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**United States District Court
Central District of California**

TYLER ARMES,

Plaintiff,

v.

AUSTIN RICHARD POST p/k/a POST
MALONE, et al.,

Defendants.

Case № 2:20-cv-03212-ODW (PJWx)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS’
MOTION FOR SUMMARY
JUDGMENT [82]**

I. INTRODUCTION

Plaintiff Tyler Armes brought suit against Defendants Austin Richard Post, publicly known as Post Malone (“Post”); Adam King Feeney, publicly known as Frank Dukes (“Dukes); and Universal Music Group, Inc., seeking a declaration and an accounting regarding his rights in the hit song *Circles*, which Armes alleges he co-wrote with Post. Post countersued in the Southern District of New York for a declaration that Armes has no rights in *Circles*; that case has been consolidated with this one. Post and Dukes (hereinafter, “Defendants”) now move for summary judgment in their favor on both Armes’ First Amended Complaint and Post Malone’s Consolidated Complaint. (Mot. Summ. J. (“Motion” or “Mot.”), ECF No. 82.)

On April 11, 2022, the Court heard oral argument from counsel for each side. Having carefully considered the arguments raised at the hearing, along with all the

1 papers filed in connection with the Motion, the Court **GRANTS** the Motion **IN**
2 **PART** and **DENIES** the Motion **IN PART**, for the reasons that follow.

3 **II. KEY ALLEGATIONS**

4 Plaintiff Armes is a professional musician whose credits include his work as
5 bandleader, writer, and producer for the multi-platinum band Down With Webster.
6 (First Am. Compl. (“FAC”), ECF No. 24 ¶ 2.) Defendant Post is a well-known
7 rapper, singer, and songwriter, and Defendant Dukes is one of Post’s musical
8 collaborators. (*See* FAC ¶¶ 1, 3, 15–16.)

9 Armes’s key allegations are as follows.

10 On a number of occasions, Post’s manager, Dre London (“Dre”), encouraged
11 Armes to collaborate with Post. (*Id.* ¶ 12.) In early August 2018, at Dre’s invitation,
12 Armes attended a private concert in Toronto, Canada where Post was performing. (*Id.*
13 ¶ 13.) The following evening, Dre invited Armes to go to Dukes’s Toronto studio
14 with Post and Dukes to write music together. (*Id.* ¶¶ 13–14.) On August 8, 2018,
15 from 2:00 a.m. to 9:00 a.m., Armes, Post, and Dukes worked together in the studio,
16 with Armes on bass and keyboard, Post on drums, and Dukes on guitar and keyboards
17 (the “April 8 Session”). (*Id.* ¶¶ 15–16.) Working from a keyboard and a bass, Armes
18 co-wrote the chords and the distinctive bassline that would ultimately become part of
19 *Circles*. (FAC ¶ 16.) Armes also co-wrote, with Post, the lead guitar line that would
20 ultimately be heard in the introduction to the commercial release of *Circles*. (*Id.*)

21 By the end of the April 8 Session, the three had reduced their collaboration to a
22 recording (the “Session File”) on Dukes’s laptop, which contained a bassline, a
23 looping chord progression, drums, some lead guitar lines, and several fragments of
24 vocal lines, both with and without lyrics. (*See id.* ¶ 18; Decl. Tyler Armes (“Armes
25 Decl.”) Ex. 1 (“iPhone Recording”), ECF No. 84-2.) At the end of the April 8
26 Session, around 9:00 a.m., the three listened to a playback of the Session File, and
27 Post and Dukes expressed enthusiasm about the results. (FAC ¶ 18; iPhone Recording
28 at timestamp 7:34.) About a year later, after contributions and modifications from

1 Post’s lyricists and other collaborators, the musical material in the Session File
2 debuted as *Circles*, Post’s fourth number one song on the US Billboard Hot 100. (See
3 FAC ¶ 21; Armes Decl. ¶ 19, ECF No. 84-2.) With the exception of the lyrics and
4 some of the vocal melodic content, the musical content of *Circles* is identical to the
5 musical content in the Session File. (Armes Decl. ¶ 19; *compare* iPhone Recording
6 with Armes Decl. Ex. 2 (“*Circles* Commercial Release”), ECF No. 84-2.) Along with
7 Post and Dukes, the credited writers of *Circles* are non-parties Billy Walsh, Louis
8 Bell, and Kaan Gunesberk. (FAC ¶ 24.)

9 When Post first premiered *Circles* on social media, Armes immediately reached
10 out to Dre to ask him to speak with Post about giving Armes co-writer credit and
11 publishing royalties for his role in creating *Circles*. (*Id.* ¶ 22.) Dre responded by
12 texting, “Just showed Posty the message [¶] He said he remembers [¶] U played a tune
13 on the bass then he played more of it after.” (*Id.* ¶ 23.) Later, Post offered a five
14 percent share of the publishing royalties for *Circles*, and Armes tried to negotiate for a
15 larger percentage, without success. (*Id.* ¶ 25.) To date, Defendants have refused to
16 credit Armes as a co-writer of *Circles*. (*Id.* ¶ 23.)

17 Defendants, for their part, do not dispute the basic facts underpinning these
18 allegations. (*See generally* SUF, SGD.) They do not dispute that Armes is a
19 musician; that Dre introduced Armes to Post; that Armes, Post, and Dukes spent a
20 night in Post’s studio in August 2018; that the results of that studio session led to the
21 release of *Circles* about a year later; and Armes is not credited as a co-writer of
22 *Circles*. What they dispute is the extent to which Armes participated in the August 8
23 Session as a musical collaborator.

24 III. PROCEDURAL BACKGROUND

25 The morning of April 7, 2020, Armes filed a Complaint in the Central District
26 of California against Post, Dukes, and Universal Music Group, asserting four causes
27 of action for: (1) Declaratory Judgment that Armes is: (a) a joint author of the *Circles*
28 musical composition (“*Circles* Composition”), (b) a joint author of the *Circles* sound

1 recording (“*Circles* Recording”), (c) entitled to co-writer and co-producer credits for
2 both copyrights, and (d) entitled to prospective and retroactive royalties with respect
3 to his interests in those copyrights, in a percentage to be proven at trial;
4 (2) Accounting of all revenues derived from Defendants’ exploitation of the *Circles*
5 Composition and *Circles* Recording; and (3) Constructive Trust over the proceeds
6 from the exploitation of the *Circles* Composition and *Circles* Recording pending the
7 final disposition of this action. (See Compl., ECF No. 1.)

8 Later that same day, Post commenced a parallel action in the Southern District
9 of New York, *Post v. Armes*, No. 1:20-CV-02877-ALC (S.D.N.Y.), seeking
10 declaratory judgment that Armes is a co-author of neither the *Circles* Composition nor
11 the *Circles* Recording.

12 On May 13, 2020, Armes filed the operative FAC, and Defendants, including
13 Defendant Universal Music Group, moved to dismiss. (FAC; Mot. Dismiss FAC,
14 ECF No. 28.) The Court granted the motion in part and denied it in part, dismissing
15 Armes’s claims to authorship of and ownership in the *Circles* Recording, on the
16 grounds that Armes failed to allege facts showing that he (1) made an independently
17 copyrightable contribution to the *Circles* Recording, and (2) superintended the
18 creation of the *Circles* Recording by exercising control over it. (Order Dismissing
19 FAC 12–13, ECF No. 32.) Although the Court provided leave to amend, Armes did
20 not amend, instead stipulating to dismiss his claim of authorship in the *Circles*
21 Recording, including dismissal of Universal Music Group as a party, and proceeding
22 with his claim of authorship in the *Circles* Composition only. (Stip. Dismiss, ECF
23 No. 34; Min. Order, ECF No. 35.)

24 The parties stipulated to transfer the venue of Post’s Southern District of New
25 York case to the Central District of California, and, on December 15, 2020, upon
26 further stipulation of the parties, this Court consolidated the two cases. (Min. Order,
27 ECF No. 45.)

28

1 Defendants now move for summary judgment. Their motion is two-pronged.
2 First, they seek summary judgment in their favor on Armes’s FAC and dismissal of
3 Armes’s FAC. Second, they seek summary judgment in their favor on their own
4 Consolidated Complaint. (See Mot.; Consol. Compl., ECF No. 1 in 2:20-cv-10205-
5 ODW (SKx).) The Motion is fully briefed. (Opp’n, ECF No. 84; Reply, ECF
6 No. 86.)

7 **IV. LEGAL STANDARD**

8 A court “shall grant summary judgment if the movant shows that there is no
9 genuine dispute as to any material fact and the movant is entitled to judgment as a
10 matter of law.” Fed. R. Civ. P. 56(a). A disputed fact is “material” where the
11 resolution of that fact “might affect the outcome of the suit under the governing law,”
12 and the dispute is “genuine” where “the evidence is such that a reasonable jury could
13 return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
14 242, 248 (1986). The burden of establishing the absence of a genuine issue of
15 material fact lies with the moving party, and the moving party may meet this burden
16 with arguments or evidence or both. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
17 (1986).

18 Once the moving party satisfies its burden, the nonmoving party cannot simply
19 rest on the pleadings or argue that any disagreement or “metaphysical doubt” about a
20 material issue of fact precludes summary judgment. *Matsushita Elec. Indus. Co., Ltd.*
21 *v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *Cal. Architectural Bldg. Prods., Inc.*
22 *v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987). The non-moving
23 party must show that there are “genuine factual issues that . . . may reasonably be
24 resolved in favor of either party.” *Franciscan Ceramics*, 818 F.2d at 1468 (quoting
25 *Anderson*, 477 U.S. at 250) (emphasis omitted). Provided the moving party has
26 satisfied its burden, the court should grant summary judgment against a party who
27 fails to present evidence establishing an essential element of its claim or defense when
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1 that party will ultimately bear the burden of proof on that claim or defense at trial. *See*
2 *Celotex*, 477 U.S. at 322.

3 In ruling on summary judgment motions, courts draw all reasonable inferences
4 in the light most favorable to the nonmoving party, refraining from making credibility
5 determinations or weighing conflicting evidence. *Scott v. Harris*, 550 U.S. 372, 378
6 (2007); *Hous. Rts. Ctr. v. Sterling*, 404 F. Supp. 2d 1179, 1183 (C.D. Cal. 2004).
7 However, “uncorroborated and self-serving” testimony will not create a genuine issue
8 of material fact. *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir.
9 2002) (quoting *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996)).
10 “Conclusory” or “speculative” testimony is likewise “insufficient to raise genuine
11 issues of fact and defeat summary judgment.” *See Sterling*, 404 F. Supp. 2d at 1183.
12 The nonmoving party must provide more than a “scintilla” of contradictory evidence
13 to avoid summary judgment. *Anderson*, 477 U.S. at 251–52; *Addisu v. Fred Meyer,*
14 *Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000).

15 V. DISCUSSION

16 The Copyright Act protects fixed original works of authorship, 17 U.S.C. § 102,
17 by granting to “copyright owners the ‘exclusive rights’ to display, perform, reproduce,
18 or distribute copies of a copyrighted work, to authorize others to do those things, and
19 to prepare derivative works based upon the copyrighted work,” *Maloney v. T3Media,*
20 *Inc.*, 853 F.3d 1004, 1010 (9th Cir. 2017) (quoting 17 U.S.C. § 106). “The copyright,
21 in other words, gives the owner ‘the right to control the work’” *Id.* (quoting
22 *Laws v. Sony Music Ent., Inc.*, 448 F.3d 1134, 1137 (9th Cir. 2006)).

23 The issue this case presents is whether the *Circles* Composition is a joint work
24 authored in part by Armes. Under the Copyright Act, a joint work is “a work prepared
25 by two or more authors with the intention that their contributions be merged into
26 inseparable or interdependent parts of a unitary whole.” 17 U.S.C. § 101; *see*
27 *Aalmuhammed v. Lee*, 202 F.3d 1227, 1231 (9th Cir. 2000). “The authors of a joint
28 work are co-owners of the copyright in that work.” 17 U.S.C. § 201(a); *Richlin v.*

1 *Metro-Goldwyn-Mayer Pictures, Inc.*, 531 F.3d 962, 968 (9th Cir. 2008) (discussing
2 history of federal copyright law’s treatment of joint works). “Even if a person’s
3 contribution is minor, once he is accorded joint authorship status, he enjoys all
4 benefits of joint authorship.” *Richlin*, 531 F.3d at 968.

5 “[I]n the Ninth Circuit, a ‘joint work’ has four elements: (1) a copyrightable
6 work, (2) two or more authors, (3) the authors intend for their contributions to be
7 merged into inseparable or interdependent parts of a unitary whole, and (4) each
8 author made an independently copyrightable contribution to the work.” *Yellowcake,*
9 *Inc. v. Morena Music, Inc.*, 522 F. Supp. 3d 747, 762–63 (E.D. Cal. 2021) (citing
10 *Aalmuhammed*, 202 F.3d at 1231). “[T]o be an author, one must supply more than
11 mere direction or ideas; one must translate an idea into a fixed tangible expression
12 entitled to copyright protection.” *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1087
13 (9th Cir. 1989) (cleaned up). In determining whether individuals are joint authors of a
14 work in the absence of a contract defining the parties’ relationship, courts consider:
15 (1) whether the purported author “superintend[ed]” the work by exercising control;
16 (2) whether the putative co-authors made objective manifestations of a shared intent to
17 be co-authors; and (3) whether the audience appeal of the work turns on both
18 contributions and the share of each in its success cannot be appraised. *Yellowcake,*
19 *522 F. Supp. 3d at 763* (quoting *Aalmuhammed*, 202 F.3d at 1234). Courts are to
20 apply these factors flexibly; the test for joint authorship “cannot be reduced to a rigid
21 formula, because the creative relationships to which they apply vary too much.”
22 *Aalmuhammed*, 202 F.3d at 1235.

23 **A. Compositions and Sound Recordings**

24 Armes initially sought a declaration of rights in both the *Circles* Composition
25 and the *Circles* Recording. He has since dismissed his claim to rights in the *Circles*
26 Recording, and the case is now limited to whether he has rights in the *Circles*
27 Composition. Copyright law recognizes musical compositions and sound recordings
28 as distinct classes of intellectual property, and a typical commercial-release song

1 comprises these two independently copyrightable components. *See Williams v. Gaye*,
2 895 F.3d 1106, 1121 (9th Cir. 2018) (“[S]ound recordings and musical compositions
3 are separate works with their own distinct copyrights.”).

4 Musical compositions are protected under 17 U.S.C. § 102(a)(2), which protects
5 “musical works.” *See Newton v. Diamond*, 204 F. Supp. 2d 1244, 1248–49 (C.D. Cal.
6 2002). The musical composition is intellectual property consisting of the underlying
7 musical material: the notes, rhythms, chord progressions, melodies, harmonies,
8 basslines, instrumental lines, and lyrics that comprise the substantive musical content
9 of the song. *See id.* at 1249 (“A musical composition’s copyright protects the generic
10 sound that would necessarily result from any performance of the piece.”). Generally,
11 the initial copyright in a musical composition vests in the songwriters, lyricists, and
12 other musical artists who authored the musical composition. *See U.S. Auto Parts*
13 *Network, Inc. v. Parts Geek, Inc.*, 692 F.3d 1009, 1015 (9th Cir. 2012) (“[C]opyright
14 ownership ‘vests initially in the author or authors of the work,’ which is generally the
15 creator of the copyrighted work.” (first quoting 17 U.S.C. § 201; and then citing *Cnty.*
16 *for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989))).

17 The sound recording is intellectual property that exists separate and apart from
18 the musical composition. It is “the aggregation of sounds captured in the recording,”
19 whereas “the song or tangible medium of expression embodied in the recording is the
20 musical composition.” *See Newton*, 204 F. Supp. 2d at 1249. To understand the
21 difference between a musical composition and a sound recording, consider Ludwig
22 van Beethoven’s iconic *Moonlight Sonata*. The *Moonlight Sonata* itself is a musical
23 composition authored by Beethoven in 1801. It is a piece of intellectual property, a
24 collection of melodies, harmonies, and rhythms, and it is part of the public domain,
25 meaning that any individual may perform, arrange, adapt, or otherwise exploit the
26 musical composition, including by copying the sheet music. *See Klinger v. Conan*
27 *Doyle Estate, Ltd.*, 755 F.3d 496, 497 (7th Cir. 2014) (“Once the copyright on a work
28 expires, the work becomes a part of the public domain and can be copied and sold

1 without need to obtain a license from the holder of the expired copyright.”). Over
2 time, thousands of pianists have recorded their own performances of the *Moonlight*
3 *Sonata* using the public domain musical composition as the underlying musical
4 material. Generally speaking, each pianist owns the copyright in the recording of his
5 or her own performance and has the right to control how that recording is used and
6 where it is played. See *Erickson v. Blake*, 839 F. Supp. 2d 1132, 1135 n.3 (D. Or.
7 2012) (“[A] copyright in a sound recording only protects against a direct duplication
8 of that recording.” (citing 17 U.S.C. § 114(b))). Each individual copyright in each
9 individual sound recording of the *Moonlight Sonata* is a separate piece of intellectual
10 property and is distinct from the intellectual property embodied in the underlying
11 composition. The composition remains in the public domain regardless of how
12 musicians and others might exploit it in making sound recordings. Cf. *Tresóna*
13 *Multimedia, LLC v. Burbank High Sch. Vocal Music Ass’n*, 953 F.3d 638, 645
14 (9th Cir. 2020) (explaining how and why a co-owner of a copyright may not act
15 independently to limit other co-owners’ independent rights to exploit the work).

16 The rights of a copyright in a sound recording do not extend to the musical
17 composition, and vice versa. *Newton*, 204 F. Supp. 2d at 1249. A defendant infringes
18 copyright in a musical composition by copying or distributing the composition in
19 some way—that is, by performing the composition, broadcasting a performance of it,
20 arranging it, or by making a photocopy of the sheet music on which the composition is
21 notated and embodied. See 17 U.S.C. § 106(1), (2), (4), (5); see *ABKCO Music, Inc.*
22 *v. LaVere*, 217 F.3d 684, 688–89 (9th Cir. 2000) (discussing history of copyright
23 protection of musical compositions). By contrast, a defendant infringes copyright in a
24 sound recording by copying the recording in some way—that is, by making physical
25 or digital copies of the recording, broadcasting the recording, or distributing copies of
26 the recording. See 17 U.S.C. § 106(1), (3), (5), (6); see also *Griffin v. J-Recs.*, 398 F.
27 Supp. 2d 1137, 1142 (E.D. Wash. 2005) (“[T]he exclusive right of reproduction is
28

1 limited to the right to duplicate the sounds in a form “that directly or indirectly
2 recaptures the actual sounds fixed in the recording.” (citing 17 U.S.C. § 114(b)).

3 Moreover, and of particular relevance here, although in some cases the fixing of
4 a sound recording simultaneously establishes a copyright in the musical composition
5 embodied in the sound recording, *see Griffin*, 398 F. Supp. 2d at 1142, the fixing of a
6 final commercial-release sound recording is not a condition precedent to establishing a
7 copyright in the musical composition, because there are other ways to fix a musical
8 composition than embodying it in a finalized sound recording, such as by transcribing
9 it to sheet music, *see ABKCO Music*, 217 F.3d at 688 (“[W]hen Congress first
10 extended copyright protection to original musical compositions . . . [it] merely
11 protected the copying of the sheet music.”), or, as arose here, reducing a composition
12 to a playable file on a computer program.

13 Given the fundamental difference between a musical composition and a sound
14 recording, Defendants are incorrect to assert that the Court’s reasons for dismissing
15 Armes’s Recording-based claims also generally support summary judgment and
16 dismissal of Armes’s Composition-based claims. (Defs.’ Mem. P & A (“Mem.”) 1–2,
17 ECF No. 82-1.) For example, the Court previously observed that, as alleged, Armes
18 did not superintend sufficient control over the post-August 8 Session recording and
19 engineering process to establish any authorship in the *Circles* Recording. (Order
20 Dismissing FAC 12–13.) But this conclusion does not automatically apply to the
21 *Circles* Composition, because the Composition, or some form of it, was indeed
22 complete as of the close of the August 8 Session. That the Recording was not
23 complete as of the end of that session, and that Armes thereafter had no control over
24 the Recording, does not mean that the same is true of the Composition. *See Newton*,
25 204 F. Supp. 2d at 1249.

26 With these points clarified, the Court turns to the parties’ burdens.
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1 **B. The Parties' Burdens**

2 Although Defendants seek summary judgment on two different pleadings, the
3 parties' burdens with respect to the two pleadings are, on this Motion, substantially
4 the same. Armes's pleading seeks a determination that Armes *does* have joint
5 authorship rights in the *Circles* Composition. (FAC 12 ("Prayer for Relief") ¶ 1.)
6 Post's pleading seeks a determination that Armes *does not* have joint authorship rights
7 in the *Circles* Composition. (*See* Consol. Compl.) Defendants can meet their initial
8 burden as to both of these pleadings by proffering arguments or evidence
9 demonstrating that Armes cannot establish joint authorship in the Composition. *See*
10 *Celotex*, 477 U.S. at 323. This would be sufficient to make the initial showing that
11 Armes' joint authorship claim is without merit, and it would also make Post's prima
12 facie case for his own Consolidated Complaint, which alleges the nonexistence of
13 joint authorship.

14 If Defendants are successful, then the burden shifts to Armes to introduce
15 evidence demonstrating that there is a genuine and material factual dispute about
16 whether Armes is a joint author of the *Circles* Composition. If Armes meets this
17 burden, he defeats Defendants' Motion, because he shows that there is a triable issue
18 regarding his own joint authorship claim and a triable issue regarding Post's no-joint-
19 authorship claim.

20 *1. Defendants' burden*

21 Defendants' initial showing consists of four components: originality, shared
22 intent, fixation, and control.

23 *Originality.* Originality refers to the requirement that a work—or, as applicable
24 here, a contribution to a joint work—contain sufficient originality of expression to
25 gain copyright protection. 17 U.S.C. § 102(a); *see Newton*, 204 F. Supp. 2d at 1254
26 ("Copyright protection extends only to those components of the work that are original
27 and non-trivial."). Here, Defendants argue Armes's contributions to *Circles* were not
28 sufficiently original. Defendants point to Armes's own deposition, in which he

1 testified that (1) he did not write any of the lyrics for *Circles*; (2) although he co-wrote
2 the chord progression for *Circles*, the progression is the extremely common I-IV-V
3 chord progression and is therefore not sufficiently original; (3) although he co-wrote
4 the bass line for *Circles*, the bass line is also based on the same extremely common
5 progression and is therefore not sufficiently original; and (4) although he wrote part of
6 the lead guitar melody which eventually became the introduction to the commercial
7 release version of *Circles*, he merely sang his contributions as an add-on to Post's own
8 contributions, and his contribution is therefore not sufficiently original. (Defs.'
9 Statement of Uncontroverted Facts ("SUF") 27–35, ECF No. 83-1 (citing Decl. David
10 A. Steinberg Ex. B ("Armes Dep."), ECF No. 82-2).) In presenting this evidence and
11 argument, Defendants meet their initial burden of showing a lack of originality.

12 *Shared intent.* Shared intent refers to the statutory requirement for joint
13 authorship that the authors prepare the work "with the intention that their
14 contributions be merged into inseparable or interdependent parts of a unitary whole."
15 *Yellowcake*, 522 F. Supp. 3d at 762 (first citing 17 U.S.C. § 101; and then citing
16 *Aalmuhammed*, 202 F.3d at 1231). Here, Defendants argue that they and the non-
17 party songwriters neither had nor objectively manifested a shared intent to create a
18 joint work with Armes. Their argument also rests primarily on Armes's own
19 deposition testimony. Armes admitted that during the August 8 Session, Post and
20 Dukes never expressly acknowledged that the three were writing a song together or
21 that Armes would be a joint author. (SUF 37–38 (citing Armes Dep.).) Moreover,
22 neither Post nor Dukes nor any of the other acknowledged co-writers of *Circles* ever
23 followed up with Armes after the August 8 Session, either to ask for his input or for
24 any other reason. (SUF 39–41 (citing Armes Dep.).) Additional declarations from the
25 acknowledged co-writers of *Circles* confirm that these individuals never knew about
26 Armes's contributions to the composition, nor did they ever intend for Armes to be a
27 co-author. (SUF 48–49 (citing Decls. of Gunesberk, Walsh, and Bell).) Defendants
28 also point out that in the song credits for *Circles*, which can be found on Post

1 Malone’s website, Armes is not listed as a co-writer. (SUF 52–53.) In presenting this
2 evidence and argument, Defendants meet their initial burden of showing a lack of a
3 shared intent to create a work.

4 *Fixation.* Fixation refers to the statutory rule providing that in order to gain
5 copyright protection a work must be fixed in a tangible medium expression.
6 17 U.S.C. § 102(a). Copyright vests in an author when the work is fixed directly by
7 the author or “by or under the authority of the author.” 17 U.S.C. § 101. Here,
8 Defendants argue that, during the process of composing *Circles*, Armes himself did
9 not fix any musical material into a tangible medium of expression. (Mem. 12.) In
10 support of this argument, they submit Armes’s own deposition testimony, in which
11 Armes explains that during the April 8 Session the three musicians recorded their
12 musical material on a Session File on Dukes’s laptop. (SUF 11–16 (citing Armes
13 Dep.)) Armes conceded in deposition that the Session File consists entirely of
14 musical material performed by Post and Dukes on their respective instruments; the
15 Session File does not contain a recording of any of Armes’s playing. (SUF 16 (citing
16 Armes Dep.)) In presenting this evidence and argument, Defendants meet their initial
17 burden of showing Armes did not fix the *Circles* Composition.

18 *Control.* Control refers to the requirement that putative co-authors
19 “superintended” the work by exercising control over its creation. *Yellowcake*, 522 F.
20 Supp. 3d at 763 (quoting *Aalmuhammed*, 202 F.3d at 1234). Here, Defendants argue
21 Armes did not exercise control over the creation of the *Circles* Composition. In
22 support of this argument, Defendants point again to Armes’s own deposition
23 testimony indicating that Dukes had sole control over the laptop the three used to
24 record and mix their musical ideas. (SUF 12–15 (citing Armes Dep.)) They also
25 present the declarations of the non-party songwriters describing their roles in the
26 *Circles* Composition following the August 8 Session, and they point out that Armes
27 had no control over these songwriters’ contributions or anything else that took place
28 after the August 8 Session. (SUF 27, 44–47 (citing Armes Dep., and Decls. of

1 Gunesberg, Walsh, and Bell).) In presenting this evidence and argument, Defendants
2 meet their initial burden of showing Armes did not superintend control over the
3 *Circles* Composition.

4 Based on the foregoing, the Court finds that Defendants meet their initial
5 burden of demonstrating with evidence and arguments that Armes will not be able to
6 establish the requirements of originality, shared intent, fixation, and control, and
7 accordingly will not be able to establish joint authorship in the *Circles* Composition.
8 The burden shifts to Armes to demonstrate that there is sufficient evidence to render
9 triable each issue that would otherwise be dispositive of the case in Defendants' favor.

10 2. *Armes's burden*

11 With the focus squarely on the *Circles* Composition, the next salient
12 observation is that there are in fact two compositions at issue, and the parties argue
13 past each other somewhat because each side is generally staking its claim in a
14 different composition.

15 First, there is the musical composition embodied in the Session File, which was
16 complete by the end of the August 8 Session. Armes acknowledges this composition
17 in asserting that "the composition of the final version of the music for 'Circles' was
18 completed on August 8, 2018," at the conclusion of the parties' jam session, (Pl.'s
19 Statement of Genuine Disputes ("SGD") 110, ECF No. 84-1), and Defendants
20 acknowledge this composition by acknowledging the existence of a "Rough Mix" that
21 existed as a result of the August 8 Session, (SUF 19). The Court refers to this
22 composition herein as the Session Composition. Second, there is the musical
23 composition embodied in the commercial release of *Circles*, which was not complete
24 until over a year later and which bore the musical contributions of several additional
25 lyricists and other musical collaborators. Both parties acknowledge this composition
26 in agreeing that "Armes had no involvement whatsoever in the creation of the Circles
27 Composition following the August 8 Session." (SUF 40.) The Court refers to this
28 composition herein as the Commercial Release Composition.

1 Armed with this distinction, the Court next notes that Post’s Consolidated
2 Complaint seeks a declaration with respect to the Commercial Release Composition
3 only. In the Consolidated Complaint, Post defines “*Circles* Composition” as the
4 musical composition contained in the *Circles* track on his album “Hollywood’s
5 Bleeding,” (see Consol. Compl. ¶ 4) and he requests declaratory judgment with
6 respect to this Composition in particular, (*id.* ¶¶ 18–25). By contrast, Armes’s FAC
7 is sufficiently broadly drafted so as to place both the Commercial Release
8 Composition and the Session Composition at issue. (See FAC ¶ 34 (generally
9 demanding “prospective and retroactive royalties and other money owed with respect
10 to his interest in” *Circles*)).

11 For the reasons that follow, Armes fails in his burden with respect to his
12 authorship in the Commercial Release Composition, but he meets his burden on each
13 issue raised with respect to his authorship in the Session Composition. Defendants are
14 therefore entitled to summary judgment in Post’s favor on his Consolidated Complaint
15 and partial summary judgment on Armes’s FAC.

16 a. *Defendants get judgment in their favor as a matter of law on Armes’s*
17 *joint authorship in the Commercial Release Composition.*

18 First, as a matter of law, by admitting that he “had no involvement whatsoever
19 in the creation of the Circles Composition following the August 8 Session,” (SUF 40),
20 Armes concedes that he has not and indeed cannot meet his burden with respect to
21 fixation of and control over the Commercial Release Composition. The product of the
22 parties’ efforts during the August 8 Session is the Session File, in which the Session
23 Composition was fixed. The Session File contains an eight-minute recording in which
24 the fundamental chord progression and bassline play on a loop while guitars and
25 vocals provide melodic content over the loop. (See iPhone Recording.) The Session
26 File, and the Session Composition embodied therein, is not the same as the final
27 release of *Circles*; later, the non-party songwriters made significant additional
28 contributions, including the majority of the lyrics and the re-structuring of the Session

1 Composition into a radio-length song—the Commercial Release Composition—with
2 a standard structure consisting of verses, choruses, and a bridge. No one, including
3 Armes, disputes that Armes had nothing to do with any of this post-August 8 Session
4 work. This defeats Armes’s claim to joint authorship of the Commercial Release
5 Composition. Because Armes was not involved for the several months following the
6 August 8 Session when Post and others continued to fix aspects of the *Circles*
7 Composition, the fixation could not have possibly been done under Armes’s authority.
8 The same is true of control: Armes had no control over what went into the *Circles*
9 Composition following the August 8 Session.

10 To the extent this case is about joint authorship in the Commercial Release
11 Composition, this case is analogous to *Aalmuhammed v. Lee*. In *Aalmuhammed*, the
12 plaintiff was hired by actor Denzel Washington to provide consultation and advice,
13 on-set and elsewhere, regarding Washington’s portrayal of Malcolm X in the motion
14 picture of the same name. 202 F.3d at 1230. The plaintiff argued that his
15 contributions, which included revisions to the script, made it into the motion picture
16 and that he was therefore a joint author. *Id.* The Ninth Circuit disagreed, noting that
17 control over the final version of the motion picture was superintended by the film’s
18 director and the film studio, not by the plaintiff. *Id.* at 1235 (“Aalmuhammed did not
19 at any time have superintendence of the work. Warner Brothers and Spike Lee
20 controlled it.”). The same is true here. Although Armes made contributions to an
21 early version of the *Circles* Composition (that is, to the Session Composition), he
22 ultimately did not have superintendence of the Commercial Release Composition.
23 Post and his other collaborators modified and edited the Session Composition with no
24 input from Armes. Thus, even if Armes did make copyrightable contributions to the
25 Session Composition, he cannot establish joint authorship in the Commercial Release
26 Composition.

27 Yet, no one disputes that *something* was fixed by the end of the August 8
28 Session. (See SUF 19 (acknowledging that a rough mix was fixed on Dukes’s laptop

1 by the end of the August 8 Session).) The iPhone Recording Armes submits with his
2 Opposition demonstrates as much. The recording¹ is of the three musicians listening
3 back to the approximately eight-minute Session File at the end of their jam session.
4 (*See* iPhone Recording.) This recording demonstrates that some quantum of original
5 musical expression was fixed on Dukes’s laptop by the end of the evening. For the
6 reasons discussed in the following four subsections, there are genuine factual disputes
7 about whether this laptop recording, which contains the Session Composition,
8 (1) contains original material by Armes, (2) is the product of the three musicians’
9 mutual intent to write a song, and (3) & (4) was fixed under Armes’s authority and
10 superintendence. The fact that the Session Composition then went to others who
11 added to and modified the musical content of the Session Composition to prepare it
12 for commercial release does not invalidate the genuine factual disputes concerning
13 Armes’s participation in the creation of the Session Composition.

14 The way forward, therefore, appears to be for the Court to view the Session
15 Composition as its own separate, standalone, copyrightable intellectual property, in
16 which Post and Dukes undisputedly have authorship and in which Armes may have
17 authorship. The Session Composition was a fixed original expression that Post then
18 handed off to the non-party songwriters, who, in adding lyrical material and
19 restructuring the Session Composition for commercial release, created a derivative
20 work, the Commercial Release Composition, using the Session Composition as source
21 material. *See* 17 U.S.C. § 101 (including musical arrangements in definition of
22 derivative work).²

24 ¹ Defendants assert, and Armes admits, that Armes’s iPhone recording was made in secret and
25 without authorization from Post or Dukes. (SUF 24.) This observation, even if true, does not appear
to affect the outcome of this Motion.

26 ² Defendants’ assertion that the Circles Composition was not complete as of the end of the August 8
27 Session does not alter the analysis, especially given that Defendants acknowledge the existence of
28 the Session File as what they call the “Rough Mix.” (*See* SUF 19, 20.) Copyright vests in fixed
original works of expression automatically, regardless of whether the author(s) deem the work to be
a draft or final version. *Garcia v. Google, Inc.*, 786 F.3d 733, 753 (9th Cir. 2015) (Kozinski, C.J.,

1 To be clear, a declaration of joint authorship in the Session Composition is
2 fundamentally different relief than a declaration of joint authorship in the Commercial
3 Release Composition. A declaration of joint authorship in the Session Composition
4 would not imply joint authorship in the Commercial Release Composition because
5 “[j]oint authorship in a prior work is insufficient to make one a joint author of a
6 derivative work.” *Ashton-Tate Corp. v. Ross*, 916 F.2d 516, 522 (9th Cir. 1990).
7 Such a declaration would, however, be a significant win for Armes; joint authorship in
8 the Session Composition would entitle him to profits and proceeds from exploitation
9 of the Session Composition. *Yellowcake*, 522 F. Supp. 3d at 763 (“[C]o-authors must
10 account to other co-authors for any profits earned from licensing or using the
11 copyright.” (citing *Ashton-Tate*, 916 F.2d at 522)). This includes certain proceeds
12 from the exploitation of the Commercial Release Composition because the
13 Commercial Release Composition is derivative of the Session Composition. Thus, a
14 win for Armes under this approach would entitle him to profits generated from the use
15 of the Session Composition in the creation of the Commercial Release Composition.
16 (Cf. FAC ¶ 34 (“Plaintiff is entitled to prospective and retroactive royalties and other
17 money owed with respect to his interest in the Song.”).) In other words, Armes would
18 be entitled to a percentage of the profits Post and Dukes have received and continue to
19 receive as authors of the *Circles* Composition.³

20 Following the April 8 Session, Armes had no control over the final version of
21 the *Circles* Composition (the Commercial Release Composition) and nothing to do
22 with its fixation, and therefore, Post is entitled to judgment as a matter of law on
23 Armes’s authorship in the Commercial Release Composition. As discussed, Post, in
24 his Consolidated Complaint, indicates that he seeks a declaration regarding rights in
25 the Commercial Release Composition in particular. (See Consol. Compl. ¶¶ 4, 18–

26
27 dissenting) (“[U]nder our copyright law, the creators of original, copyrightable material
automatically acquire a copyright interest in the material as soon as it is fixed.”).

28 ³ The legal principles and methods for calculating and allocating these profits are not currently articulated in the record of this case.

1 25.) The Court can therefore proceed to rule on the Motion to the extent Defendants
2 seek a ruling on Post's Consolidated Complaint. The Court **GRANTS** Defendants'
3 Motion **IN PART** by granting Post judgment in favor of his Consolidated Complaint
4 and the narrow relief sought therein, which relates solely to the Commercial Release
5 Composition.⁴ The Court further **GRANTS** the Motion **IN PART** by granting Post
6 judgment in his favor as against Armes's FAC to the extent Armes claims joint
7 authorship in the Commercial Release Composition.

8 The remaining question is whether Defendants are also entitled to judgment as a
9 matter of law on Armes's claim in the FAC to joint authorship in the Session
10 Composition. The Court now focuses on joint authorship of the Session Composition,
11 ultimately concluding that Armes may go to trial on this issue.

12 *b. Whether Armes in fact contributed musical material to the Session*
13 *Composition, including the bass line, the chord progression, and the lead*
14 *guitar line, and whether those contributions were sufficiently original, is*
15 *in genuine dispute.*

16 First, whether Armes in fact contributed musical material to the Session
17 Composition, and whether those contributions were sufficiently original, are
18 genuinely disputed issues of material fact. Armes's declaration and deposition
19 testimony substantiate his claim that he made the following contributions to the
20 Session Composition, and in each case, Defendants do not dispute the fundamental
21 assertion that Armes in fact co-wrote the material:

- 22 • Armes made contributions to the *Circles* chord progression, including the
23 shift from F major to F minor⁵ that functions as a variation on the basic
24 chord progression and appears intermittently throughout the Session
25

26 ⁴ To be clear, this does not mean that Post is entitled to a declaration on each and every matter as
27 presented and requested in his Consolidated Complaint. The Court will make this determination if
and when it becomes appropriate to issue a final judgment.

28 ⁵ As a technical note, for the purposes of this Order and for clarity, all musical references have been
transposed to C Major.

1 Composition. (SGD 99–102.) Defendants do not submit any evidence
2 that logically contradicts Armes’s assertions about his contributions to
3 the chord progression.

- 4 • Armes co-wrote the bassline, versions of which are found throughout the
5 Session Composition. (SGD 88–91.) While Defendants object to
6 Armes’s assertions to this effect, Defendants submit no evidence that
7 controverts Armes’s own testimony that he co-wrote this bass line. The
8 fact that Armes is not the person playing the bass in the Session File does
9 not logically controvert Armes’s statements on this matter because the
10 person who records musical content to a session file is not necessarily the
11 same person who devised or composed the musical content being
12 recorded.
- 13 • Armes supplied the latter part of the lead guitar line, which can be heard
14 in several places on the Session Composition and at the very beginning of
15 the introduction in the Commercial Release Composition. (SGD 93–98
16 (similarly objected to by Defendants, but not controverted by evidence).)

17 Moreover, when Armes contacted Dre immediately upon hearing a preview of the
18 commercial release of *Circles* to assert his authorship in the song, Dre responded that
19 Post “remember[ed]” that Armes “played a tune on the bass,” and then Post “played
20 more of it after.” (SGD 117; Armes Decl. Ex. 4 (“Dre Texts”), ECF No. 84-2.))
21 The trier of fact could examine this piece of evidence along with the other evidence
22 discussed above and find that Armes did indeed make musical contributions to the
23 Session Composition.

24 The next substantive question is whether Armes’s contribution to the Session
25 Composition is sufficiently original. Armes’s contribution to the bass line and to the
26 lead guitar line are sufficiently original such that the Court can *not* conclude as a
27 matter of law that Armes’s contributions are wholly unoriginal contributions
28 unworthy of copyright protection.

1 Joint authorship requires that the putative author make an original contribution
2 to the work at issue. *Ashton-Tate*, 916 F.2d at 521 (“A collaborator’s contribution will
3 not produce a joint work, and a contributor will not obtain a co-ownership interest,
4 unless the contribution represents original expression that could stand on its own as
5 the subject matter of copyright.”); cf. *Ets-Hokin v. Skyy Spirits, Inc.*, 225 F.3d 1068,
6 1073 (9th Cir. 2000) (“The essence of copyrightability is originality of artistic,
7 creative expression.”). With regard to musical compositions, copyright protection
8 does not “extend to common or trite musical elements or commonplace elements that
9 are firmly rooted in the genre’s tradition. These building blocks belong in the public
10 domain and cannot be exclusively appropriated by any particular author.” *Skidmore as*
11 *Tr. for Randy Craig Wolfe Tr. v. Led Zeppelin*, 952 F.3d 1051, 1069 (9th Cir. 2020)
12 (citations and internal quotation marks omitted); see *Satava v. Lowry*, 323 F.3d 805,
13 810 (9th Cir. 2003) (“[E]xpressions that are standard, stock, or common to a particular
14 subject matter or medium are not protectable under copyright law.”)

15 As for the *Circles* chord progression, Defendants argue that, according to
16 Armes’s own deposition testimony, the progression is a simple I-IV-V chord
17 progression, and that, because that progression is extremely commonplace and
18 unoriginal, Armes’s contribution to the chord progression is insufficiently original.
19 But, having listened to the Session Composition as captured on the iPhone Recording
20 with special attention to the chord progression throughout, the Court makes two
21 observations. First, the chord progression is not an exact loop throughout, and instead
22 contains variations; the existence of these variations, and where the collaborators
23 chose to place them, cannot be disregarded as unoriginal. Second, and foreshadowing
24 the Court’s discussion below regarding Armes’s contribution to the lead guitar line,
25 isolating the chord progression and disregarding it as unoriginal misses the fact that
26 the collaborators not only chose *this* chord progression, but chose a particular melody
27 and a particular vocal line to be played simultaneously with the chord progression at
28 any given time. These decisions all went into the creation of the Session

1 Composition, and a reasonable juror could conclude that all three collaborators took
2 part in these decisions and that the combination of these decisions created something
3 that is not stock or commonplace, despite the fact that it may contain stock or
4 otherwise uncopyrightable building blocks. *Satava*, 323 F.3d at 811. Thus, the Court
5 cannot conclude that at this phase that, as a matter of law, the chord progression lacks
6 sufficient originality.

7 Defendants further argue that, because the I-IV-V progression is commonplace
8 and unoriginal, so too is the associated bassline. But the bassline in question consists
9 of much more than three unadorned bass notes outlining a I-IV-V progression.
10 Loosely speaking, the roman numeral progression I-IV-V refers to the first, fourth,
11 and fifth notes in a major scale, and in C Major would refer to the notes C, F, and G.
12 Here, however, the bassline in question is much more complex than a simple,
13 repeated, three-note, C-F-G loop. Instead, it is a significantly adorned and adapted
14 setting of the chord progression in question. Therefore, the Court cannot simply
15 assume or accept that the bassline is insufficiently original. The undisputed evidence
16 indicates that Armes did in fact contribute to the chord progression and bassline,
17 leaving open the possibility that Armes made a material contribution to this bassline.
18 That being the case, the Court cannot conclude that, as a matter of law, Armes did not
19 make an original contribution to the Session Composition.

20 The same conclusion applies to the lead guitar line, and perhaps even more
21 clearly so. As the evidence suggests, Post composed the four-note gesture (G-A-G-E)
22 that repeats three times, and Armes then composed “the turnaround phrasing that
23 conclude[s] the guitar melody.” (*See* SUF 95 (citing Armes Dep. 118:21-23 (“I sang
24 the melody to him on how to include and resolve the melody nicely and he did it
25 exactly as I sang it and there it is on the master recording.”)).) The Court cannot
26 conclude that, as a matter of law, Armes’s contribution to this line was minimal to the
27 point of unoriginal. Armes’s three-bar contribution consists of a specific musical
28 contour set to a particular rhythm. Moreover, and just as importantly in the musical

1 context, the decision to include *this* three-bar fragment out of all the possible three-bar
2 fragments after Post’s particular five-bar fragment is a creative decision unto itself
3 with a cognizable amount of originality. In making his contribution, Armes not only
4 wrote a short three-bar fragment; he wrote a three-bar fragment that picks up where
5 the previous five bars left off and brings Post’s musical gesture to a resolution. Thus,
6 even if Armes’s contribution—as its own standalone three-bar phrase—might not
7 qualify as original, the same three-bar phrase coupled with Armes’s idea to include it
8 after Post’s contribution could be sufficiently original. *See Satava*, 323 F.3d at 811
9 (“[A] combination of unprotectable elements is eligible for copyright protection only
10 if those elements are numerous enough and their selection and arrangement original
11 enough that their combination constitutes an original work of authorship.”); *cf.*
12 *Metcalf v. Bochco*, 294 F.3d 1069, 1074 (9th Cir. 2002) (“The particular sequence in
13 which an author strings a significant number of unprotectable elements can itself be a
14 protectable element. Each note in a scale, for example, is not protectable, but a
15 pattern of notes in a tune may earn copyright protection.”), *overruled on other*
16 *grounds by Skidmore*, 952 F.3d 1051. The originality exhibited by the compilation of
17 component musical parts cannot be ignored and contributes to the finding that the
18 originality of Armes’s contributions is an issue which does not resolve in Defendants’
19 favor based on the papers alone. The issue must be tried.

20 *c. Whether the Session Composition was fixed by or under Armes’s*
21 *authority is a genuinely disputed issue.*

22 Next, Armes demonstrates a genuine and material factual dispute as to fixation.
23 As discussed above, under the Copyright Act, a work is “fixed” when it is embodied
24 “in a copy or phonorecord, by or under the authority of the author.” Armes’s key
25 evidence in this regard is his deposition testimony and declaration which indicate that
26 during the recording process, Armes, Post, and Dukes discussed and “mutually agreed
27 on which takes of the song should be included” in the Session File on Dukes’s laptop.
28 (SGD 104; *see generally* SGD 85–108; Armes Decl. ¶ 16.) For example, the three

1 agreed that *Circles* sounded better stripped down to just bass, guitar, and drums as the
2 prominent sounds, and Dukes adjusted the session on the laptop to reflect this
3 decision. (See SGD 105.) The evidence indicates that Dukes controlled the laptop;
4 the evidence does *not* indicate that, as a matter of law, this control of the laptop
5 functioned as a general veto power over musical ideas Armes might have suggested
6 during the session. Instead, Armes’s evidence suggests that the three musicians
7 jointly controlled the flow of the jam session and jointly decided what musical
8 material would be included in the Session File. (See generally SGD 85–108.) This, in
9 turn, would be sufficient to establish that the fixation occurred under the authority of
10 all three musicians, including Armes. Cf. *Del Rio v. Virgin Am., Inc.*, No. CV 18-
11 1063-GW (SKx), 2018 WL 5099720, at *5 (C.D. Cal. June 28, 2018) (noting that the
12 “under authority” requirement for fixation is an issue that “seldom rise[s] to the fore”).
13 Armes accordingly demonstrates that the fixation requirement remains in genuine
14 dispute.

15 *d. Whether Armes, Post, and Dukes objectively manifested an intent to*
16 *jointly create a musical composition is in genuinely dispute.*

17 Next, Armes demonstrates that whether he, Post, and Dukes had a shared intent
18 to jointly create the Session Composition, and objectively manifested that intent, are
19 genuinely disputed issues of fact. Courts making this determination have looked to
20 statements and admissions of the putative co-authors at or around the time the work
21 was created, *Morrill v. Smashing Pumpkins*, 157 F. Supp. 2d 1120, 1124 (C.D. Cal.
22 2001), the testimony of the parties regarding their intent at the time the work was
23 created, *Stillwater Ltd. v. Basilotta*, No. 2:16-cv-01895-SK, 2020 WL 4355306, at *7
24 (C.D. Cal. Feb. 5, 2020), the extent to which, and the means by which, the parties
25 collaborated in making the work, *Marya v. Warner/Chappell Music, Inc.*, 131 F. Supp.
26 3d 975, 993–94 (C.D. Cal. 2015), whether one party paid the other, *Reinsdorf v.*
27 *Skechers U.S.A.*, 922 F. Supp. 2d 866, 874 (C.D. Cal. 2013), whether any putative co-
28 author “attempt[ed] to constrain an intended co-author’s use of [the] collaborative

1 work,” *id.*, and “other objective evidence of intent,” *Richlin*, 531 F.3d at 969. Here,
2 ample evidence supports Armes’s position on this matter, including the following:

- 3 • In a greenroom following Post’s performance, the day before the
4 August 8 Session, Dre informed Post that Armes was “an awesome
5 musician” and that he was going back to the studio with Post to work
6 with him. (Armes Decl. ¶ 6.) Post responded, “Awesome, man, let’s
7 write a tune, awesome, f*** yeah.” (*Id.*)
- 8 • Armes himself is a renowned professional musician. He is best known
9 for his work with the band Down With Webster, having produced and
10 written the band’s top five Canadian singles. The song “Over,” written
11 and produced by Armes through his band Honors, was the #1 Global
12 Viral Track on Spotify in January 2017. Armes has a music publishing
13 deal with Warner Chappel Music and has worked with many well-known
14 names in the music industry. (SGD 54–68.) The trier of fact could
15 reasonably construe these facts as supporting the conclusion that three
16 professional musicians entered the studio with the intent of writing a
17 song together.
- 18 • Prior to August 8, 2018, no music for any version of the *Circles*
19 Composition had been written. (SGD 82 (undisputed).) The fact that
20 what was created had no life of its own until Armes, Post, and Dukes
21 convened could reasonably be construed as evidence that the parties
22 intended to write a song that would be the product of their joint efforts.
- 23 • It is undisputed that the members of Post’s entourage who were with him
24 at the beginning of the August 8 Session all eventually left, leaving
25 Armes, Post, and Dukes alone in the studio for several hours overnight,
26 interrupted only occasionally by a sound engineer who entered when
27 beckoned by Post. (SUF 6, 15; SGD 81.) The trier of fact could
28

1 reasonably find that by keeping Armes in the studio with them all night
2 long, Post and Dukes manifested their intent to write a song with Armes.

- 3 • What existed at the end of the night was a single, unified, coherent
4 musical composition. (See iPhone Recording.) The result of the
5 August 8 Session was more than a series of fragmented or unrelated
6 ideas; instead, it was a robust palette of cohesive musical ideas that
7 would ultimately form most of the musical content of the Commercial
8 Release Composition. The trier of fact could listen to the iPhone
9 Recording and the parties' comments describing their composition as a
10 complete musical creation and reasonably conclude that this evidence
11 supports the parties' shared intent to write a song together.
- 12 • Armes substantiated his allegation about the text from Dre with evidence
13 of undisputed authenticity. (Dre Texts.) Defendants submit nothing to
14 controvert this evidence, such as a declaration from Post or Dukes. A
15 reasonable juror could consider the fact that, a year after the August 8
16 Session, Post still remembered that Armes "played a tune on the bass"
17 and Post "played more of it after" and find even more support for the
18 parties' shared intent to write a song together.

19 In light of this evidence, the issue of the parties' shared intent to write a song together
20 is a genuinely disputed factual issue.

21 *e. Whether Armes superintended control over the composition embodied in*
22 *the Session File is in genuine dispute.*

23 Finally, Armes demonstrates a genuine dispute as to whether he superintended
24 the creation of the Session Composition by an exercise of control. "Control may often
25 be the most important factor." *Richlin*, 531 F.3d at 968. Courts may find mutual
26 control where the work "relies on each author's contributions to make a unitary
27 whole," *McMunigal v. Bloch*, No. C 10-02765 SI, 2010 WL 5399219, at *4 (N.D. Cal.
28 Dec. 23, 2010), or where the collaborators exercised "creative control over separate

1 and indispensable elements of the completed product.” *Morrill*, 157 F. Supp. 2d
2 at 1124. Conversely, courts may find a lack of mutual control when one party has
3 veto power over another party’s contributions, *Stiletto Television v. Hastings, Clayton*
4 *& Tucker, Inc.*, 392 F. Supp. 3d 1133, 1142 (C.D. Cal. 2019), or control over how the
5 other party’s contributions are used, *Moi v. Chihuly Studio, Inc.*, No. C17-0853RSL,
6 2019 WL 2548511, at *2 (W.D. Wash. June 20, 2019). *See also Stillwater*, 2020 WL
7 4355306, at *7 (framing issue of control as whether the putative co-author was the
8 “inventive mastermind” of the work (internal quotation marks omitted)).

9 Most of the evidence and reasoning demonstrating a genuine dispute with
10 regard to fixation is also applicable here. While Dukes may have controlled the
11 laptop, nothing suggests that he or Post possessed any special veto or decision-making
12 power that Armes did not. Armes’s evidence, if credited, supports the finding that the
13 three musicians shared equal control in the session, making nonhierarchical
14 contributions to a “unitary whole.” *McMunigal*, 2010 WL 5399219, at *4 Armes’s
15 creative control over the August 8 Session remains in genuine dispute.

16 With the Court’s focus on the authorship of the Session Composition,
17 *Aalmuhammed* becomes inapposite. In *Aalmuhammed*, the plaintiff who coached and
18 advised Denzel Washington had no control over the final product, which was the
19 studio release of the motion picture *Malcolm X*. 202 F.3d at 1235. Here, however, the
20 “final product” is the Session Composition itself, and Armes was involved with the
21 creation of the Session Composition up to the moment the parties completed their jam
22 session, listened back to the Session Composition embodied in the Session File, and
23 saved the file. Nothing in the record precludes the possibility that Armes
24 superintended control of the Session Composition up to that point.

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1 As to the Session Composition, Armes shows a genuine dispute on each issue
2 Defendants raised. The Court **DENIES** the Motion **IN PART** by recognizing
3 Armes’s right to a trial on his claim to joint authorship in the Session Composition.⁶

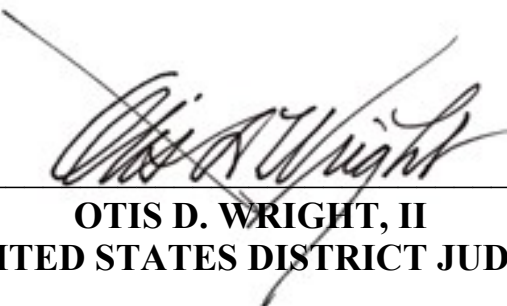
4 **VI. CONCLUSION**

5 For the reasons discussed above, the Court **GRANTS IN PART and DENIES**
6 **IN PART** Defendants’ Motion. (ECF No. 82.) As a matter of law, Armes has no
7 claim to authorship in the Commercial Release Composition. But Armes
8 demonstrates genuine disputes in regard to his authorship in the Session Composition,
9 and he is entitled to a trial on that issue.

10 Finally, the Court **CONTINUES** the deadline for the parties to file their pretrial
11 documents to **April 20, 2022**. The parties should ensure that a courtesy copy trial
12 binder is delivered to the First Street Courthouse by no later than **11:00 a.m. on April**
13 **21, 2022**.

14
15 **IT IS SO ORDERED.**

16
17 April 18, 2022

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19 
20 **OTIS D. WRIGHT, II**
21 **UNITED STATES DISTRICT JUDGE**

22
23 ⁶ Given the Court’s approach, which focuses specifically on joint authorship of the Session
24 Composition, Armes’s expert musicologist declaration is of no relevance to this disposition.
25 Armes’s expert establishes no more and no less than that the musical content of the Session
26 Composition is substantially the same as the musical content of the Commercial Release
27 Composition. For the purpose of this Motion, this fact appears undisputed, (*compare* iPhone
28 Recording *with Circles* Commercial Release; SUF 20 (“Certain musical composition elements in the
Rough Mix were later incorporated into the final Circles Composition completed a year later.”)), and
will be relevant only if Armes establishes joint authorship in the Session Composition, when it
comes time to account for profits made from the derivative work (the Commercial Release
Composition) as part of Armes’s accounting and constructive trust claims.