, promotion, and distribution of the recordings; and provides the artist with an advance payment to provide income to the artist. In exchange, the label receives a share of royalties from the revenue generated by the recordings through sales and streaming, and may also receive "options" negotiated by the parties that would cover additional recordings by the artist.

Recording contracts are routinely renegotiated within their original term as circumstances change based on the parties' experience, as is often the case when one of an artist's first releases is successful. More often, initial recordings do not achieve significant commercial success and an artist is released from their contract when the record label declines the option for future recordings. That leaves the record label to absorb the costs it invested to develop, market, and promote a commercially unsuccessful release. This contract structure enables record labels to offset losses on those recordings that are not commercially successful by securing the right to obtain royalties for all recordings covered by multi-album deals when artists are successful. This makes the right to receive the full potential value of all recordings covered by an agreement during the seven-year contractual period critical to the music business model.

These recording contracts are subject to Labor Code section 2855, which limits all personal service contracts to seven years.[2] This "Seven Year Rule" has special provisions for recording contracts.[3] One such provision requires a recording artist who seeks to cease rendering services under a record deal to serve a written termination notice:

> Any employee who is a party to a contract to render personal service in the production of phonorecords . . . , may not invoke the provisions of subdivision (a) without first giving written notice to the employer . . ., specifying that the employee from and after a future date certain specified in the notice will no longer render service under the contract by reason of subdivision (a).[4]

In that case a record label may seek compensation for any contractually promised recordings that an artist fails to deliver:

---

[2] *See* Labor Code § 2855(a) (providing that "a contract to render personal service . . . may not be enforced against the employee beyond seven years from the commencement of service under it").

[3] California's limitation on the length of personal service contracts began in 1872. As originally enacted, California law limited personal service contracts to a two-year term. The term was extended to five years in 1919, and to seven years in 1931. Blaufarb, *The Seven Year Itch: California Labor Code Section 2855* (1984) 6 Hastings Comm. & Ent. L.J. 653, 655–56. Section 2855 was the subject of a notorious lawsuit in the 1940s, when film star Olivia De Havilland sued Warner Brothers Pictures in a dispute over her contract term. *See De Haviland v. Warner Bros. Pictures* (1944) 67 Cal.App.2d 225. The provisions governing recording artists were added in 1987. S. Bill 1049 (1987-1988 Reg. Sess.), 1987 Cal. Stat., ch. 591.

[4] Labor Code § 2855(b)(1).

> If a party to a contract described in paragraph (1) is, or could contractually be, required to render personal service in the production of a specified quantity of the phonorecords and fails to render all of the required service prior to the date specified in the notice provided in paragraph (1), the party damaged by the failure shall have the right to recover damages for each phonorecord as to which that party has failed to render service . . . .[5]

This right to compensation for undelivered recordings is the same right to recover for breach in any California contract.[6]

This statutory structure recognizes the unique nature of recording contracts. Unlike other traditional areas of personal service, performance under recording contracts is measured by deliverables rather than a period of time (*e.g.*, five albums rather than five years). Unlike television and film actors, recording artists control the pace and result of their work, recording and releasing albums as their inspiration dictates. This structure permits both parties to prosper. Artists are free to leave at the end of a seven-year period even if they have not delivered all contractually required albums, and record labels can protect the value of their investment in the artist by recovering costs for undelivered recordings.

2. AB 983 is a major change to existing law.

AB 983 would revise the contractual relationship between record labels and recording artists in several fundamental ways:

- It would eliminate the right to seek damages for breach when an artist fails to deliver contractually promised recordings during the seven-year period. Proposed § 2855(c).
- It would create an inadequate alternative recourse by merely obligating an artist leaving their deal without delivering contractual recordings to repay "an amount equal to the contractual advances actually paid" to an artist "that are directly and solely related" to the undelivered recordings. Proposed § 2855(c)(2).
- It would limit the options period by prohibiting "option periods that extend more than 12 months after the initial commercial release of the applicable music product," and allow an artist to terminate a record deal "at any time" if an option period is not exercised within the 12-month window. Proposed § 2855(d)(1), (2).

---

[5] Labor Code § 2855(b)(3).

[6] *See, e.g.*, *Lewis Jorge Constr. Mgmt., Inc. v. Pomona Unified Sch. Dist.* (2004) 34 Cal.4th 960, 967 ("[d]amages awarded to an injured party for breach of contract 'seek to approximate the agreed-upon performance,'" with the goal of putting the injured party "'in as good a position as [they] would have occupied'" if the contract was not breached) (citations omitted); *Sargon Enters., Inc. v. Univ. of S. Cal.* (2012) 55 Cal.4th 747, 773–75 (discussing standard for recovery of lost profits for breach of contract). It is one of the most basic principles of contract law that effective remedies are needed to encourage both sides to perform their end of the bargain and create a disincentive for breach. *E.g.*, *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 683 ("[P]redictability about the cost of contractual relationships plays an important role in our commercial system."); *Hot Rods, LLC v. Northrop Grumman Sys. Corp.* (2015) 242 Cal.App.4th 1166, 1176 ("Contracts must mean what they say, or the entire exercise of negotiating and executing them defeats the purpose of contract law — predictability and stability.").

The bill further states that the statutory provisions are not waivable and that contracts that conflict with the statute are void. Proposed § 2855(e), (f).

3. Retroactively applying AB 983 would violate constitutional contract clauses by substantially impairing record labels' contractual rights to favor a narrow class of special interests.

If AB 983 is made retroactive it may impair contracts between record labels and music artists by retroactively restructuring recording contracts. Previous subdivision (g) ("This section shall apply to existing and future recording agreements and employment contracts.") was amended out in the Senate on June 14, 2022. If that or a similar retroactivity provision returns in the final bill it may be unconstitutional under the California and federal constitutional provisions that protect against impairment of contracts.

Enacting new laws that substantially impair existing contracts is unconstitutional. Both the United States and California constitutions contain provisions that prohibit the enactment of laws effecting a "substantial impairment" of contracts, including employment contracts.[7] The contract clause "restricts the power of States to disrupt contractual arrangements," and it "applies to any kind of contract," including contracts "between private parties."[8] Courts balance the "facially absolute" prohibition in the contract clause against "the inherent police power of the State to safeguard the vital interests of its people."[9]

The California Supreme Court has relied on U.S. Supreme Court precedents when considering California's constitutional contract clause.[10] The current framework applies a two-step analysis to contract clause claims. The threshold question is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship."[11] This inquiry looks at the extent to which "the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights."[12]

If there is a substantial impairment, "the inquiry turns to the means and ends of the legislation," which requires the state to "have a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem. The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests."[13] Finally, "[i]f the legislation survives that scrutiny, 'the next inquiry is whether the adjustment of the rights and responsibilities of contracting parties is

---

[7] *Cal Fire Local 2881 v. Cal. Pub. Emps. Retirement Sys.* (2019) 6 Cal.5th 965, 977; *see* U.S. Const. art. I, § 10 (states shall not pass "any Law impairing the Obligation of Contracts"); Cal. Const. art. I, § 9 (a "law impairing the obligation of contracts may not be passed").
[8] *Cal Fire*, 6 Cal.5th at 977 (citations omitted).
[9] *Exxon Corp. v. Eagerton* (1983) 462 U.S. 176, 190 (internal quotation marks and citation omitted); *see Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 828 (quoting *Exxon*).
[10] *See, e.g.*, *Alameda Cty. Deputy Sheriff's Ass'n v. Alameda Cty. Emps. Ret. Ass'n* (2020) 9 Cal.5th 1032, 1074–75; *Cal Fire*, 6 Cal.5th at 977; *Calfarm*, 48 Cal.3d at 827–29; *Sonoma Cty. Org. of Pub. Emps. v. Cty. of Sonoma* (1979) 23 Cal.3d 296, 305–09.
[11] 9 Cal.5th at 1075 (quoting *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.* (1983) 459 U.S. 400, 411).
[12] *Id.* (quoting *Sveen v. Melin* (2018) 138 S. Ct. 1815, 1822).
[13] *Alameda County*, 9 Cal.5th at 1075 (quoting *Kansas Power*, 459 U.S. at 411–12).

based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption.'"[14]

AB 983 likely fails that analysis if it is made retroactive, and (as discussed in section 4 below) it will present risks of opening a new area of California constitutional law, and failing in that arena.

a. A retroactive AB 983 will substantially impair record label contracts with recording artists.

Retroactively applying AB 983 would substantially impair record label contracts with recording artists. It would rewrite existing record contracts by eliminating a core protection — the right to actual damages from an artist's failure to deliver contractually promised recordings — and permit artists to walk away from a record deal by simply repaying some portion of advances. This disregards the substantial monetary investments and nonmonetary support record labels expend in artist development, production, and marketing. That is all potentially recoverable under the existing statutory damages remedy, including lost profits and royalties, under current law.

AB 983 bars such recovery. That grants a windfall to artists: if they experience commercial success, they can withhold recordings for the remainder of their seven-year contract period, thereby forcing labels to shoulder all of the risk without the bargained-for upside. And if an artist's success occurs after the 12-month option period lapses, the artist can walk away and leave the recording label with the bill for launching a major new artist. Worse, the vast majority of artists fail to achieve such success, and AB 983 prevents labels from cutting their losses and recovering on the existing investment.

Retroactively imposing a new one-year limit on exercising existing options similarly impairs a record label's bargained-for right to protect its early investment in recording artists, particularly where an album's success may not be apparent until long after its initial release. Labels and artists may have already agreed on a development, release, and touring strategy that makes it impossible to exercise existing options within twelve months. If the options have already expired by the time AB 983 takes effect, that would deprive the label of the benefit of longer options it negotiated and paid for in existing deals.

Decisions from both the California and U.S. high courts hold that a contractual impairment is "severe" when legislation overrides contract rights such that they are "irretrievably lost," and imposes a "severe, permanent, and immediate change" in pre-existing contractual relationships.[15] The financial windfall to artists, and reciprocal monetary loss for the labels, is individually severe and on a grand scale industry-wide. When the impairment is severe, "the 'height of the hurdle the state legislation must clear' is elevated" when considering the means and ends of the legislation.[16] The next section shows that a retroactive AB 983 cannot meet that standard.

---

[14] *Id.* (quoting *Kansas Power*, 459 U.S. at 412; quotation marks and brackets from *Kansas Power* omitted).
[15] *Sonoma County*, 23 Cal.3d at 309 (quoting in part *Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234, 250 (striking down a law that "worked a severe, permanent, and immediate change in [contractual] relationships—irrevocably and retroactively")).
[16] *Id.* (citing *Allied Structural Steel*, 438 U.S. at 245); *see also Olson v. Cory* (1980) 27 Cal.3d 532, 539 ("the state's hurdle . . . is heightened" when legislation impairs "the heart of [an] employment contract").

b. A retroactive AB 983 will not further a legitimate public purpose because it specially benefits one narrow class at the sole expense of another.

AB 983 benefits recording artists alone, and solely burdens record labels. Such a special benefit to a narrow class fails the contract clause requirement that legislation that substantially interferes with contracts must be "enacted to protect a broad societal interest rather than a narrow class."[17] AB 983 does not seek to remedy "a broad and general social or economic problem." Instead, it only provides a special benefit to the interests of a narrow class: recording artists. Making this change retroactive is unconstitutional because the legislation's "sole effect" would be "to alter contractual duties" to benefit artists and impair record labels' contractual rights.[18] That is not a significant and legitimate public purpose. A retroactive AB 983 therefore fails constitutional scrutiny at this first step of the contract clause inquiry.

c. A retroactive AB 983 is not reasonable and appropriate.

A retroactive AB 983 also fails the second analytical step, which requires showing that "the adjustment of 'the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.'"[19] Retroactive application of AB 983 cannot meet this standard, because three features of AB 983 show that it is not tailored in a reasonable and appropriate way.

AB 983 removes a key benefit of the bargain for recording labels in recording contracts, forcing labels to bear the full economic burden of the changes in legislation. AB 983 voids the right to seek damages for breach and restricts labels' ability to recover any amount beyond "contractual advances actually paid" to an artist "that are directly and solely related" to the undelivered recordings. This leaves the labels holding the bag, unable to recover their substantial investments in artist development, promotion, and marketing, and lost profits from the undelivered albums.

And with the options-period limitation, AB 983 destabilizes the artist-label relationship by encouraging artists to breach their contracts and by inviting competing labels to lure talent away from their label. Because the only penalty for breach is partial repayment of a cash advance, artists have every incentive to wait out the final period of a deal, walk away when the seven-year clock runs, immediately produce a recording, and release it through another label. The new label gets an established and successful artist with no startup costs, and the original label's contractual rights to recover its investment have been voided by a new retroactive law.

---

[17] *Allied Structural Steel*, 438 U.S. at 249; *see also Alameda County*, 9 Cal.5th at 1075 (the "legitimate public purpose" requirement ensures that the government "is exercising its police power, rather than providing a benefit to special interests") (quoting *Kansas Power*, 459 U.S. at 412).

[18] *Exxon*, 462 U.S. at 192; *see also Allied Structural Steel.*, 438 U.S. at 250 (striking down a law that "ha[d] an extremely narrow focus" and benefitted a "narrow class"); *Equip. Mfrs. Inst. v. Janklow* (8th Cir. 2002) 300 F.3d 842, 861 ("It is clear that the only real beneficiaries under the Act are the narrow class of dealers of agricultural machinery. . . . As the case law makes clear, such special interest legislation runs afoul of the Contract[s] Clause when it impairs pre-existing contracts."); *cf. Exxon*, 462 U.S. at 191–92 (distinguishing contract clause cases striking down legislation that was "limited in effect to contractual obligations or remedies" or "directly 'adjust[ed] the rights and responsibilities of contracting parties,'" from permissible legislation that "advance[d] 'a broad societal interest'" and had only an "incidental" "effect . . . on existing contracts").

[19] *Alameda County*, 9 Cal.5th at 1075 (quoting *Kansas Power*, 459 U.S. at 412).

Finally, making AB 983 retroactive compounds the fundamental unfairness here. The contract clause is a bulwark against retroactive legislation, which can "sweep away settled expectations suddenly and without individualized consideration," and may be used "as a means of retribution against unpopular groups or individuals."[20] Retroactive application of statutes like AB 983 poses particular concerns because they "may be passed with an exact knowledge of who will benefit from [them]."[21] That is so here; accordingly a retroactive AB 983 will fail the second step of the contract clause analysis.

4. The California constitution's contract clause may be more protective than the federal constitution.

The above analysis shows that a retroactive AB 983 is probably invalid under existing law. And it presents a further risk of creating an opportunity for courts to find that California's contract clause provides greater protection than its federal analogue.

As noted above, California courts often borrow from federal contract clause doctrine when evaluating California contract clause claims. This is consistent with the default California "cogent reasons" standard, which requires California courts to follow federal constitutional law on analogous state and federal constitutional provisions absent a good reason for departure.[22] To date, there has been little reason for California courts to forge an independent state contract clause doctrine. But there is already evidence of courts moving in that direction, and AB 983 could fling that door wide.

The general rule is that California courts may always interpret the California constitution differently from the federal charter. "[T]he California Constitution 'is, and always has been, a document of independent force,'" and "the rights embodied in and protected by the state Constitution are not invariably identical to the rights contained in the federal Constitution."[23] Thus, even when the California and federal constitutional terms are textually identical, "the proper interpretation of the state constitutional provision is not invariably identical to the federal courts' interpretation of the corresponding provision contained in the federal Constitution."[24] Indeed, "[t]here is no reason . . . that constitutional guarantees of independent sovereigns, even guarantees with the same or similar words, must be construed in the same way."[25] California courts can — and should — independently analyze the California contract clause and are not bound by federal

---

[20] *Landgraf v. USI Film Prod.* (1994) 511 U.S. 244, 266; *see also* Kmiec & McGinnis, *The Contract Clause: A Return to the Original Understanding* (1987) 14 Hastings Const'l L.Q. 525, 527–28 ("The Contract Clause . . . is particularly concerned with the requirement of prospectivity. Prospectivity is an essential requirement of the rule of law because only prospective laws allow citizens to plan their conduct so as to conform to the law."). Similarly, the U.S. Supreme Court in *Allied Structural Steel* invalidated a law that "nullifie[d] express terms of the company's contractual obligations and impose[d] a completely unexpected liability in potentially disabling amounts," and the state had failed to demonstrate that this "severe disruption of contractual expectations was necessary to meet an important general social problem." 438 U.S. at 248.

[21] Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation* (1960) 73 Harv. L. Rev. 692, 693.

[22] *East Bay Asian Local Development Corp. v. State of California* (2000) 24 Cal.4th 693, 719.

[23] *Am. Acad. of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 325 (citation omitted); *see* Cal. Const., art. I, § 24.

[24] *Id.* at 326; *see also Sands v. Morongo Unified Sch. Dist.* (1991) 53 Cal.3d 863, 910 n.3 (Mosk, J., concurring) (article I, section 24 "was specifically intended to allow our state courts to give greater scope to the California Constitution than that required by the federal high court to similar, or even identical, language of the United States Constitution.").

[25] SUTTON, 51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW 174 (2018).

authorities.[26] Former California Supreme Court Justice Joseph Grodin notes that the California Supreme Court "has developed a substantial body of state jurisprudence regarding the Contract Clause," such that "there is room for independent doctrinal growth."[27]

This leaves California courts poised to drive California constitutional contracts clause doctrine in an independent direction, given the right opportunity. A retroactive AB 983 may well be that case. The wholesale revision of contractual rights AB 983 threatens is the very mischief the contract clause is meant to protect against.[28] And there is good reason to think that California's contract clause should provide more robust protection to contracting parties' rights than current U.S. Supreme Court doctrine provides, particularly when it comes to retroactive legislation.[29] As Justice Gorsuch put it, the focus on "reasonableness" in the Court's current balancing test leaves one wondering "whether their lawful contracts will be enforced tomorrow, or instead undone by a legislative majority with different sympathies."[30] Given this apparent weakening of the federal contract clause, California courts may well define the state contract clause to require a higher standard. And that higher standard likely would be fatal to a retroactive AB 983.

Conclusion

Existing law provides robust protection against legislative impairment of private contracts, and a retroactive AB 983 likely fails the existing test for such impairments. And there are signs that federal court doctrine has diverged from California doctrine — and that a new, distinct California doctrine would provide even stronger protection for contractual rights. This means that retroactive application of AB 983 would give California courts the opportunity to reevaluate California contract clause doctrine and establish greater protections for contractual rights; a test AB 983 is more likely to fail than the existing test. Either under existing law, or under a possible new California-specific contract clause analysis, a retroactive AB 983 likely is unconstitutional.

—o0o—

[26] *See* Sutton, *supra*, at 178–90 (discussing independent state constitutionalism); Liu, *State Courts and Constitutional Structure* (2019) 128 Yale L.J. 1304, 1338–40 (reviewing the structural rationale for independent state constitutionalism); *see generally* William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights* (1977) 90 Harv. L. Rev. 489.
[27] GRODIN, ET AL., THE CALIFORNIA STATE CONSTITUTION 81 (2016).
[28] Epstein, *Toward a Revitalization of the Contract Clause* (1984) 51 U. Chi. L. Rev. 703, 740 (arguing that "the transfer of wealth by special-interest politics" is the "evil to which the clause is directed"); Kmiec & McGinnis, *supra*, 14 Hastings Const'l L.Q. at 526 ("Correctly interpreted, the Contract Clause prohibits all retrospective, redistributive legislation which violates vested contractual rights by transferring all or part of the benefit of a bargain from one contracting party to another.").
[29] *See Sveen*, 138 S. Ct. at 1826–28 (Gorsuch, J., dissenting) (reviewing the original public meaning of the contract clause and criticizing the United States Supreme Court's prevailing mode of analysis).
[30] *Id.* at 1828.