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Attorney for Plaintiff BOSKO KANTE p/k/a BOSKO KANTE

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

BOSKO KANTE p/ka/ BOSKO KANTE, an individual

Plaintiff,

v.

DUA LIPA, an individual; STEPHEN KOZMENIUK p/k/a/ KOZ, an individual; WARNER MUSIC GROUP, CORP., a Delaware Corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.:

COMPLAINT FOR:

- 1. COPYRIGHT INFRINGEMENT**
- 2. BREACH OF CONTRACT**
- 3. DECLARATORY RELIEF**
- 4. PRELIMINARY INJUNCTION**

DEMAND FOR JURY TRIAL

Plaintiff BOSKO KANTE p/k/a BOSKO KANTE (hereinafter "Plaintiff") hereby alleges as follows:

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF PARTIES

1. Plaintiff is, and at all times herein mentioned was, an individual, residing in the State of California, County of Los Angeles.

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1 2. Plaintiff is informed and believes and, based upon such information and belief, alleges that
2 Defendant DUA LIPA (hereinafter “Lipa”) is, and at all times herein mentioned was, an individual,
3 residing in the State of California, County of Los Angeles, and in the U.K. Lipa recorded at least a
4 portion of her debut studio album entitled “Dua Lipa” in Los Angeles, and songs from the album were
5 written or partially written in Los Angeles. In addition, her management team has offices in Los
6 Angeles and the U.K.

7 3. Plaintiff is informed and believes and, based upon such information and belief, alleges that
8 Defendant STEPHEN KOZMENIUK p/k/a/ KOZ (hereinafter “Koz”) is, and at all time herein
9 mentioned was, an individual, residing in the State of California, County of Los Angeles and in
10 Canada.
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12 4. Plaintiff is informed and believes and, based upon such information and belief, alleges that
13 Defendant WARNER MUSIC GROUP, CORP (hereinafter “WMG”) is, and at all times herein
14 mentioned was, a corporation duly organized and existing under the laws of the State of Delaware,
15 with its principal place of business at 777 South Santa Fe Avenue, Los Angeles, California, 90021.
16

17 5. Plaintiff is informed and believes and, based upon such information and belief, alleges that
18 DOES 1 through 5 are, and at all times herein mentioned were, corporations, partnerships, or other
19 business entities, which were and are legally responsible and liable for the acts, omissions, and events
20 referred to in this Complaint.

21 6. Plaintiff is informed and believes and, based upon such information and belief, alleges that
22 DOES 6 through 10 are, and at all times herein mentioned were, individuals, who were and are legally
23 responsible and liable for the acts, omissions, and events referred to in this Complaint.
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25 7. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1
26 through 10, inclusive, and therefore sues said Defendants under such fictitious names. Plaintiff will
27 seek leave to amend this Complaint to allege their true names and capacities when the same have been
28 ascertained.

1 **13.** A talk box allows musicians to modify the sound of a musical instrument by shaping the
2 frequency content of the sound and to apply speech sounds (in the same way as singing) onto the
3 sounds of the instrument, and to control the modification of the instrument’s sounds by changing the
4 shape of the mouth, and vocalizing the instrument’s output into a microphone.

5 **14.** The ElectroSpit Talk Box that was invented by Plaintiff is a neck-worn electronic system that
6 is much easier to use and carry than the original talk boxes, as the device sends sound into the mouth
7 by way of electromagnetic transducers placed against the throat, allowing the user to shape the sounds
8 of a synthesizer, guitar, or any other electronic source.

9 **15.** In or about 2019, Plaintiff was approached by music producer, Stephen Kozmeniuk p/k/a/ Koz
10 (hereinafter “Kozmeniuk”), who was one of the producers of a Dua Lipa track entitled “Levitating.”
11 Kozmeniuk asked Plaintiff about creating and performing a talk box performance, using the
12 ElectroSpit Talk Box, to be licensed in connection with “Levitating.”

13 **16.** Plaintiff did in fact compose, create, and record his performance on the ElectroSpit Talk Box,
14 which included, among other things, original melodies and lyrics (hereinafter “Plaintiff’s Work”).
15

16 **17.** Following multiple attempts to come to a license agreement with Defendants over the use
17 Plaintiff’s performance in “Levitating,” and Plaintiff’s credit and compensation, no written agreement,
18 including any sort of “work for hire” was ever executed. However, it was explicitly agreed, among
19 other things, that Plaintiff’s performance could be used by Defendants in the original recording of the
20 track—only, and that there would be no sampling or reuse of Plaintiff’s performance by Defendants.
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22 **18.** Despite multiple requests, Plaintiff made it very clear, throughout his communications with
23 Kozmeniuk, that any license that Plaintiff would grant for his recorded performance would be limited
24 to use in the original recording of “Levitating,” that no other uses would be allowed, including any
25 other sampling or re-use, and that neither Dua Lipa nor anyone else (other than Plaintiff) would own
26 any portion of Plaintiff’s work.

27 **19.** However, Plaintiff did orally agree to license Plaintiff’s Work for the original recording of
28 Complaint for Copyright Infringement, Kante vs. Dua Lipa et al.

1 “Levitating.”

2 **20.** Plaintiff is informed and believes and, based upon such information and belief, alleges that the
3 original version of “Levitating” was released on March 26, 2020, on Dua Lipa’s album entitled
4 “Future Nostalgia.”

5 **21.** Plaintiff is informed and believes and, based upon such information and belief, alleges that
6 Defendants, and each of them, incorporated a sample of Plaintiff’s Work into a remix of “Levitating,”
7 by American DJ, the Blessed Madonna, featuring Madonna and Missy Elliott (hereinafter the
8 “Blessed Madonna Remix”).

9 **22.** Plaintiff is informed and believes and, based upon such information and belief, alleges that the
10 Blessed Madonna Remix was released for digital download and streaming on August 13, 2020, as the
11 lead single from Lipa and the Blessed Madonna remix album “Club Future Nostalgia.”

12 **23.** Plaintiff is informed and believes and, based upon such information and belief, alleges that
13 Defendants, and each of them, incorporated a sample of Plaintiff’s Work into a second remix of
14 “Levitating,” featuring American rapper DaBaby (hereinafter the “DaBaby Remix”).

15 **24.** Plaintiff is informed and believes and, based upon such information and belief, alleges that the
16 DaBaby Remix was released for digital download and streaming on October 1, 2020, in promotion of
17 the bonus edition of the album “Future Nostalgia.”

18 **25.** Plaintiff is informed and believes and, based upon such information and belief,
19 alleges a third remix was created specifically for the American Music Awards on November
20 2022, in which a sample of Plaintiff’s Work was featured prominently (hereinafter the “AMA
21 Remix”).

22 **26.** All three remixes sampled and incorporated a greater amount of Plaintiff’s Work than that
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1 used in the original version, including, but not limited to, additional lyrics and melody that were
2 created by Plaintiff, which do not appear in the original version. Moreover, Plaintiff's Work is
3 featured more prominently throughout the two remixes.

4 **27.** Plaintiff is informed and believes and, based upon such information and belief, alleges that
5 "Levitating" reached No. 5 on the UK Singles Chart, and No. 2 on the US Billboard Hot 100, and was
6 named the No. 1 song of 2021. "Levitating" was also the longest charting song by a female artist on
7 the Billboard Hot 100 chart, spending a total of 77 weeks on the chart, and placing it 5th overall.
8 "Levitating" also reached number two on the Billboard Global 200 chart, became No. 1 on the 2021
9 year-end chart, and was awarded a Platinum certification in the United Kingdom by the British
10 Phonographic Industry for track-equivalent sales of 600,000 units.

11 **28.** However, it was the DaBaby Remix that was the most successful version of "Levitating."
12 Plaintiff is informed and believes and, based upon such information and belief, alleges that the
13 DaBaby Remix had 1.6 billion plays on Spotify (versus 600 million for the original. The DaBaby
14 Remix also had the most plays on YouTube, with 641 million.

15 **29.** Plaintiff is informed and believes and, based upon such information and belief, alleges that the
16 DaBaby Remix reached No. 3 on the global chart, No. 1 on the New Zealand iTunes Chart, No. 2 on
17 the Canadian Radio Chart, No. 2 on the New Zealand Apple Music Chart, No. 3 on the Canadian
18 YouTube Chart, and No. 4 on the Australian Spotify Chart, having spent 30 weeks on the global chart.

19 **30.** Plaintiff is informed and believes and, based upon such information and belief, alleges that the
20 Blessed Madonna Remix had multiple YouTube music videos with approximately 40 million plays,
21 and 50 million plays on Spotify.

22 **31.** Plaintiff is informed and believes and, based upon such information and belief, alleges that the
23 Blessed Madonna Remix reached No. 1 on the Mexico iTunes Chart, No. 2 on the Chile Apple Music
24 Chart, No. 11 on the Israel Radio Chart, No. 59 on the Australia YouTube Chart, and No. 86 on the
25 U.K. Spotify Chart.

1 transmissions the Blessed Madonna Remix, the DaBaby Remix, and Remix 3 of “Levitating,” as
2 alleged above, each constitute separate infringements of Plaintiff’s rights in and to the federally-
3 registered composition and sound recording of Plaintiff’s Work.

4 **40.** The foregoing acts of copyright infringement have been willful and intentional. Defendant's
5 reproduction and distribution of Plaintiff’s copyrights+ constitutes willful copyright infringement.
6 Feist Publications, Inc. v. Rural Telephone Service Co., Inc., 499 U.S. 340, 361 (1991).

7 **41.** As a direct and proximate result of the Defendants’ infringement of Plaintiff’s copyrights, as
8 alleged herein, Plaintiff has been damaged in the amount of at least \$2,000,000.00, together with
9 interest thereon at the legal rate. When Plaintiff ascertains the exact amount of said damages, he will
10 seek leave of Court to amend this Complaint to set forth said amount.

11 **42.** In accordance with 17 U.S.C. Section 504, as a further direct and proximate result of the
12 foregoing copyright infringement by Defendants, and each of them, Plaintiff is also entitled to recover
13 all profits earned by Defendants, and each of them, which are attributable to the infringement of the
14 copyright of the music, which profits Plaintiff expects to be in excess of Twenty Million Dollars
15 (\$20,000,000.00).
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17 **43.** As a further direct and proximate result of the foregoing copyright infringement by
18 Defendants, and each of them, Plaintiff has been compelled to retain the services of an attorney in
19 order to prosecute his rights under the Copyright Act. As a result, Plaintiff has incurred and will
20 continue to incur substantial attorneys’ fees. In accordance with 17 U.S.C. Section 505, Plaintiff is
21 entitled to an award of its reasonable attorneys’ fees.
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23 **44.** In accordance with 17 U.S.C. Section 504(c)(2), as a further direct and proximate result of
24 Defendants’ willful acts of copyright infringement under 17 U.S.C. §106, Plaintiff is alternatively
25 entitled to an award of the maximum statutory damages under that Section, in the sum of One
26 Hundred Fifty Thousand Dollars (\$150,000.00) for each act of infringement.
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SECOND CLAIM FOR RELIEF

(For Breach of Oral Contract Against All Defendants)

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3 **45.** Plaintiff adopts, realleges, and by this reference incorporates, Paragraphs 1 through 33,
4 inclusive, hereinabove.

5 **46.** In or about 2019, Plaintiff and Defendants, and each of them, entered into an oral agreement
6 (hereinafter the “Agreement”), whereby Plaintiff agreed to create and perform talk box vocals for
7 Lipa’s track, entitled “Levitating,” using the ElectroSpit Talk Box.

8 **47.** In exchange for the foregoing, Defendants, and each of them, were to pay Plaintiff the sum of
9 \$1,500, plus a share of neighboring rights to the track based on a split between 7 musicians (including
10 Plaintiff), as well provide a credit to Plaintiff for his work on the track. Additionally, and most
11 importantly, it was explicitly agreed that there would be no reuse or sampling of Plaintiff’s Work
12 beyond the use for the original version of the track, “Levitating.”

13 **48.** Plaintiff has performed all of the covenants, conditions, and obligations that were required on
14 his part to be performed under the Agreement, except insofar as such performance was waived,
15 prevented, or excused by the acts or omissions of Defendants, or any of them.

16 **49.** Defendants, and each of them, have breached the express and/or implied terms of the
17 aforementioned Agreement by, among other things: (a) Reusing and/or sampling and incorporating
18 Plaintiff’s Work in multiple derivative works, including at least two remixes of “Levitating,” without
19 Plaintiff’s approval and/or authorization, and/or without any compensation or credit; (b) By including
20 multiple additional musicians in the original version of “Levitating,” significantly reducing Plaintiff’s
21 neighboring rights royalties.
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25 **50.** In addition, Plaintiff is informed and believe and, based upon such information and belief,
26 allege that Defendants, and each of them, have materially breached the express terms of the
27 Agreement, as well as the implied covenant of good faith and fair dealing, by other acts or omissions.
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1 Plaintiff will seek leave of Court to amend this Complaint at such time as Plaintiff discovers the other
2 acts or omissions of Defendants, or any of them, constituting such a breach.

3 **51.** As a direct and proximate result of the aforementioned breaches by Defendants, and each of
4 them, as alleged herein, Plaintiff has been damaged in an amount that has yet to be ascertained,
5 including consequential and incidental damages, which amount is at least \$2 Million, together with
6 interest thereon at the legal rate of ten percent (10%) per annum. When Plaintiff ascertains the exact
7 amount of said damages, he will seek leave of Court to amend this Complaint to set forth said amount.
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9 **THIRD CLAIM FOR RELIEF**

10 (For Declaratory Relief - Against All Defendants)

11 **52.** Plaintiff adopts, realleges, and by this reference incorporates, Paragraphs 1 through 33,
12 inclusive, and 46 through 50, inclusive, hereinabove.

13 **53.** An actual controversy has arisen between Plaintiff and Defendants, and each of them, in that
14 Defendants contend, and Plaintiff denies, that Defendants own all rights, title, and interest in and to
15 the copyrights of Plaintiff's Work, and otherwise have the legal right to exploit the same.
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17 **54.** Plaintiff desires a judicial determination that: (a) Plaintiff own all rights, title, and interest in
18 and to the copyright to Plaintiff's Work; (b) Those rights were never sold, assigned, or otherwise
19 transferred to Defendants, or any of them; (c) Defendants have no present or future rights to sell,
20 distribute, or otherwise exploit Plaintiff's Work, or any portions or derivative works thereof; (d)
21 Defendants have no present or future rights to license, distribute, sell copies of, or otherwise exploit
22 Plaintiff's Work, or any portions or derivative works thereof; (e) The Blessed Madonna Remix, the
23 DaBaby Remix, and Remix 3 are derivative works of Plaintiff's Work; and (f) Plaintiff owns and/or
24 co-owns all rights, title, and interest in and to the copyright to the Blessed Madonna Remix, the
25 DaBaby Remix, and Remix 3.
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28 **FOURTH CLAIM FOR RELIEF**

Complaint for Copyright Infringement, Kante vs. Dua Lipa et al.

(For Temporary, Preliminary, and Permanent Injunction -- Against All Defendants)

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2 **55.** Plaintiff adopts, realleges, and by this reference incorporates, Paragraphs 1 through 33,
3 inclusive, hereinabove.

4 **56.** The wrongful acts and conduct of Defendants, and each of them, constitute a serious and
5 substantial violation of Plaintiff's rights under the laws of the United States.

6 **57.** Plaintiff is informed and believes and, based upon such information and belief, alleges that
7 Defendants' conduct, including, but not limited to, the foregoing, has caused and will cause
8 irreparable injury to Plaintiff, which injury will continue as long as Defendants continue to exploit
9 "Levitating," and otherwise infringe Plaintiff's copyrights. Such injury will be severe, substantial, and
10 continuing, and cannot be reasonably or adequately measured or compensated for by money damages
11 alone.
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13 **58.** Unless Defendants, and each of them, are preliminarily and permanently enjoined from any
14 further exploitation of the Blessed Madonna Remix, the DaBaby Remix, and Remix 3 of "Levitating,"
15 and any other use of Plaintiff's copyrights, Plaintiff will be irreparably and permanently injured.
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17 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:
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19 **AS TO ALL CLAIMS FOR RELIEF**

- 20 **1.** For costs of suit herein incurred; and
21 **2.** For such other and further relief as the Court deems just and proper.
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23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for relief as follows:

- 25 **a.** For declaratory relief to the extent permitted by law;
26 **b.** For injunctive relief to the extent permitted by law;
27 **c.** For pre-judgment interests on all damages and/or profits awarded by this Court;
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- d.** For general damages to the extent permitted by law;
- e.** For punitive damages to the extent permitted by law;
- f.** For reasonable attorney’s fees and cost of suit to the extent permitted by law; and
- g.** An award of such other and further relief as this Court deems proper and just.

DEMAND FOR JURY TRIAL

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2 Pursuant to Federal Rule of Civil Procedure 38(b), and otherwise, Plaintiff
3 respectfully demands a jury trial on all issues raised in this complaint.
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5 Dated: July 30, 2023

Respectfully submitted,

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7 *Herbert T. Patty*

8 The Law Office of Herbert T. Patty
9 Herbert T. Patty, Esq.
10 Attorney for Plaintiff
11 BOSKO KANTE
12 p/k/a BOSKO KANTE
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