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12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14 TYLER ARMES,

15 Plaintiff,

16 v.

17 AUSTIN RICHARD POST, publicly
 18 known as POST MALONE, an
 19 individual; ADAM KING FEENEY
 20 publicly known as FRANK DUKES,
 21 an individual; UNIVERSAL MUSIC
 22 GROUP, INC., a Delaware
 23 corporation; DOES 1 through 10,
 24 inclusive,

25 Defendants.

26 **CASE NO. 2:20-CV-3212**

27 **FIRST AMENDED COMPLAINT**
28 **FOR:**

- 1. **DECLARATORY JUDGMENT**
- 2. **ACCOUNTING**
- 3. **CONSTRUCTIVE TRUST**

[DEMAND FOR JURY TRIAL]

Plaintiff Tyler Armes alleges as follows:

INTRODUCTION

1. This case arises from Post Malone’s (“Post”) and his producer Frank Dukes’ (“Dukes”) bad faith refusal to accord Tyler Armes (“Armes”) the credit and share of the profits he is due as a co-writer of the song *Circles*, which is perhaps

1 Post's biggest hit to date and was named by Billboard as among the top 10 best
2 songs of 2019. *Circles* was released on August 30, 2019, to much critical praise and
3 it debuted at Number 7 on the Billboard Hot 100 Chart. It quickly shot to Number
4 1, where it spent three (3) weeks, and to this day it remains in the Billboard Hot
5 100's top 5 most popular songs.

6 2. Armes is a professional songwriter, musician and producer. He is also
7 the bandleader, writer and producer for the bands Down With Webster, which was
8 signed to Motown by Sylvia Rhone in 2009, and Honors. With Armes at the helm,
9 Down With Webster has sold multiple platinum albums and over One Million
10 (1,000,000) singles, and it has been nominated for a number of Juno Awards,
11 MuchMusic Video Awards and Canadian Radio Music Awards. Armes wrote and
12 produced five (5) of Down with Webster's top five (5) Canadian singles including,
13 *Rich Girl\$, Your Man, Whoa is Me, One in a Million* and *Chills*. Armes, with Down
14 With Webster, has performed sold-out shows at Toronto's famed Massey Hall, as
15 well as performing at the Juno Awards, MuchMusic Video Awards and the Grey
16 Cup, the championship game of the Canadian Football League. Not only has Armes
17 been the leader of one commercially successful band, but he also created a second
18 project called Honors that has also been commercially successful. Honors' song
19 *Over* was the Number 1 Global Viral Track on Spotify in January 2017, and it
20 charted on the US Alternative Radio charts. Honors was courted by multiple major
21 record labels and, after receiving multiple offers, it signed with PRMD, the label
22 helmed by Ash Pournouri, who is best known for managing the artist Avicci. In
23 addition, Armes individually, has a music publishing deal with Warner Chappell
24 Music, and Armes' music has appeared in campaigns for Panasonic, Major League
25 Baseball, TBS, Fox and *The Voice* on NBC. Armes has also collaborated with
26 some of the top writers and producers in the music industry, including Murda Beatz,
27 Justin Tranter, Jesse Saint John and Timbaland. Armes also co-wrote and produced a
28 song on Lil Baby's recent Number 1 charting album *My Turn*, released on February

1 28, 2020, and he co-wrote and produced an upcoming single for \$ki Mask “The
2 Slump God”.

3 3. On August 8, 2018, after being repeatedly encouraged by Post’s
4 manager, Dre London (“Dre”), that Armes and Post should collaborate to write
5 music together, Dre invited Armes to join Post and Dukes at Dukes’ studio to jam
6 together. When Post found out that Armes was a talented multi-instrumental
7 musician, he was excited and said, “*let’s write a tune!*” Armes spent hours in the
8 studio jamming with Post and Dukes and ultimately co-writing the song *Circles* and
9 contributing significantly to the sound of the final recording.

10 4. Although Post has freely admitted that Armes co-wrote *Circles* with
11 him and Dukes during the August 2018 session at Dukes’ studio, Post and Dukes
12 have refused to credit Armes as a co-writer and have refused to pay Armes a fair
13 share of the monies derived from the exploitation of *Circles*. Despite repeated
14 efforts by Armes to amicably resolve this matter, Post and Dukes have steadfastly
15 refused to give Armes the credit and share of the profits he is due.

16
17 **JURISDICTION AND VENUE**

18 5. Plaintiff’s first claim for relief arises under the copyright laws of the
19 United States, as amended (17 U.S.C. § 101, *et seq.*) The Court has subject matter
20 jurisdiction over this claim pursuant to 28 U.S.C. §§ 1331, 1332 and 1338, and
21 supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367.

22 6. Venue is proper in this district 28 U.S.C. § 1391(b)(2) because
23 Defendant has committed acts directed at this judicial district, where Plaintiff
24 resides.

25
26 **THE PARTIES**

27 7. Plaintiff Tyler Armes (“Plaintiff” or “Armes”) is a songwriter,
28 producer and composer, and at all times relevant hereto was, an individual residing

1 in the County of Los Angeles, California.

2 8. Plaintiff is informed and believes and based thereon alleges that
3 Defendant Austin Richard Post, publicly known as Post Malone (“Post”), is, and at
4 all times relevant hereto was, an individual residing and doing business in the
5 County of Los Angeles, State of California.

6 9. Plaintiff is informed and believes and based thereon alleges that
7 Defendant Adam King Feeney, publicly known as Frank Dukes (“Dukes”) is, and at
8 all times relevant hereto was, an individual doing business in the County of Los
9 Angeles, State of California.

10 10. Plaintiff is informed and believes and based thereon alleges that
11 Defendant Universal Music Group, Inc. (“UMG”) is, through its Republic Records
12 division, the distributor of the song entitled *Circles*, and at all times relevant hereto
13 was a Delaware corporation with its principal place of business in the County of Los
14 Angeles, State of California.

15 11. The true names and capacities of the Defendants sued herein as Does 1
16 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such
17 Defendants by fictitious names. Plaintiff will amend this Complaint to allege the
18 true identities of such Doe Defendants when their identities are discovered. Plaintiff
19 is informed and believes, and thereon alleges, that each such fictitiously named Doe
20 Defendant is responsible in some manner for the events alleged in this Complaint
21 and that Plaintiff’s damages as alleged herein were proximately caused by the
22 conduct of such Doe Defendants, and each of them, and that Defendants in
23 committing the acts and omissions alleged herein acted as agents and servants of one
24 another, acted within the scope of their authority as agents and servants of each
25 other, and/or approved and ratified the acts and/or omissions of each other.

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ALLEGATIONS COMMON TO ALL CLAIMS

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2 12. Dre London (“Dre”) is a music manager whose best known client is
3 Post. Armes first met Dre in approximately 2015. After Armes’ band Honors’ hit
4 single *Over* was released and became a viral hit in 2017, Dre began actively courting
5 Armes and Honors to sign with him. On a number of occasions, Dre has also
6 encouraged Armes to get into the studio with Post to collaborate.

7 13. In early August 2018, at Dre’s invitation, Armes attended a private
8 concert at which Post was performing in Toronto, Canada. The following evening,
9 Dre again invited Armes to get into the studio with Post to write music together.

10 14. The following evening, Armes, Dre, Post and Dukes went to see a
11 band that Post was a fan of play at a club in Toronto. After the show, Dre again
12 invited Armes to go to Duke’s Toronto studio with Post and Dukes to write music
13 together. Dre told Post that Armes is “an amazing musician” and that he should
14 check out Armes’ band. When Post learned that Armes was a legitimate musician
15 and composer and proficient with multiple instruments, he was excited to jam with
16 Armes, and write music together.

17 15. From approximately 2:00 a.m. on August 8, 2018 until 9:00 a.m. that
18 morning, Armes, Post and Dukes worked together in the studio, with Armes on bass,
19 Post on drums and Dukes playing guitar and keyboards. That collaboration resulted
20 in the song *Circles* (the “Song”), Post’s fourth number one song on the US Billboard
21 Hot 100, and his first as the only credited artist on the track.

22 16. At Dukes’ studio on August 8, 2018, Armes and Dukes co-wrote the
23 chords for the Song on the keyboard, and Armes co-wrote and had significant input
24 in the bassline for the Song. Armes also had input on the guitar parts in the Song,
25 including co-writing the guitar melody which is played in the introduction to the
26 Song and which repeats throughout the Song.

27 17. In his capacity as a producer, Armes gave the direction to slow down
28 the tempo when Post played the drums, directing that Post should “slow down the

1 groove”. When Dukes was playing keyboards on the Song, Armes recommended
2 that the song sounded better stripped down to just bass, guitar and drums, without
3 the keyboard. Armes further recommended that the bass should be played using a
4 pick as opposed to fingers. Armes also suggested that both the vocals and guitar
5 have a large amount of reverb on them. Armes’ contributions to the organization,
6 instrumentation, arrangement and overall unique sound of the Song are all reflected
7 in the final sound recording of the Song that was ultimately released.

8 18. A recording engineer at the studio observed Armes working alongside
9 Post and Dukes to create the Song, and set up Dukes’ equipment and Dukes
10 recorded the music composed by Armes, Post and Dukes that night with Dukes
11 playing the bass parts co-written by Armes and Post playing guitar parts co-written
12 by Armes. At the end of the session that morning, Dukes played back the recording
13 for Armes and Post, and the three of them were thrilled with the results of their
14 collaboration. Dukes exclaimed, ***“It’s so fucking good! It’s a whole new sound***
15 ***man.*** Post said, ***“It’s super special,”*** and ***“that’s gonna be the next ... we’re just***
16 ***gonna, for the next album we’re just gonna use a fuck load of reverb,”*** and Dukes
17 said, ***“this kind of track would be insane to play live.”***

18 19. Although the lyrics had not yet been completed, other than the main
19 lyric and title of the Song, *i.e.*, “circles”, all instrumentation and vocal melodies in
20 the song recorded at Dukes’ studio on August 8, 2018 are note for note rhythmically
21 and melodically identical to the Song and have the same main lyric, title and
22 concept, including without limitation the guitar introduction co-written by Armes,
23 the tempo and instrumentation was directed in large part by Armes, and the bassline
24 and chords co-written by Armes. Everything reflected in the final recording of the
25 Song including the bridge vocal melody was conceived that night.

26 20. The Song is also dramatically different from other music previously
27 released by Post. Significantly, although Post is well known as a hip-hop artist,
28 typically performing lyrics over a rap track, the Song is the first major release by

1 Post not to appear on any hip-hop charts. As Chris Molanphy observed about the
2 Song in a December 5, 2019 article for Slate entitled, “Post Malone Might Finally
3 Be Getting His Wish to Escape Hip Hop,” unlike Post’s prior music, “*the melody is*
4 *sparkling, with prominent guitar arpeggios and a wistful sigh of a chorus that,*
5 *dare I say it, soars. Post Malone has never been about the soar.*” Indeed, the style
6 and sound of the Song is more similar to music created by Armes for his bands
7 Down With Webster and Honors than it is to any of Post’s prior music.

8 21. On August 5, 2019, Dre posted a snippet of the Song on Instagram,
9 and Post premiered the Song live that night during his Bud Light Dive Bar Tour
10 show in New York City. The Song was released by Defendant UMG through its
11 Republic Records label on August 30, 2019. The Song debuted at Number 7,
12 reached Number 1 on the US Billboard Hot 100 for the week of November 30, 2019,
13 where it remained for three (3) non-consecutive weeks, and to this day it remains
14 one of the top 5 most popular songs on the Billboard charts. The Song received
15 critical praise, with Billboard naming it the seventh (7th) best song of 2019, and
16 describing it as consisting of a “bouncy, melancholy” melody alongside a “gentle
17 acoustic groove,” and as being “backed by sunny acoustic guitars, swirling
18 percussion and infectious melodies” with a “funky feel”.

19 22. When Dre posted the Song on Instagram on August 5, 2019, Armes
20 immediately reached out to him and sent him the following text message:

21 *Dre, I need you to ask Post about this please....*

22 *Post asked me to write with them and jam and we did for well over an hour*
23 *in the live recording room coming up with the jam that lead into the*
24 *recording of circles.*

25 *I was there until long after the sun came up with them in the main room*
26 *working on the song and playing different instruments and contributing to*
27 *ideas from start to finish.*

28

1 *Specifically the bass and guitar parts, post ended up tracking them after I*
2 *was playing. I was beside him giving input on both of them. I was not just*
3 *someone hanging out in the room, I'm a writer/producer in the room with*
4 *two other writer/producers working on a song.*

5 *I have never asked for anything I don't deserve. I've been in 100 studio*
6 *sessions with Lou while he was working at EF with different artists, I know*
7 *when I am just hanging out. This was much different.*

8 *I was part of the writing process. The entire song (minus the lyrics other*
9 *than "circles) was laid down that night with the 3 of us in the room*
10 *together, working together.*

11 *Trying to just be fair here. Not asking for much. Would just like credit and*
12 *minimal pub. Please speak to post. I'll have Cory my manager hit up*
13 *frank's manager. Thanks brother, excited for the song.*

14 23. On August 9, 2019, Dre responded to Armes, "*Just showed Posty the*
15 *message [¶] He said he remembers [¶] U played a tune on the bass then he played*
16 *more of it after*". Thus Post acknowledged that Armes co-wrote the Song with him
17 at Dukes' studio. In particular, Post recalled Armes' contributions to the bass line in
18 the Song. Notwithstanding the foregoing, to date, Defendants have refused to credit
19 Armes as a co-writer or producer of the Song and have refused to pay him any share
20 of the publishing royalties for the Song.

21 24. The credited writers on the song are Post, Dukes, Billy Walsh, who
22 Armes is informed wrote the lyrics, Louis Bell, a producer with whom Post and
23 Dukes frequently collaborate and who Armes is informed recorded the vocal track
24 for the Song, and Kaan Gunesberk, another producer who also frequently
25 collaborates with Dukes. Other than Post and Dukes, none of the foregoing credited
26 co-writers of the Song was present with Armes, Post and Dukes at Dukes' studio
27 when they composed the guitar, bass and melody of Song on August 8, 2018.
28

1 25. After Dre informed Armes that Post remembered and acknowledged
2 that Armes co-wrote the Song, Post initially offered to give Armes a five percent
3 (5%) share of the publishing royalties. In response, Armes attempted to negotiate to
4 receive a larger percentage of the royalties that more fairly reflected his significant
5 contributions to the Song, and one of his representatives requested that he be
6 credited as a co-writer and co-producer of the Song while they attempted to reach an
7 agreement on Armes' share of the publishing royalties. Defendants refused. Instead,
8 Austin Rosen, who manages both Post and Dukes, threatened Armes' manager, Cory
9 Litwin, that if Armes was unwilling to accept Post's so-called "gift" of five percent
10 (5%) of the publishing, then he would get nothing – no credit and no publishing
11 royalties. Thus, Defendants have retaliated and attempted to punish Armes for not
12 accepting their low-ball offer on the publishing royalties by refusing to credit Armes
13 as a co-writer and co-producer of the Song, notwithstanding the fact that Post has
14 acknowledged that Armes co-wrote the Song.

15 26. On November 15, 2019, Plaintiff filed a copyright registration for the
16 Song, identifying Armes and Defendants Post and Dukes as co-writers of the music
17 (composition) and sound recording of the Song. A true and correct copy of said
18 copyright registration is attached hereto as Exhibit A.

19 27. Defendants' refusal to credit Armes' as a co-writer and co-producer of
20 the Song has resulted in significant harm to Armes' reputation, career and cost him a
21 host of opportunities that otherwise would have been available had Armes been
22 properly credited as a co-writer and co-producer of the Song when it was initially
23 released. Composers credited with writing hit songs are invited to work with the top
24 artists in the music industry, among other potentially lucrative opportunities.

25 28. Songwriters and composers work their entire lives to create a
26 commercially successful and critically acclaimed song like the Song. As a direct
27 result of Defendants' retaliatory refusal to grant Armes the co-writing credit he
28 admittedly deserves on the Song, which would have been Armes' biggest musical

1 credit to date, Defendants have prevented Armes from capitalizing on the success of
2 the Song in order to further his career in the music industry.

3
4 **FIRST CLAIM FOR RELIEF**

5 **(For Declaratory Judgment against all Defendants)**

6 29. Plaintiff repeats, realleges and incorporates by reference each and
7 every allegation contained in Paragraphs 1 through 28, inclusive, of this Complaint
8 as if fully set forth herein.

9 30. An actual and present controversy now exists between Plaintiff and
10 Defendants regarding Plaintiff's status as a co-writer and co-producer of the Song.
11 Defendants have denied recognition of Plaintiff's status as a co-writer and co-
12 producer of the sound recording and composition of the Song, which entitles
13 Plaintiff to writer credit and a share of the monies generated from the exploitation of
14 the Song.

15 31. Plaintiff contends that he is a co-writer and co-producer with
16 Defendants Post and Dukes on the sound recording and the composition of the Song.
17 Plaintiff and Defendants Post and Dukes each jointly contributed separate and
18 distinct copyrightable chord progressions, melody, and rhythm to the Song. They
19 each possessed independent creative control over their respective contributions.

20 32. Plaintiff and Defendants Post and Dukes each manifested an intent to
21 be co-writers of the Song, and worked together jointly to create the Song. Plaintiff,
22 Post and Dukes intended that their separate contributions be merged into inseparable
23 or interdependent parts of a unitary composition.

24 33. Plaintiff contributed significantly to the Song, including composing the
25 guitar introduction at the beginning and which repeats throughout the Song, as well
26 as making significant contributions to the bass line of the Song and the chords in the
27 Song. Plaintiff was responsible for directing the tempo and instrumentation
28 reflected in the final sound recording of the Song.

1 exploitation of the Song and all sums due to Plaintiff and to pay Plaintiff the sums
2 shown due by such accounting.

3
4 **THIRD CLAIM FOR RELIEF**

5 **(For Constructive Trust against all Defendants)**

6 40. Plaintiff repeats, realleges and incorporates by reference each and
7 every allegation contained in Paragraphs 1 through 28, inclusive, of this Complaint
8 as if fully set forth herein.

9 41. By virtue of the foregoing, any interest that Plaintiff has in the Song,
10 and any and all profits received by Defendants Post and Dukes from the commercial
11 exploitation of the Song, are the property of Plaintiff, Post and Dukes in equal
12 shares.

13 42. Post and Dukes have wrongfully deprived Plaintiff of his share of the
14 profits that they have enjoyed from the commercial exploitation of the Song.

15 43. By virtue of Defendants' acts, Defendants hold the profits derived
16 from the exploitation of the Song as constructive trustees for the benefit of Plaintiff
17 and Defendants.

18 44. Plaintiff is entitled to immediate possession of his *pro rata* share of the
19 profits held by Defendants as constructive trustees.

20
21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

23 1. That the Court declare that as follows: (a) Plaintiff is a joint author
24 and has an ownership interest in the sound recording entitled *Circles*; (b) Plaintiff is
25 a joint author of the composition entitled *Circles*; (c) Plaintiff is entitled to a co-
26 writer and co-producer credit on the copyright to the sound recording and
27 composition entitled *Circles*, and on subsequently released versions of *Circles*; and
28 (d) Plaintiff is entitled to prospective and retroactive royalties and other money

1 owed with respect to his respective interest in the sound recording and composition
2 entitled *Circles*, in a percentage to be proven at trial;

3 2. That the Court order an accounting of all revenues derived from the
4 exploitation of the Song by Defendants;

5 3. That the Court impose a constructive trust over the proceeds from the
6 exploitation of the Song pending the final disposition of this action;

7 4. That Plaintiff be awarded his reasonable attorney’s fees and costs
8 pursuant to Section 505 of the U.S. Copyright Act (17 U.S.C. § 505); and

9 5. For such other and further relief as the Court deems to be just and
10 proper.

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DATE: May 13, 2020

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DEMAND FOR JURY TRIAL

Plaintiff Tyler Armes hereby demands a trial by jury.

DATE: May 13, 2020

ALLISON S. HART
KELSEY J. LEEKER
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By: _____
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