LABOR CODE SECTION 2855

MAINTAINING A BALANCE FOR CALIFORNIA'S RECORDING ARTISTS AND COMPANIES

California Labor Code Section 2855 Is Unique Among The States.

- Section 2855 places a seven-year limit on the enforceability of personal services contracts in California. In every other state, contracts between private parties for personal services—including entertainment industry contracts—are enforceable for the term agreed to by the parties to the contract without any limitation as to time or available remedies.

- This means that, in California, a person who promises to perform personal services may walk away from those contractual obligations after seven years, regardless of any terms in the contract to the contrary.

Recording Contracts Are Subject to Section 2855's Seven-Year Rule, Just Like Any Other Personal-Services Contract. Subsection (b) Merely Clarifies That Remedies Are Available When A Recording Artist Invokes Section 2855 To Walk Away From His Or Her Contractual Obligations.

- Subsection (b) makes clear that record companies may seek to collect damages for albums that a recording artist failed to deliver before the date specified in the artist's notice to the record company that the artist intends to cease providing services under the recording contract. These are albums that the artist promised to deliver, and for which the artist typically accepted substantial benefits from the record company, under a contract that was freely and voluntarily negotiated with the record company by high-powered and sophisticated attorneys, agents, and managers on behalf of the artist.

- Prior to the enactment of Subsection (b), some artists asserted that the law permitted an artist to sign a contract, collect an advance for an album, and then do nothing (or do something else, like make movies) until the seven-year period of Section 2855 expired, leaving the record company without a remedy for the non-delivery of albums it was promised but did not receive. Subsection (b) put to rest that flawed argument and confirmed that record companies may seek to recover their losses from artists who walked away with unfulfilled obligations to deliver recordings.

- ***Subsection (b) focuses on the recording industry in recognition of qualities that are unique to recording contracts***:

  - Performance under recording contracts is not meaningfully measured by time, but by deliverables – typically the number of albums or other sound recordings (e.g., EPs, singles) delivered by an artist.

  - Recording artists (unlike, say, athletes and film stars) are in a position to control the pace of their creative output. Inspiration is not measured by a clock, and artists often tend to other aspects of their careers, such as touring schedules and other ventures. They can also delay or refuse to create and deliver albums.

  - Record companies and artists are creative partners as well as business partners, and both parties share a mutual interest in maximizing the revenue from the artist's recordings. By providing record companies with certainty that they are entitled to the fruits of their investments for which they bargained, subsection (b) facilitates this partnership and leaves breathing room for record companies to accommodate the individual needs and circumstances of each individual artist, recognizing that all parties benefit when the artist is able to deliver the highest quality music possible in the manner and pace that their creativity dictates.

- ***Subsection (b) does not disadvantage California artists***. It simply confirms that labels can seek from California artists the same remedies they can seek everywhere else when artists fail to deliver the albums they promised under their contracts.

AB 983's Amendments to Section 2855 Would Significantly Hurt California's Entire Music Ecosytem, Including The Vast Majority of California Artists.

- ***The recording industry invests billions of dollars each year in new musical artists, most of whom do not achieve widespread commercial success***. In 2020, according to MRC data, more than 160,000 albums were released, but less than 1.5% of them (about 2,200 releases) sold or streamed the equivalent of 100,000 album sales. For the few artists who achieve widespread commercial success, labels must be able to realize the contractual benefits for which they bargained and to which they are entitled. And, indeed, it is those revenues that allow labels to, among other things, invest in artists who may achieve their success in other ways, but who record in less commercially remunerative—but no less important—musical genres like jazz, classical, gospel, folk, Tejano, and so on.

- ***When artists are successful, record companies typically renegotiate their contracts in recognition of that success, often providing the artists with significantly higher compensation for additional recordings***. Labels strive to support their creative talent and to preserve their ongoing creative partnership with their artists, and successful artists can and do renegotiate their contracts mid-term to obtain larger advances and better royalty rates for subsequent albums. Their recordings also serve as springboards for other revenue sources that the artist frequently does not share with the record companies, such as concert revenues and publishing and merchandising royalties. Successful artists, who are represented in these negotiations by high-powered and sophisticated attorneys, agents, and managers, can and do enjoy lucrative careers under Section 2855 as it exists right now.

- ***Section 2855 has little effect on the vast majority of artists whose contract terms rarely last more than seven years.*** While record companies invest in and develop artists at all levels of their careers, most artists at both major and independent labels do not remain under contract for more than seven years, for any number of reasons. In many cases, it may be because the artist has not achieved a level of commercial success that would cause the record company to opt for more albums; in other cases, the record company may simply accede to an artist's request to be relieved of his or her contract. Or there yet may be other reasons for the relationship to end. But whatever the reason, most record contracts end well prior to seven years, mutually, with no obligation of the artist to repay the record company for its investments in the artist. **It is usually only the superstars—the artists most capable of protecting their own interests through their sophisticated lawyers, agents and managers —whose contracts even implicate the seven-year limitation of Section 2855 at all**.

- ***Amending Section 2855 to further restrict the ability of record companies to realize the benefit of their investments in California artists would have serious adverse consequences for California artists and for record companies that employ thousands of Californians***. Amendments like those proposed in AB 983 shortening the length of time for the exercise of recording contract options or restricting the availability of damages would predictably lead to a host of adverse consequences for California-based artists, labels, and residents alike, such as: (1) a decrease in the number of new artists record companies could sign and promote, (2) incentives for record companies to invest more in artists who work in states other than California, (3) decreases in the advances or royalties paid to California-based artists, and (4) thinning of existing artist rosters.

- ***Amendments to Section 2855 are unnecessary***. Recording artists and their labels have successfully negotiated and performed contracts within the framework of Section 2855 with very few disputes leading to litigation or acrimony. Disagreements are almost always resolved by negotiation and, in fact, very few court cases have ever been filed concerning Section 2855's subsection (b). There is no need, nor any wisdom, in fashioning an untested solution to a "problem" that does not exist, and that benefits only the wealthiest of artists at the expense of others.