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VIA EMAIL

Assemblymember Ash Kalra
Capitol Office
1021 O Street, Suite 5130
Sacramento, CA 95814

RE: **AB 2926**

Dear Assemblymember Kalra,

My name is Dina LaPolt. I am the owner of LaPolt Law, P.C., a West Hollywood law firm specializing in the representation of music creators and owners of intellectual property. As a representative and advocate for recording artists, I write in support of the proposed AB 2926 legislation, which seeks to eliminate the recording artist exception to California Labor Code § 2855. Record labels have used their outsized bargaining and lobbying power to take advantage of artists for decades. AB 2926 presents an opportunity to grant artists long-overdue protections from overreaching label contracts.

As you know, California Labor Code § 2855, otherwise known as the Seven Year Statute, once protected all Californians from the enforcement of personal service contracts beyond seven years. Following its enactment in 1937, many Hollywood studio lawyers took the position that the law's seven-year limit could be extended for the duration of any periods during which an entertainer under contract was not working. In 1943, actress Olivia de Havilland sued Warner Bros. when it tried to extend her contract for "suspension" periods imposed on her after she rejected roles the studio suggested. Ruling in de Havilland's favor, the court found that the law's seven-year period should be interpreted as seven *calendar* years. This interpretation remains the law today. The court's opinion in the de Havilland case emphasized that an individual should have the freedom to employ their abilities to the best advantage and for the highest obtainable compensation.

Unfortunately, lobbying by the record companies led to a 1987 amendment to the law effectively excluding recording artists from this protection by creating egregious penalties for artists who try to get out of a bad record deal. It is critical that the California State Assembly passes AB 2926, restoring the law to its original intent and ending this unwarranted and unfair treatment of music creators.

Since the de Havilland case and prior to the 1987 amendment, the major record labels repeatedly sought out ways to ensure artists are constrained to their contracts for as long as possible by including oppressive and overbearing contractual provisions in their agreements. In 1977, Frank Zappa, upset with the efforts of his label, Warner Bros., on his behalf, wanted to complete his contractual obligations and move on. With four required albums left in his deal, Zappa delivered all four albums at once, so he could then terminate the agreement. Warner refused to pay Zappa for these albums and initially refused to release them, despite contractual obligations to do both of those things. This led to nearly a decade of legal proceedings. As a result of this so-called "loophole", record companies began inserting a provision in recording agreements stating that the artist cannot start recording their next required album until between six months to a year (as negotiated) from the release of the previously delivered album. See ***Exhibit A*** (language from a typically, current recording agreement). This provision has been industry custom ever since and effectively holds artists in their agreements for many years after the seventh.

In 1979, Olivia Newton-John successfully sued MCA Records for the right to terminate her recording agreement after its five-year term ended, even though she had not delivered all required albums. While Newton-John prevailed in the suit, her victory led the record companies to add to future record deals a provision stating that a "contract period" is not a term of years; rather, it is a period that continues until up to a year *after* the commercial release of a required album (whenever that may be). See ***Exhibit B*** (language from a typically, current recording agreement). This paragraph has been industry custom ever since and effectively holds artists in their agreements for years beyond the seven-year limit. The result of the Newton-John case also led the major labels to lobby the California legislature for a new rule, which allows labels to sue artists for lost profits in connection with undelivered albums.

History has shown that, even when artists have found legitimate avenues to terminate their relationships with their record labels, the labels found new ways to keep artists locked in. Every time there was an artist who got out, a new contractual provision was introduced in record contracts to prevent the next artist from escaping. These provisions have become industry standard nationwide. Ultimately, the major record labels who control the vast majority of the industry's top-earning artists and recordings, banded their massive efforts together to lobby for the 1987 recording artists exception that is still the law today. This exception must be eliminated.

When artists and advocates tried to overturn the recording artists exception to the Seven Year Statute in 2001, LeeAnn Rimes spoke about her experience being stuck in a practically never-ending recording contract: "*At 12, I was thrilled to sign my record contract with Curb Records, and at that age I didn't understand everything that was in my contract*," Rimes said. "*I just turned 19 last month, and if I record at a rate of one album every two years, which is the industry average, I will be 35 before the contract is over*." Don Henley of the Eagles, who was involved in lobbying against the exception along with Rimes, put it this way: "*Record companies can fire us, but we can't fire them, even if they fail to perform their duties*."

Without recording artists, there are no labels, there is no music industry, and there is no music. Despite this reality, it is well-known and well-established that the major record companies will take any measures necessary to protect their profits, whether through predatory contracts or

through legislation. Accordingly, AB 2926 is a necessary legislative fix to reverse the legal exception that has held countless artists hostage over the years.

I am grateful for your efforts and leadership in protecting the creators who drive the music industry that Californians so cherish.

Sincerely,

Dina LaPolt

cc: Steven Tyler
Music Artists Coalition (MAC)
Songwriters of North America (SONA)
(all via email)

EXHIBIT A

You shall not commence recording any Album earlier than nine (9) months following Delivery of the immediately preceding Committed Album. You shall not Deliver any Album earlier than twelve (12) months following Delivery of the immediately preceding Committed Album.

EXHIBIT B

(a) The Recording Commitment for the initial period (the "**Initial Period**") shall be one (1) Album embodying the performances of Artist (the "**First Album**"). The Initial Period shall commence on the date hereof and shall continue until the last day of the twelfth (12th) complete month following the date of the initial United States commercial release of the First Album.

(b) In addition, Company shall have four (4) separate options for four (4) additional Contract Periods (each, an "**Option Period**"). Each Option Period for which Company has exercised its option shall commence upon the expiration of the immediately preceding Contract Period and shall continue until the last day of the twelfth (12^{th}) complete month following the date of Company's initial United States commercial release of the last Album constituting the Recording Commitment for that Option Period