Ca	se 2	:19-cv-09107-DMG-MAA Document 27 File	ed 02/28/20 Page 1 of 37 Page ID #:73
	1 2 3 4 5 6 7 8 9	KINSELLA WEITZMAN ISER KUMP & LAWRENCE Y. ISER (SBN 094611) liser@kwikalaw.com SHAWN HOLLEY (SBN 136811) sholley@kwikalaw.com ALLEN SECRETOV (SBN 301655) asecretov@kwikalaw.com 808 Wilshire Boulevard, 3 <sup>rd</sup> Floor Santa Monica, California 90401 Telephone: 310.566.9800 Facsimile: 310.566.9850 Attorneys for Defendants and Counterclai Justin Raisen, Jeremiah Raisen, Justin "Yo Rothman, and Heavy Duty LLC <b>UNITED STATES</b>	mants
	10	CENTRAL DISTRICT OF CAL	FORNIA, WESTERN DIVISION
IEL 310.300.3000 • FAX 310.300.300	11         12         13         14         15         16         17         18         19         20         21         22         23         24         25         26         27         28	MELISSA JEFFERSON, professionally known as LIZZO, an individual, Plaintiff, vs. JUSTIN RAISEN, an individual, JEREMIAH RAISEN, an individual, HEAVY DUTY MUSIC PUBLISHING, JUSTIN "YVES" ROTHMAN, an individual, and DOES 1-10, <u>Defendants.</u> JUSTIN RAISEN, an individual, JEREMIAH RAISEN, an individual, HEAVY DUTY LLC (erroneously sued as HEAVY DUTY MUSIC PUBLISHING), and JUSTIN "YVES" ROTHMAN, an individual, Counterclaimants, vs. MELISSA JEFFERSON, professionally known as LIZZO, an individual, ERIC FREDERIC, an individual, JESSE ST. JOHN GELLER, an individual, and ROES 1-10, Counterdefendants.	Case No. 2:19-CV-09107-DMG-MAA The Hon. Dolly M. Gee DEFENDANTS JUSTIN RAISEN, JEREMIAH RAISEN, HEAVY DUTY LLC, AND JUSTIN "YVES" ROTHMAN'S ANSWER AND COUNTERCLAIMS DEMAND FOR JURY TRIAL Courtroom: 8C Action Filed: October 23, 2019 Trial Date: None Set
	20	20578 00002/685521	Case No. 2:19-CV-09107-DMG-MAA
		<u>30578-00002/685531</u> ANSWER AND C	Case No. 2:19-CV-09107-DMG-MAA COUNTERCLAIMS

Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Defendants
 Justin Raisen, Jeremiah Raisen (collectively, "the Raisens"), Justin "Yves"
 Rothman, and Heavy Duty LLC<sup>1</sup> (collectively, "Defendants" or "Counterclaimants")
 answer the Complaint of Plaintiff Melissa Jefferson p/k/a Lizzo ("Plaintiff" or
 "Lizzo"). If an averment is not specifically admitted, it is hereby denied.

6

## **ANSWER TO COMPLAINT**

7 1. Answering Paragraph 1, Defendants admit that Lizzo is a recording
8 artist and songwriter, that Lizzo attained breakthrough commercial success in 2019,
9 that "Truth Hurts" was first released in 2017 and hit Number One on the *Billboard*10 charts in September 2019, and that Lizzo is seeking a judicial declaration regarding
11 the authorship of "Truth Hurts." Except as expressly admitted herein, Defendants
12 deny each and every allegation contained therein.

13 2. Answering Paragraph 2, Defendants admit that the Raisens are
14 asserting claims to a percentage of "Truth Hurts." Except as expressly admitted
15 herein, Defendants deny each and every allegation contained therein.

16 3. Answering Paragraph 3, Defendants admit that Rothman is asserting a
17 claim to a percentage of "Truth Hurts." Except as expressly admitted herein,

**18** Defendants deny each and every allegation contained therein.

19 4. Answering Paragraph 4, Defendants deny each and every allegation20 contained therein.

5. Answering Paragraph 5, Defendants admit Lizzo is a singer,
songwriter, and rapper, and that she received breakthrough commercial success in
2019. Defendants lack knowledge and information sufficient to form a belief as to
the truth of the remaining allegations of Paragraph 5, and therefore deny the
allegations on that basis.

26

27 Lizzo's Complaint erroneously sued Heavy Duty LLC as Heavy Duty Music
28 Publishing.

30578-00002/685531	2	Case No. 2:19-CV-09107-DMG-MAA
	ANSWER AND COUNTERCLAIMS	

6. Answering Paragraph 6, Defendants admit the allegations contained
 therein.

3 7. Answering Paragraph 7, Defendants admit the allegations contained4 therein.

8. Answering Paragraph 8, Defendants admit that the Raisens do business
with an entity known as Heavy Duty LLC, which Lizzo's Complaint erroneously
sued as Heavy Duty Music Publishing. Except as expressly admitted herein,
Defendants deny each and every allegation contained therein.

9 9. Answering Paragraph 9, Defendants admit the allegations contained10 therein.

11 10. Answering Paragraph 10, Defendants lack sufficient knowledge or
12 information to form a belief concerning the truth of the factual allegations contained
13 therein and on that basis deny such allegations. Paragraph 10 further contains legal
14 conclusions and argument as to which no response is required.

15 11. Answering Paragraph 11, this Paragraph states a legal conclusion as to
16 which no response is required. To the extent a response is required, however,
17 Defendants admit the allegations contained therein.

18 12. Answering Paragraph 12, this Paragraph states a legal conclusion as to
19 which no response is required. To the extent a response is required, however,
20 Defendants admit the allegations contained therein.

21 13. Answering Paragraph 13, this Paragraph states a legal conclusion as to
22 which no response is required. To the extent a response is required, however,
23 Defendants admit the allegations contained therein.

14. Answering Paragraph 14, Defendants admit they are aware that a song
called "Truth Hurts" by Lizzo was commercially released. Defendants lack
knowledge and information sufficient to form a belief as to the truth of the
remaining allegations of Paragraph 14, and therefore deny the allegations on that
basis.

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP 808 WILSHIRE BOULEVARD, 3<sup>RD</sup> FLOOR SANTA MONICA, CALIFORNIA 90401 Tel. 310.566.9800 • Fax 310.566.9850

30578-00002/685531

1 15. Answering Paragraph 15, Defendants deny each and every allegation
 2 contained therein.

3 16. Answering Paragraph 16, Defendants admit that the Raisens and
4 Rothman are joint authors of "Truth Hurts," and have claimed so at all times,
5 including after its release. Except as expressly admitted herein, Defendants deny
6 each and every allegation contained therein.

7 17. Answering Paragraph 17, Defendants deny each and every allegation8 contained therein.

9 18. Answering Paragraph 18, Defendants admit that the Raisens co-own
10 "Truth Hurts" based on numerous legal and factual reasons, including, but not
11 limited to, the fact that the song includes a lyric coupled with a melody contained in
12 an unreleased song which Lizzo created with Defendants at Justin Raisen's Los
13 Angeles studio in April 2017. Except as expressly admitted herein, Defendants deny
14 each and every allegation contained therein.

15 19. Answering Paragraph 19, Defendants deny each and every allegation16 contained therein.

17 20. Answering Paragraph 20, Defendants admit that the source of the line
18 "I just took a DNA test, turns out I'm 100% that bitch" is a tweet that became an
19 internet meme. Except as expressly admitted herein, Defendants deny each and
20 every allegation contained therein.

21 21. Answering Paragraph 21, Defendants admit that each of the Raisens
22 own rights to 10% of "Truth Hurts" and to a corresponding share of the song's
23 profits. Except as expressly admitted herein, Defendants deny each and every
24 allegation contained therein.

25 22. Answering Paragraph 22, Defendants admit that Lizzo rejected the
26 Raisens' ownership in, and rights and claims to, "Truth Hurts" and its profits on a
27 telephone call with Justin Raisen. Except as expressly admitted herein, Defendants
28 deny each and every allegation contained therein.

30578-00002/685531
30578-00002/685531

23. Answering Paragraph 23, Defendants deny each and every allegation
 contained therein.

3 24. Answering Paragraph 24, Defendants lack knowledge and information
4 sufficient to form a belief as to the truth of the allegations of Paragraph 24, and
5 therefore deny the allegations on that basis.

6 25. Answering Paragraph 25, Defendants lack knowledge and information
7 sufficient to form a belief as to the truth of the allegations of Paragraph 25, and
8 therefore deny the allegations on that basis.

9 26. Answering Paragraph 26, Defendants lack knowledge and information
10 sufficient to form a belief as to the truth of the allegations of Paragraph 26, and
11 therefore deny the allegations on that basis.

12 27. Answering Paragraph 27, Defendants lack knowledge and information
13 sufficient to form a belief as to the truth of the allegations of Paragraph 27, and
14 therefore deny the allegations on that basis.

15 28. Answering Paragraph 28, Defendants lack sufficient knowledge or
16 information to form a belief concerning the truth of the factual allegations contained
17 therein and on that basis deny such allegations. Paragraph 28 further contains legal
18 conclusions and argument as to which no response is required.

19 29. Answering Paragraph 29, Defendants lack sufficient knowledge or
20 information to form a belief concerning the truth of the factual allegations contained
21 therein and on that basis deny such allegations. Paragraph 29 further contains legal
22 conclusions and argument as to which no response is required.

30. Answering Paragraph 30, Defendants admit that "Truth Hurts"
appeared on the *Billboard* Hot 100 Chart. Defendants lack sufficient knowledge or
information to form a belief concerning the truth of the factual allegations contained
therein and on that basis deny such allegations.

27 31. Answering Paragraph 31, Defendants admit the allegations contained28 therein.

32. Answering Paragraph 32, Defendants admit that as of September 4,
 2019, the Raisens own a 20% ownership share of "Truth Hurts." Except as expressly
 admitted herein, Defendants deny each and every allegation contained therein.

4 33. Answering Paragraph 33, Defendants admit that they made posts on
5 social media about their joint authorship of "Truth Hurts." Except as expressly
6 admitted herein, Defendants deny each and every allegation contained therein.

7 34. Answering Paragraph 34, Defendants admit that Rothman participated
8 in the April 2017 songwriting and recording session. Except as expressly admitted
9 herein, Defendants deny each and every allegation contained therein.

10 35. Answering Paragraph 35, Defendants admit that Rothman learned of
11 the Raisens' claims to "Truth Hurts." Except as expressly admitted herein,
12 Defendants deny each and every allegation contained therein.

13 36. Answering Paragraph 36, Defendants admit that Rothman has partial
14 ownership in, and lodged meritorious claims to, "Truth Hurts." Except as expressly
15 admitted herein, Defendants deny each and every allegation contained therein.

37. Answering Paragraph 37, Defendants admit that on October 14, 2019,
Rothman made a formal demand claiming that he was one of the writers of
"Healthy," that "Truth Hurts" infringes his copyright to "Healthy," and demanded
five percent of "Truth Hurts" in exchange for relinquishing his claims. Except as
expressly admitted herein, Defendants deny each and every allegation contained
therein.

38. Answering Paragraph 38, Defendants lack sufficient knowledge or
information to form a belief concerning the truth of the factual allegations contained
therein and on that basis deny such allegations. Paragraph 38 further contains legal
conclusions and argument as to which no response is required.

26 39. Defendants incorporate by reference their responses in each of the
27 preceding paragraphs as if fully set forth herein.

30578-00002/685531

40. Answering Paragraph 40, this Paragraph states a legal conclusion as to
 which no response is required. To the extent a response is required, however,
 Defendants admit there is a dispute among the parties regarding the song "Truth
 Hurts," and the parties' entitlement to shares in the profits earned connection with
 the song. Except as expressly admitted herein, Defendants deny each and every
 allegation contained therein.

7 41. Answering Paragraph 41, this Paragraph states a legal conclusion as to
8 which no response is required. To the extent a response is required, however,
9 Defendants admit there is a dispute among the parties regarding the song "Truth
10 Hurts." Except as expressly admitted herein, Defendants deny each and every
11 allegation contained therein.

42. Answering Paragraph 42, this Paragraph states a legal conclusion as to
which no response is required. To the extent a response is required, however,
Defendants admit there is a dispute among the parties regarding the song "Truth
Hurts." Except as expressly admitted herein, Defendants deny each and every
allegation contained therein.

## **ANSWER TO PRAYER FOR RELIEF**

18 Defendants deny that Plaintiff is entitled to relief against Defendants, and
19 request that the Court dismiss all claims against Defendants with prejudice and order
20 such further relief in favor of Defendants as the Court deems just and proper.

#### **AFFIRMATIVE DEFENSES**

Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, Defendants
plead the following separate affirmative defenses. Each defense is asserted as to all
claims asserted against Defendants. By setting forth these affirmative defenses,
Defendants do not assume the burden of proving any fact, issue or element of a
claim where such burden properly belongs to Plaintiff. Defendants reserve the right
to assert additional affirmative defenses that discovery indicates are proper.

28

21

30578-00002/685531

FIRST AFFIRMATIVE DEFENSE 1 2 (Failure to State a Claim) 3 As a separate and first affirmative defense to the Complaint, and to the 1. purported causes of action set forth therein, Defendants allege that the Complaint 4 fails to state facts sufficient to constitute a cause of action. 5 SECOND AFFIRMATIVE DEFENSE 6 7 (Duress) 8 As a separate and second affirmative defense to the Complaint and each 2. purported cause of action contained therein, Defendants were subject to duress, 9 10 menace, fraud, or undue influence by Plaintiff's wrongful threats, and as a result, Plaintiff cannot recover in this matter, or their recovery must be limited. 11 THIRD AFFIRMATIVE DEFENSE 12 13 (Apportionment of Fault) As a separate and third affirmative defense to the Complaint and each 14 3. purported cause of action contained therein, Defendants allege that Plaintiff's 15 damages, if any, were caused by the negligence and/or acts or omissions of parties 16 other than the Defendants, whether or not parties to this action. By reason thereof, 17 18 Plaintiff's damages, if any, as against the Defendants, must be reduced by the proportion of fault attributable to such other parties, and to the extent that this is 19 necessary, Defendants may be entitled to partial indemnity from others on a 20 comparative fault basis. 21 22 FOURTH AFFIRMATIVE DEFENSE 23 (Attorneys' Fees Barred) 24 4. As a separate and fourth affirmative defense to the Complaint and each purported cause of action contained therein, Defendants allege that Plaintiff's claim 25 for attorneys' fees is barred by the provisions of California Code of Civil Procedure 26 § 1021. 27 28 Case No. 2:19-CV-09107-DMG-MAA 8 30578-00002/685531 ANSWER AND COUNTERCLAIMS

#### FIFTH AFFIRMATIVE DEFENSE

#### (Comparative Fault)

5. As a separate and fifth affirmative defense to the Complaint and each
purported cause of action contained therein, Defendants allege that Plaintiff's
damages, if any, were caused by the primary negligence and/or acquiescence in the
acts and omissions alleged in the Complaint by the Plaintiff, and Plaintiff's agents,
employees, representatives, relatives, heirs, assigns, attorneys, and/or any others
acting on Plaintiff's behalf. By reason thereof, Plaintiff is not entitled to damages or
any other relief whatsoever as against Defendants.

10

11

1

2

## SIXTH AFFIRMATIVE DEFENSE

#### (Consent)

6. As a separate and sixth affirmative defense to the Complaint and each
purported cause of action contained therein, Defendants allege that Plaintiff is
barred from prosecuting the purported causes of action set forth in the Complaint
because Plaintiff, and/or the persons and/or entities acting on her behalf, consented
to and acquiesced in the subject conduct.

17

18

#### <u>SEVENTH AFFIRMATIVE DEFENSE</u>

#### (Failure of Condition)

As a separate and seventh affirmative defense to the Complaint and 19 7. each purported cause of action contained therein, Defendants allege that by virtue of 20 21 the acts of the Plaintiff, and/or the persons and/or entities acting on her behalf, 22 Plaintiff is barred from prosecuting the purported causes of action set forth in the 23 Complaint because of a failure of the Plaintiff, and/or the persons and/or entities acting on her behalf, to perform all or any conditions, whether precedent, concurrent 24 and/or subsequent, covenants, and/or promises on their part to be performed as 25 between the parties herein. 26 27

28

30578-00002/685531

1

2

7

8

15

16

#### EIGHTH AFFIRMATIVE DEFENSE

#### (Failure to Mitigate)

8. As a separate and eighth affirmative defense to the Complaint and each
purported cause of action contained therein, Defendants allege that Plaintiff's
claims, if any, are barred for her failure, and/or the failure of the persons and/or
entities acting on her behalf, to mitigate any purported damages.

#### NINTH AFFIRMATIVE DEFENSE

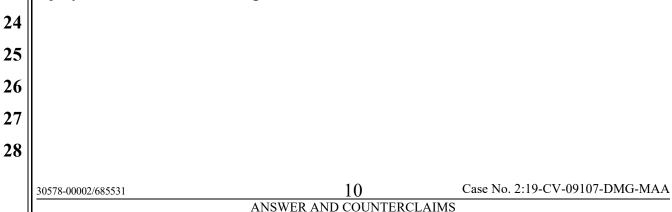
#### (Fraud)

9 9. As a ninth separate and affirmative defense to the Complaint and each
10 purported cause of action contained therein, Defendants allege that negligent and/or
11 intentional misrepresentations were made by Plaintiff, and/or the persons and/or
12 entities acting on her behalf, to Defendants such that Defendants were induced to
13 enter into an agreement with Plaintiff, which Defendants would not have done
14 absent such misrepresentations.

#### TENTH AFFIRMATIVE DEFENSE

#### (Intervening and Superseding Cause)

17 10. As a separate and tenth affirmative defense to the Complaint and each
purported cause of action contained therein, Defendants allege that if Plaintiff
suffered or sustained any loss, damage or injury as alleged in the Complaint, such
loss, damage or injury was legally caused or contributed to by the negligence or
wrongful conduct of other parties, persons or entities, and that their negligence or
wrongful conduct was an intervening and superseding cause of the loss, damage or
injury of which Plaintiff complains.



1	ELEVENTH AFFIRMATIVE DEFENSE
2	(Justification/Excuse)
3	11. As a separate and eleventh affirmative defense to the Complaint and
4	each purported cause of action contained therein, Defendants allege that by virtue of
5	the acts of the Plaintiff, and/or the persons and/or entities acting on her behalf,
6	Plaintiff is barred from prosecuting the purported causes of action set forth in the
7	Complaint because the acts and/or omissions alleged in the Complaint were justified
8	and/or excused.
9	TWELFTH AFFIRMATIVE DEFENSE
10	(Laches)
11	12. As a separate and twelfth affirmative defense to the Complaint and
12	each purported cause of action contained therein, Defendants allege that Plaintiff is
13	barred in whole or in part from prosecuting the purported causes of action set forth
14	in the Complaint by the doctrine of laches.
15	THIRTEENTH AFFIRMATIVE DEFENSE
16	(Mistake or Inadvertence)
17	13. As a thirteenth separate and affirmative defense to the Complaint and
18	each purported cause of action contained therein, Defendants allege that Plaintiff is
19	barred from recovering on the claims in its Complaint on the grounds of mistake or
20	inadvertence.
21	FOURTEENTH AFFIRMATIVE DEFENSE
22	
	(No Injury or Damage)
23	(No Injury or Damage) 14. As a separate and fourteenth affirmative defense to the Complaint and
23 24	
	14. As a separate and fourteenth affirmative defense to the Complaint and
24	14. As a separate and fourteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendants allege that Plaintiff has
24 25	14. As a separate and fourteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendants allege that Plaintiff has not been injured or damaged as a proximate result of any act or omission for which
24 25 26	14. As a separate and fourteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendants allege that Plaintiff has not been injured or damaged as a proximate result of any act or omission for which
24 25 26 27	14. As a separate and fourteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendants allege that Plaintiff has not been injured or damaged as a proximate result of any act or omission for which

#### (Offset)

3 15. As a separate and fifteenth affirmative defense to the Complaint and
4 each purported cause of action contained therein, Defendants allege that by virtue of
5 the acts of the Plaintiff and/or the persons and/or the entities acting on Plaintiff's
6 behalf, the Defendants have been damaged in an amount equal to or greater than the
7 amount of damages, if any, to which Plaintiff might be entitled. As a result, the
8 Defendants are entitled to an offset against any sums found owing to the Defendants
9 from Plaintiff.

# SIXTEENTH AFFIRMATIVE DEFENSE

#### (Ongoing Investigation)

As a separate and sixteenth affirmative defense to the Complaint and 12 16. 13 each purported cause of action contained therein, Defendants allege that they have not yet completed a thorough investigation or study or completed the discovery of 14 all the facts and circumstances of the subject matter of the Complaint and, 15 accordingly, reserve the right to amend, modify, revise or supplement their answer 16 and to plead such other defenses and take such other further actions as they may 17 deem proper and necessary in their defense upon completion of said investigation 18 19 and/or study.

#### 20

21

1

2

10

11

## SEVENTEENTH AFFIRMATIVE DEFENSE

## (Proximate Cause – Plaintiff)

17. As a separate and seventeenth affirmative defense to the Complaint and
each purported cause of action contained therein, Defendants allege that the injuries
and damages alleged in the Complaint by Plaintiff occurred, were proximately
caused by and/or were contributed to by Plaintiff's own acts or failures to act and
that Plaintiff's recovery, if any, should be reduced by an amount proportionate to the
amount by which said acts caused or contributed to said alleged injury or damages.

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP 808 WILSHIRE BOULEVARD, 3<sup>RD</sup> FLOOR SANTA MONICA, CALIFORNIA 90401 Tel 310.566.9800 • Fax 310.566.9850

30578-00002/685531

#### EIGHTEENTH AFFIRMATIVE DEFENSE 1 2 (Unclean Hands) 3 18. As a separate and eighteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendants allege that Plaintiff is 4 barred in whole or in part from prosecuting the purported causes of action set forth 5 in the Complaint by the doctrine of unclean hands. 6 7 NINETEENTH AFFIRMATIVE DEFENSE (Waiver and Estoppel) 8 9 As a separate and nineteenth affirmative defense to the Complaint and 19. 10 each purported cause of action contained therein, Defendants allege that Plaintiff, through her own acts or omissions, has waived any right which she may have had to 11 12 recover, and/or is estopped from recovering, any relief sought against Defendants. 13 TWENTIETH AFFIRMATIVE DEFENSE (Additional Affirmative Defenses) 14 15 20. Defendants have insufficient knowledge or information upon which to form a belief as to whether they may have additional yet unstated affirmative 16 defenses. Defendants give notice that they intend to rely upon such other and further 17 18 defenses as may become available or apparent during pretrial proceedings in this action and hereby reserve their right to amend this Answer and to assert any such 19 additional defenses. 20 21 WHEREFORE, Defendants pray for relief as follows: That the Complaint be dismissed, with prejudice and in its entirety; 22 1. 23 2. That Plaintiff take nothing by reason of this Complaint and that 24 judgment be entered against Plaintiff and in favor of Defendants; 25 That Defendants be awarded their attorneys' fees and costs incurred in 3. defending this action; 26 That Defendants be granted such other and further relief as the Court 27 4. 28 may deem just and proper. Case No. 2:19-CV-09107-DMG-MAA 30578-00002/685531

ANSWER AND COUNTERCLAIMS

1 2

## **COUNTERCLAIMS**

Defendants and Counterclaimants Justin Raisen, Jeremiah Raisen, Justin 3 "Yves" Rothman, and Heavy Duty LLC (collectively, "Counterclaimants") hereby counterclaim against Plaintiff and Counterclaim Defendants Melissa Jefferson p/k/a 4 5 Lizzo ("Lizzo"), Eric Frederic p/k/a Ricky Reed ("Ricky Reed"), Jesse St. John Geller ("Saint John"), Steven Cheung p/k/a Tele ("Tele"), and ROES 1-10 6 (collectively, "Counterdefendants") as follows: 7

#### 8

#### INTRODUCTION

9 This case concerns Lizzo's bad faith, unprincipled attempt to deny 10 songwriting and producer credits and royalties to Counterclaimants Justin Raisen, Jeremiah Raisen, and Yves Rothman on the hit song "Truth Hurts" (sometimes 11 referred to herein as the "Song"). The Song, originally released on September 19, 12 13 2017, became a viral hit in 2019 after gaining popularity on the TikTok video-sharing app and being featured in the 2019 Netflix film Someone Great. The 14 Song was included as a bonus track on the "Deluxe" version of Lizzo's album Cuz I 15 Love You and reached Number One on Billboard's Hot 100 list, becoming Lizzo's 16 first song to do so, and where it stayed for six consecutive weeks. The Song has 17 18 achieved more than 518 million streams on Spotify alone, and its music video has 19 amassed more than 186 million views on YouTube, leading to three Grammy Award nominations, including Record of the Year and Song of the Year. Ironically, "Truth 20 21 Hurts" won Lizzo the Grammy Award for Best Pop Solo Performance. As alleged 22 herein, the Song was anything but Lizzo's "solo performance," and Lizzo would 23 never have collected her Grammy Award but for the songwriting and producing 24 contributions of Counterclaimants.

## THE PARTIES

Justin Raisen ("Justin") is a producer, songwriter, and musician. Justin 26 1. is a resident of Los Angeles County, California. 27

28

30578-00002/685531

25

Case No. 2	2:19-CV-09	9107-DMC	i-MAA

#### ANSWER AND COUNTERCLAIMS

2. Jeremiah Raisen ("Jeremiah") is a producer, songwriter, and musician.
 Jeremiah is a resident of Los Angeles County, California.

3 3. Justin "Yves" Rothman ("Yves") is a producer, songwriter, and
4 musician. Yves is a resident of Los Angeles County, California.

4. Heavy Duty LLC is a Delaware limited liability company with its
principal place of business in Los Angeles County, California. Heavy Duty LLC is a
music publishing and production company and has entered into co-publishing
agreements with Justin and Jeremiah.

9 5. Lizzo is an actress and musical artist. On information and belief, Lizzo
10 is a resident of Los Angeles County, California. Lizzo is currently listed as a
11 songwriter for the song "Truth Hurts."

12 6. Ricky Reed is a producer, songwriter, and musician. On information
13 and belief, Reed is a resident of Los Angeles County, California. Reed is currently
14 listed as a songwriter and producer for the song "Truth Hurts."

15 7. Saint John is a songwriter and singer. On information and belief, Saint
16 John is a resident of Los Angeles County, California. Saint John is currently listed as
17 a songwriter for the song "Truth Hurts."

18 8. Tele is a songwriter and producer. On information and belief, Tele is a
19 resident of Los Angeles County, California. Tele is currently listed as a songwriter
20 and producer for the song "Truth Hurts."

9. The true names and capacities, whether individual, corporate, or
otherwise, of ROES 1 through 10, are currently unknown, and they are therefore
sued under fictitious names.

24

## JURISDICTION AND VENUE

25 10. This action arises under the federal copyright laws of the United States,
26 17 U.S.C. §§ 101, *et seq*.

2711. In addition, this Court has subject matter jurisdiction over the

**28** counterclaims herein pursuant to 28 U.S.C. § 1367 in that the counterclaims form

	1 5
30578-00002/685531	15
	ANSWER AND COUNTERCLAIMS

Case No. 2:19-CV-09107-DMG-MAA

part of the same case or controversy as Lizzo's federal claim for relief under 28
 U.S.C. § 2201, *et seq.* and under 17 U.S.C. §§ 101, *et seq.*

3 12. This Court also subject matter jurisdiction over the counterclaims
4 herein pursuant to 28 U.S.C. §§ 1331 and 1338 and the Declaratory Judgment Act,
5 18 U.S.C. § 2201.

6 13. This Court has personal jurisdiction over Counterdefendants because
7 Counterdefendants are domiciled in California.

8 14. Venue in this District is proper under 28 U.S.C. § 1391(b)(1) and (2)
9 and pursuant to 28 U.S.C. § 1400(a), because Counterdefendants and their agents
10 reside in, or may be found in, this District.

## ALLEGATIONS COMMON TO ALL CLAIMS

#### The Lead Up to "Healthy"

13 15. Justin Raisen is a highly sought-after record producer and songwriter,
14 who often provides these services to musical artists out of his Los Angeles home
15 recording studio.

16. In 2016, Justin was approached several times about working with the
17 then-up-and-coming artist Lizzo, who was signed to her music producer Ricky
18 Reeds' ("Reed") Nice Life Recording Company ("Nice Life").

19 17. In or around January 2017, Justin and Lizzo spoke on the phone and
20 agreed that Lizzo would come to Justin's studio for a writing and recording session
21 with Justin and his brother and fellow producer and songwriter, Jeremiah.

18. Justin's wife and co-manager, Ashlee Gardner ("Ashlee"), handled the
logistics of the session. When Bradley Haering ("Haering") of Nice Life asked that
"another topliner" songwriter and producer be added to the session's roster at
Lizzo's request, Ashlee added Yves Rothman. Later, songwriter Jesse Saint John
("Saint John") was also added.

27 19. The purpose and intent of the session was for Lizzo, the Raisens, Yves,28 and Saint John to collaborate in creating new songs featuring Lizzo.

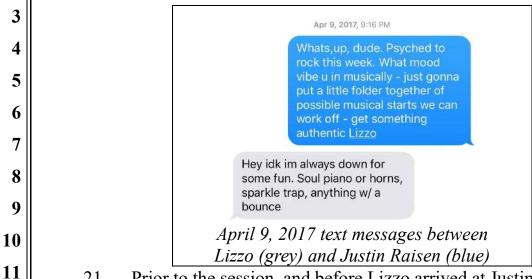
30578-00002/685531	16	Case No. 2:19-CV-09107-DMG-MAA
	ANSWER AND COUNTERCLAIMS	

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP 808 WILSHIRE BOULEVARD, 3<sup>RD</sup> FLOOR SANTA MONICA, CALIFORNIA 90401 Tel 310.566.9800 • Fax 310.566.9850

11

12

20. In preparation for the session, Justin and Lizzo messaged about the type of sound and feel Lizzo was looking for:



Prior to the session, and before Lizzo arrived at Justin's home recording 21. studio, the Raisens and Rothman created several instrumental tracks in preparation, including one they titled "magneticmove."

## The Creation of "Healthy"

15 On April 11, 2017, Lizzo arrived at Justin's home studio for the session 22. 16 with Justin, Jeremiah, Yves, and Saint John. Accompanying Lizzo were her brother, 17 Mikey, and her sister, Vanessa. Several other persons were also present at various 18 times during the five-hour session. Neither Lizzo nor Saint John brought any 19 preexisting music or lyrics to the session. Upon Lizzo's arrival, Justin played for 20 Lizzo the instrumental tracks the Raisens and Rothman had created in preparation 21 for the session, and Lizzo chose to work off of the track "magneticmove." As the 22 group brainstormed ideas for lyrics, Jeremiah suggested calling the song "Healthy," 23 and that the song's lyrics should relate to health, sobriety, and wellness.

24 23. While the group (Justin, Jeremiah, Yves, Saint John, and Lizzo) were 25 collaborating on the lyrics and searching the internet for inspiration, Saint John 26 showed the group an internet meme that read, "I did a DNA test and found out I'm 27 100% that bitch." Jeremiah enthusiastically suggested they add this line to the song. 28 As the now-iconic "100%" line and other lyrics emerged through the collaboration 30578-00002/685531

1

2

12

13

of Justin, Jeremiah, Yves, Saint John, and Lizzo, the original "magneticmove"
 instrumental was altered by Justin and Yves to fit the structure, melody, and cadence
 of the developing song. Specifically, Justin was responsible for the overall creation
 and production of the music, and Rothman contributed heavily to the drum
 grooves/programming and melodic keyboard/synth parts of "Healthy."

6 24. The second verse of "Healthy" included the "100%" lyric, and in
7 completed form read: "I just did a DNA test turns out I'm a hundred percent that
8 bitch, even when I'm holistic / gotta keep it realistic / I could be, guest-listed / but
9 I'd rather be home, get rest, not twisted."

10 25. At the end of the five-hour session, Justin, Jeremiah, Yves, Saint John,
11 and Lizzo had each contributed inseparable and interdependent non-trivial amounts
12 of creative, original, and intellectual expression to create "Healthy" and a second
13 song "Gorgeous," with the intent that their creative contributions be combined.

14 26. Regarding "Healthy," Lizzo told Justin Raisen during the recording
15 session that "me and Ricky [Reed] have been trying to do something like this for a
16 while."



26 Lizzo, Jesse Saint John, Justin Raisen, and Yves Rothman at April 11, 2017 session



Jesse Saint John, Lizzo, Ashlee Gardner, and Yves Rothman at April 11, 2017 session

0578-00002/685531	18	Case No. 2:19-CV-09107-DMG-MAA
	ANSWER AND COUNTERCLAIN	MS

27. Justin stayed up all night and into the early morning of the following
 day cleaning up the tracks and, on April 12, 2017, Justin and Ashlee sent recordings
 of "Healthy" and "Gorgeous" to the group, including Lizzo, Saint John, and Brad
 Haering of Nice Life. Everyone <u>loved</u> "Healthy":

_			
5	 Lizzo, John, (i)	<8	LL JJ (1) Lizzo, John,
6 7	John, Jessie Saint		I'm officially obsessed with being healthy and gorgeous -
7	Locooooove today		healthy like the modern smash - gorgeous - the vogue that
8	Looooooove		never goes away - I'm stoked
9 10	Apr 12, 2017, 4:03 AM		Shit forgot the amazing Adlib at top of healthy - I'll renounce with that in later - fucking loved that part
11			John, Jessie Saint They're both BANGURRZ
	<b>I</b>		
12	LIZzo_GoRgeous_04_12		Lizzo, Lizzo
13	<b>R</b>	0	Whoooo these r bomb! Gonna send notes asap!
14	LiZZo_hEalthy_04_12_17		Apr 12, 2017, 12:32 PM
15	April 12, 2017 text messages between Liz	zo Jesse	Saint John and Justin Raisen
16		20, 00550	Sum sonn, and sustin Massen
17			
18	On Apr 12, 2017, at 8:01 AM, Bradley Haering		wrote:
19	oh wow i really dig healthy! gonna catch up wit back!	h lizzo today	or tomorrow morning and ill come
20 21	glad it went so well. thanks for helping me set in	up!	
	Bradley Haering // Nice Life Recording Compa	iny	
22 23	April 12, 2017 email from Bradl	ey Haerin	ng to Ashlee Gardner
24 25	28. After closely listening to "Hea	lthy," Liz	zo's producer Reed suggested
25	changing some of the lyrics to the chorus. T	o that end	l, Reed asked Haering to
26	schedule a time for Lizzo to return to Justin		_
27			_
28	the idea of changing the lyrics. Haering carr	ned out R	eed's request:
	30578-00002/685531 19		Case No. 2:19-CV-09107-DMG-MAA
	ANSWER AND CO	UNTERCLA	IMS

#### Case 2 19-cv-09107-DMG-MAA Document 27 Filed 02/28/20 Page 20 of 37 Page ID #:92

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP 808 WILSHIRE BOULEVARD, 3<sup>RD</sup> FLOOR SANTA MONICA, CALIFORNIA 90401 Tel 310.566.9800 • Fax 310.566.9850

14

15

16

17

18

19

20

21

22

23

24

25

26

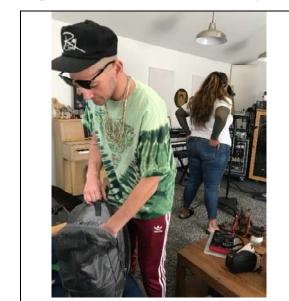
27

28

30578-00002/685531

1 From: Bradley Haering Date: Thu, Apr 13, 2017 at 5:08 PM Subject: Re: Lizzo session 2 To: Ashlee Gardner 3 Ok, idea! 4 In "Healthy", flipping "sexy" and "healthy" in the hook. So that's it's "But I'm healthy, best 5 believe, now that's sexy to me" and "if you're healthy, and you're free, then you're sexy to me." 6 Let me know what Justin thinks? Maybe we can find an hour or so for Lizzo to come over to recut? 7 8 April 13, 2017 email between Bradley Haering and Ashlee Gardner 9

10 29. The second session took place on April 17, 2017, at Justin's home
11 studio, attended by Justin, Jeremiah, Lizzo, and Lizzo's sister. Justin sent a revised
12 version of "Healthy" to Saint John and Lizzo, who, on information and belief,
13 subsequently shared it with Haering and Reed.





April 17, 2017 session at Justin Raisen's home studio

2

9

10

11

12

13

14

15

16

17

18

19

1

# <u>Lizzo and Reed Copy Significant Expression From "Healthy"</u> <u>to Make "Truth Hurts"</u>

3 30. Following the April 11 and 17, 2017 songwriting and recording
4 sessions, the Raisens communicated with Lizzo's management about "Healthy" and
5 "Gorgeous" being included on Lizzo's upcoming EP. On May 2, 2017, Ashlee
6 reached out to Haering for an update, writing that the "[s]ongs are great, people who
7 are hearing them are really liking. Does she want them?" Haering of Nice Life
8 responded that "Healthy" still had "a shot" of making the EP:

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP 808 WILSHIRE BOULEVARD, 3<sup>RD</sup> FLOOR SANTA MONICA, CALIFORNIA 90401 Tel 310.566.9800 • Fax 310.566.9850

From	n: Bradley Haering
Date	e: May 2, 2017 at 1:00:57 PM PDT
To: /	Ashlee Gardner
Sub	ject: Re: Lizzo
Hey	Ashlee!
She	s in with Ricky next week to wrap up their songs, we'll know more then. I have a feeling "Gorgeous" isn't going to make the cut
so th	hat could be something for your pitch catalog.
"Hea	Ithy" might have a shot, so will come back on that, as well!
We'r	e setting up the next to song releases now, and will decide the EP plan once those start moving.
Will	update better when I can, thanks for being patient. :)
	May 2, 2017 email from Bradley Haering to Ashlee Gardner
31.	Notwithstanding Haering's email, the Counterclaimants did not hear

20 32. On information and belief, in or about June 2017, Lizzo and Reed 21 copied substantial, significant original creative expression from "Healthy" to create 22 "Truth Hurts." On February 9, 2018, Lizzo tweeted that "Truth Hurts was written in 23 June fyi-someone made a meme on IG that said, 'I'm 100% that bitch' and we 24 were inspired." Lizzo's tweet was flat-out false. In reality, Lizzo was first shown the 25 "100%" meme at the April 11, 2017 session with Counterclaimants, where they 26 incorporated the "100%" line into "Healthy." 27 33. On August 17, 2017, Counterclaimants again reached out to Lizzo's

team to ask about the status of "Healthy." The Raisens' co-manager, Ross Donadio
 30578-00002/685531
 21
 Case No. 2:19-CV-09107-DMG-MAA

1 ("Ross"), was told that were no plans to release "Healthy," and conveyed this to

2 Counterclaimants:

3

4

From: Ross Dona	adio
Date: Sat, Aug 19	, 2017 at 7:50 AM
Subject: Lizzo up	date
To: Justin Raisen	

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP 808 WILSHIRE BOULEVARD, 3<sup>RD</sup> FLOOR SANTA MONICA, CALIFORNIA 90401 Tel. 310.566.9800 • Fax 310.566.9850

5 Ashlee Gardner 6 Spoke to label and management and "Healthy" is not going to be used at the moment. 7 Kinda shocked as it seemed like a no brainer to me...but onwards and upwards. 8 August 19, 2017 email from Ross Donadio to Justin Raisen and Ashlee Gardner 9 10 34. One month later, on September 19, 2017, Lizzo released "Truth Hurts," 11 crediting herself, Reed, Tele, and Saint John as writers, and Reed and Tele as 12 producers, but not crediting Counterclaimants at all. On information and belief, 13 Saint John's only participation in the creation of "Truth Hurts" was at the April 11, 14 2017 songwriting and recording session during which he collaborated with 15 Counterclaimants and Lizzo. 16 Nevertheless, Lizzo tweeted thanks to Saint John "for inspiring v1 from 35. 17 a whole otha song we wrote! I JUST TOOK A DNA TEST // IM 100% DAT BITCH 18 is the best gift ever": 19 TY @jessesaintjohn for inspiring v1 20 from a whole otha song we wrote! I 21 JUST TOOK A DNA TEST//IM 100% 22 DAT BITCH is the best gift ever 😘 23 24 25 #STREAMTRUTHHURTS 📀 @lizzo · 9/19/17 26 September 19, 2017 Tweet by Lizzo 27 28 Case No. 2:19-CV-09107-DMG-MAA 30578-00002/685531 ANSWER AND COUNTERCLAIMS

36. On information and belief, the "whole otha song" Lizzo referenced in
 her Tweet is "Healthy."

3

#### The Raisens Assert Claims to "Truth Hurts"

After the September 19, 2017 release of "Truth Hurts," Justin Raisen 37. 4 received congratulations from people who had heard "Healthy" and thought that 5 "Truth Hurts" was the final product from that song. Justin listened to "Truth Hurts" 6 and was struck by the substantial similarities between it and "Healthy." He sent his 7 co-manager Ross an email listing some of the similarities and evidence that "Truth 8 Hurts" was derived and copied from "Healthy." On September 28, 2017, Ross 9 reached out to Lizzo's management and label about the Raisens' lack of credit on 10 "Truth Hurts": 11

12	To: Bradley Haering	Quei Freheureler	41			
13	Cc: Rosie Sherman Balden	Cori Ershowsky	Alana			
14	From: Ross Donadio Sent Fri 9/29/2017 9:44 Importance: Normal Subject Re: Lizzo "Healthy	1				
15						
16	Hi Brad! Thanks for the intro. Yes it's the line and also some from <sup>3</sup> Healthy <sup>2</sup> demo.	e of the chord progressions, melody in the verse	part, and rhythmic cadence			
17		aint John was credited as a writer on this. Why	were Justin and Jeremiah not?			
18	Hi Alana - Great to be in touch	h!				
19	Best regards,					
20	Ross					
21	From: Bradley Haering Date: Thursday, September 2	28, 2017 at 1:32 PM				
	To: Ross Donadio					
22	Cc: Rosie Sherman	Cori Ershowsky	, Alana Balden			
23	Subject: Re: Lizzo "Healthy"					
24 25	Hey Ross, Looping in Alana from Lizzo's r	management to help out here.				
26	I believe it's only the <sup>3</sup> I just too	ok a DNA test turns out I'm 100% that bitch <sup>2</sup> line	e, correct?			
20		«Bradley Haering // Nice Life Recording Compa	in y			
27						
28	Rosie Sher	rman, Cori Ershowsky, and Alana	Balden			
	30578-00002/685531	23	e No. 2:19-CV-09107-DMG-MAA			
		ANSWER AND COUNTERCLAIMS				

38. Lizzo's team ignored Ross until he sent a follow-up email on October
 3, 2017. On October 5, 2017, Ross spoke with Alana Balden, Brandon Creed, and
 Kevin Beisler from Lizzo's team and then sent them Justin's notes regarding the
 similarities between the songs. Ross summarized the call to Justin as follows:

	Oct 5, 2017, 7:11 PM
	Any thoughts from the team?
	chat649727532840573426
	Hi!
	I'll call u tmrw
0	Its a convo
	Alright - I'm guessing they tried to deny
	chat649727532840573426
	But basicallythey tried to pull the taking a line out of the session
	Like extracting it
	I told them no
0	They know its an issue
Octobe	er 5, 2017 text messages between Ross
	adio (grey) and Justin Raisen (blue)

18 39. In October 2017, the Raisens' team registered Justin and Jeremiah as
19 co-writers on "Truth Hurts" with ASCAP.

20 40. For months thereafter, Ross tried to peacefully resolve the 21 authorship/credit/royalty issue with Lizzo's team. However, Lizzo's representatives 22 refused to acknowledge the Raisens' participation, forcing the Raisens' music 23 publisher, Heavy Duty, to officially put "Truth Hurts" in dispute on January 22, 24 2018, thereby allowing ASCAP to hold royalties attributable to the Raisens' disputed 25 portion of "Truth Hurts" for as long as ASCAP deemed appropriate. 26 For the next year, the Raisens' representatives continued to try to reach 41.

- 27 an agreement with Lizzo's team regarding the claims, but were shut out or ignored.
- 28

30578-00002/685531

5

6

7

8

9

10

11

12

13

14

15

16

42. 1 In March 2019, Lizzo reached out to Justin, asking to speak with him. 2 On March 26, 2019, Lizzo and Justin spoke on the phone.

3 43. During the March 26, 2019 phone call, Lizzo admitted to Justin that elements of "Truth Hurts" never would have been created without "Healthy," and 4 admitted that Reed suggested to her that they take elements from "Healthy" for 5 "Truth Hurts," including the "100%" lyric and melody. 6

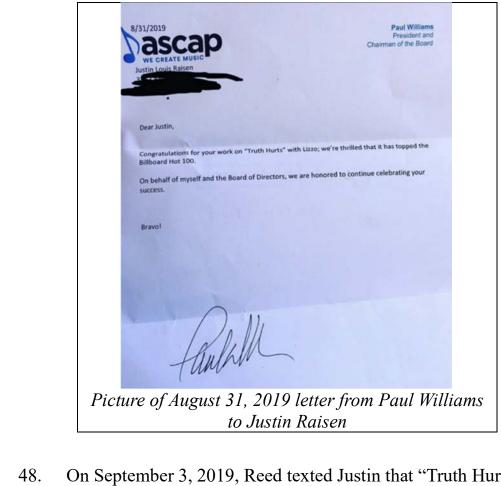
7 44. However, Lizzo also told Justin that she did not want to share any 8 percentage of "Truth Hurts" with the Raisens. In fact, Lizzo used the call as an 9 opportunity to intimidate Justin into stalling his efforts to pursue the Raisens' 10 claims. Lizzo warned Justin to be wary of continuing to seek a percentage of "Truth Hurts," because, "you know...I'm not trying to have problems with you if you know 11 what I'm saying...like I could be in a room with someone tomorrow that knows 12 13 you...you know what I'm saying?"

14 45. On information and belief, Lizzo reached out to Justin after she had already entered into license agreements for the use of "Truth Hurts" in the upcoming 15 16 Netflix film Someone Great, which would be released on April 19, 2019, less than a month after their phone call. Lizzo also knew at the time of the call that "Truth 17 Hurts" would be included on the "Deluxe" version of her album Cuz I love You, 18 which would be released on May 3, 2019. Lizzo failed to disclose either the film 19 license or the upcoming Deluxe album to Justin during the call. The March 26, 2019 20 21 call between Lizzo and Justin did not resolve their dispute, and they have not spoken 22 since.

23 46. In August 2019, Heavy Duty obtained a musicology report comparing 24 "Healthy" and "Truth Hurts" which concluded that the "duplication of these distinctive elements in Truth makes it difficult to argue that these similarities are the 25 result of coincidence or that Truth was independently created and did not copy these 26 elements from *Healthy*. After considering all of these similarities it is readily 27 apparent that Truth contains some strikingly similar lyric and musical elements to 28 30578-00002/685531

those in *Healthy*. Therefore, one may conclude that *Truth Hurts* would not exist in
 its present form without the existence of and the borrowing from *Healthy*."

3 47. On August 31, 2019, Justin and Jeremiah Raisen received personal
4 letters from Paul Williams, President and Chairman of the Board of ASCAP,
5 congratulating them on their work on "Truth Hurts":



48. On September 3, 2019, Reed texted Justin that "Truth Hurts" reached the top of the *Billboard* Hot 100 chart, that he did not want Justin to hear this first from someone else, that he wanted the dispute regarding the Raisens' claims to "Truth Hurts" to be "resolved," and that Justin should continue to work with Reed to find a solution:

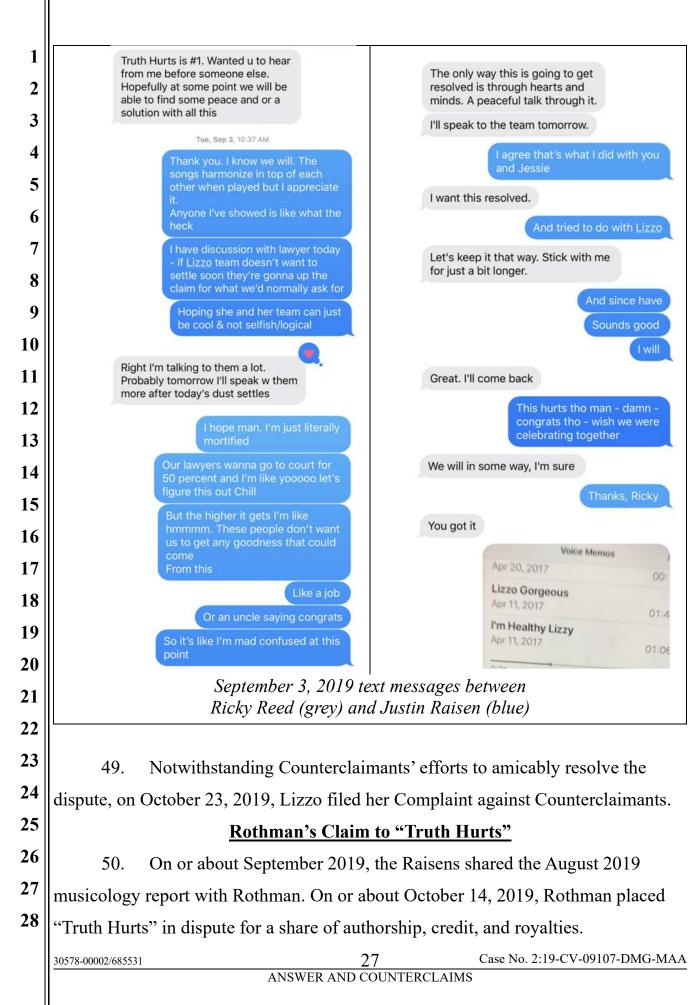
30578-00002/685531

ANSWER AND COUNTERCLAIMS

Case No. 2:19-CV-09107-DMG-MAA

#### Case 2 19-cv-09107-DMG-MAA Document 27 Filed 02/28/20 Page 27 of 37 Page ID #:99

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP 808 WILSHIRE BOULEVARD, 3<sup>RD</sup> FLOOR SANTA MONICA, CALIFORNIA 90401 Tel 310.566.9800 • FAX 310.566.9850



51. Rothman has steadfastly maintained his claim ever since.

52. On December 3, 2019, Kobalt Music Publishing America, Inc. applied, on behalf of the Raisens and Rothman, for Copyright certification of "Healthy," listing Lizzo, Saint John, the Raisens, and Rothman as joint authors, eventually receiving registration number PAu004005173.

6

5

1

2

3

4

## "Truth Hurts" Was Derived and Copied From "Healthy"

7 53. At the time "Truth Hurts" was purportedly written by Reed and Lizzo
8 in June 2017, both Reed and Lizzo had full and complete access to recordings of
9 "Healthy," which had been sent to Lizzo in April 2017.

10 54. "Truth Hurts" is substantially similar to "Healthy" both by objective
11 musicological elements, and in its total concept and feel, and evidences the
12 conscious copying of "Healthy" in the creation of "Truth Hurts." The similarities
13 between "Healthy" and "Truth Hurts" include, but are not limited to, the following:
14 (a) Both songs have identical structures:

15	8 measures "Intro"
16	16 measures "Verse 1"
17	16 measures "Chorus 1" 16 measures "Verse 2"
18	16 measures "Chorus 2"
19	16 measures "Bridge" 16 measures "Chorus 3"
20	"Outro"

21 Because of their identical structures, if the "Truth Hurts" vocals are
22 played over the music to "Healthy," every musical drop and change matches up
23 perfectly when played in the same key.

(b) On both songs, Lizzo "vamps" in the beginning, pre-setting up the
songs' melodies, lyrics, and cadences.

26 (c) Both songs utilize a piano-sound for the main underlying

27 instrumental theme.

30578-00002/685531

28

(d) The second verse of "Healthy" begins with the lyric:

ANSWER AND COUNTERCLAIMS

Case No. 2:19-CV-09107-DMG-MAA

I just did a DNA test 1 turns out I'm a hundred percent that bitch 2 even when I'm holistic 3 The first verse of "Truth Hurts" begins with the lyric: 4 I just took a DNA test 5 turns out I'm a hundred percent that bitch even when I'm crying crazy 6 7 (e) In "Healthy," the melody of the lyric, "percent that bitch," is 8 accomplished by a distinctive series of repeating quarter note intervals of a major 9 sixth: (depicted below in the key of C Major) from E down to G natural, back up to 10 E, down to G, and back up to E. This melody repeats itself in "Healthy" in the very 11 next line for the lyric "be home get rest, not." This distinctive melody was created 12 collaboratively among the participants at the April 11, 2017 session at Justin 13 Raisen's studio. 14 Phrase 1 Healthy BAR 4 15 с An 16 D E E E C D E E E E D E Ε G E G E D E I just did a hun-dred per cent that bitch, 17 D test turns out I'm ev en

Phrase 1 Truth Hurts BAR 4 C \* Am An D С E D E E E E E G E E E Ε E G Ē G Е D Е D D-N-A I just took I'm a hun-dred per - cent bitch, a test turns out that ev - en when I'm

In "Truth Hurts," this distinctive use of the major sixth is identical for
the copied vocal ("percent that bitch") as shown above (for comparison purposes
both songs are transcribed in the key of C Major). Additionally, the distinctive use of
the major sixth in "Healthy" became a repeating, dominant musical theme of "Truth
Hurts":

29

ANSWER AND COUNTERCLAIMS

Case No. 2:19-CV-09107-DMG-MAA

28

30578-00002/685531

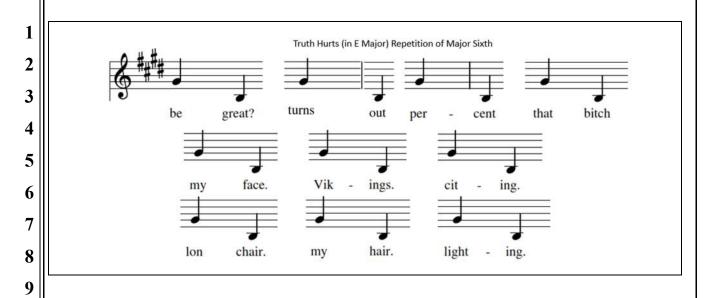
18

19

20

21

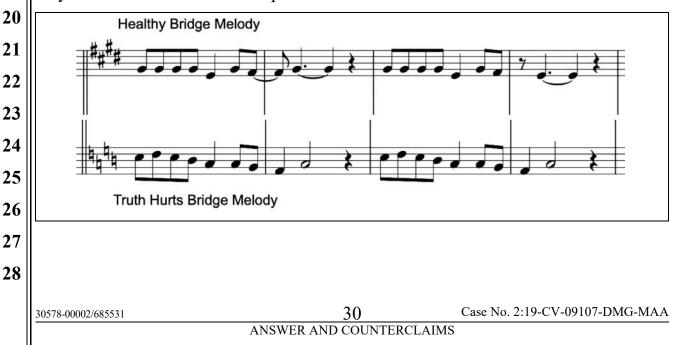
KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP 808 WILSHIRE BOULEVARD, 3<sup>RD</sup> FLOOR SANTA MONICA, CALIFORNIA 90401 Tel. 310.566.9800 • Fax 310.566.9850



10 The copying of this distinctive musical phrase is a "fingerprint" that
11 proves that "Truth Hurts" was derived (and substantially copied) from "Healthy."
12 (f) Both songs "break down" to a capella vocals in the bridge.
13 "Healthy" breaks down to vocals and drums in the bridge after 4 measures (1:53),

while "Truth Hurts" immediately breaks down to only vocals in the bridge (1:50)
and later adds drums (1:54).

16 (g) The lead vocals in the bridge of both songs follow almost the exact
17 same rhythm. Every note in the first and third measures of both songs line up. The
18 melody utilized in the bridge of both songs is also musicologically similar, in that
19 they have a similar melodic shape.



55. A comparison of the total concept and feel, and the objective
 protectable musical elements of "Healthy" and "Truth Hurts," shows that the songs
 share a substantial similarity of musical ideas and expression. Indeed, an ordinary
 observer can easily determine that "Healthy" and "Truth Hurts" have the same
 musical feel, and sound the same in their compositional and other musical elements.

6

7

#### FIRST COUNTERCLAIM

#### (Declaratory Relief re: "Healthy" Against Lizzo and Saint John)

8 56. Counterclaimants incorporate by reference the allegations in each of the9 preceding paragraphs as if fully set forth herein.

10 57. There exists a real and actual controversy between Counterclaimants
11 and Lizzo regarding whether Counterclaimants are joint authors and co-owners of
12 the musical composition "Healthy," including the copyright therein, along with
13 Lizzo and Saint John.

14 58. Counterclaimants contend that they are joint authors and co-owners of
15 the musical composition "Healthy," including the copyright therein, which was
16 written and recorded in Justin Raisen's home studio on April 11 and 17, 2017 by
17 Counterclaimants, Lizzo, and Saint John.

18 59. Counterclaimants further contend that they have not waived their rights
19 to "Healthy," and are not estopped or otherwise prevented from asserting their rights
20 to "Healthy," and any derivative works created from it.

21 60. Counterclaimants further contend that they possess valid and registered
22 copyrights with the United States Copyright Office to "Healthy."

61. Upon information and belief, Lizzo disputes the above contentions.

24 62. The controversy between Counterclaimants and Lizzo is real and
25 substantial and demands specific relief through a decree of conclusive character.

27

26

- 28
- 30578-00002/685531

2 3

1

## SECOND COUNTERCLAIM

## (Declaratory Relief re: "Truth Hurts" Against All Counterdefendants)

3 63. Counterclaimants incorporate by reference the allegations in each of the4 preceding paragraphs as if fully set forth herein.

5 64. There exists a real and actual controversy between Counterclaimants
6 and Counterdefendants regarding whether Counterclaimants are joint authors and
7 co-owners of the musical composition "Truth Hurts," including the copyright
8 therein, and are entitled to royalties and profits earned from the exploitation of
9 "Truth Hurts."

10 65. Counterclaimants contend that "Truth Hurts" was substantially copied
11 from "Healthy," as demonstrated by the substantial similarity between the songs as
12 to objective musicological elements and in their total concept and feel.

13 66. In the alternative, Counterclaimants contend that "Truth Hurts" is a
14 derivative work of "Healthy" and that Counterclaimants are entitled to share in the
15 license fees imputed from the license Lizzo impliedly granted to herself and the
16 other Counterdefendants to create said derivative work, including but not limited to
17 royalties and profits from the exploitation of "Truth Hurts."

18 67. Counterclaimants further contend that they have not waived any of
19 their rights with respect to their joint authorship and/or joint ownership of "Truth
20 Hurts," and/or their right to share in the license fee imputed from the license Lizzo
21 impliedly granted to herself and the other Counterdefendants to create said
22 derivative work, including but not limited to royalties and profits from the
23 exploitation of "Truth Hurts," and are not estopped or otherwise prevented from
24 asserting any of their rights to "Truth Hurts."

25 68. Upon information and belief, Counterdefendants dispute the above26 contentions.

- 27
- 28

69. The controversy between Counterclaimants and Counterdefendants is
 real and substantial and demands specific relief through a decree of conclusive
 character.

#### THIRD COUNTERCLAIM

#### (Further Relief Under 28 U.S.C. § 2202 Against All Counterdefendants)

6 70. Counterclaimants incorporate by reference the allegations in each of the
7 preceding paragraphs as if fully set forth herein.

8 71. In the event that the Court grants all or part of the declaratory relief
9 requested by Counterclaimants in the First Counterclaim and/or Second

10 Counterclaim, Counterclaimants hereby request further relief against

11 Counterdefendants in accordance with 28 U.S.C. § 2202.

## FOURTH COUNTERCLAIM

#### (Accounting Against All Counterdefendants)

14 72. Counterclaimants incorporate by reference the allegations in each of the15 preceding paragraphs as if fully set forth herein.

16 73. Counterclaimants, as joint authors and co-owners of the copyright of
17 the composition of "Healthy," are entitled to their pro rata share of the profits that
18 Lizzo and Saint John have enjoyed from their use of "Healthy," including Lizzo's
19 unilateral granting of licenses to use "Healthy."

74. Counterclaimants are further entitled to their pro rata share of the
profits that Lizzo and Saint John enjoyed from "Truth Hurts," which was derived
and copied from "Healthy," or was created as a result of Lizzo unilaterally granting
a license to use "Healthy."

24 75. By commercially exploiting both "Healthy" and "Truth Hurts" without
25 accounting to Counterclaimants for profits, Counterdefendants wrongfully deprived
26 Counterclaimants of their rightful share of income therefrom.

27 76. Counterdefendants are in sole control of the books and records needed28 to ascertain the amounts due to Counterclaimants pursuant to their special

30578-00002/685531	33	Case No. 2:19-CV-09107-DMG-MAA
	ANSWER AND COUNTERCLAIMS	

4

5

12

relationship as joint authors and co-owners of the composition of "Healthy" and/or

2 "Truth Hurts." Counterclaimants have no means whatsoever by which they could

**3** assemble the information necessary to calculate what is owed to them by

4 Counterdefendants.

5 77. Counterclaimants are entitled to an order of this court directing
6 Counterdefendants to render a complete and honest accounting of all revenues
7 derived from the exploitation of "Truth Hurts" and all sums due to Counterclaimants
8 and to pay Counterclaimants the sums shown due by such accounting.

9

10

11

12

25

1

## FIFTH COUNTERCLAIM

## (Constructive Trust Against Lizzo)

78. Counterclaimants incorporate by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

13 79. By virtue of the foregoing, any interest Counterclaimants have in
14 "Healthy" and "Truth Hurts," and any and all profits received by Lizzo from her
15 commercial exploitation of "Healthy" and "Truth Hurts," are the property of
16 Counterclaimants and Lizzo in equal shares.

17 80. Lizzo has wrongfully deprived Counterclaimants of their share of the
18 profits that she has enjoyed from the commercial exploitation of "Healthy" and
19 "Truth Hurts."

20 81. By virtue of Lizzo's acts, Lizzo holds the profits derived from the
21 exploitation of "Healthy" and "Truth Hurts" as constructive trustee for the benefit of
22 Counterclaimants and Lizzo.

23 82. Counterclaimants are entitled to immediate possession of their pro rata
24 share of the profits held by Lizzo as constructive trustee.

## PRAYER FOR RELIEF

**26** WHEREFORE, Counterclaimants pray for relief as follows:

**27** 1. That Lizzo's Complaint be dismissed, with prejudice and in its entirety;

**28** 2. That Lizzo take nothing by reason of her Complaint and that judgment

30578-00002/685531

#### 34 ANSWER AND COUNTERCLAIMS

Case No. 2:19-CV-09107-DMG-MAA

1 be entered against Lizzo and in favor of Counterclaimants;

2 3. That the Court declare that Counterclaimants are joint authors and have
3 an ownership interest in "Healthy";

4 4. That the Court declare the respective ownership interests of
5 Counterclaimants in "Healthy" in percentages to be proven at trial;

6 5. That the Court declare that Counterclaimants are joint authors and
7 co-owners of "Truth Hurts";

8 6. That the Court declare the respective ownership interests of
9 Counterclaimants in "Truth Hurts," in percentages to be proven at trial;

10 7. In the alternative, that the Court declare that "Truth Hurts" is a
11 derivative work of "Healthy" and that Counterclaimants are entitled to share in the
12 license fees imputed from the license Lizzo granted to herself and the other
13 Counterdefendants to create said derivative work, including but not limited to
14 royalties and profits from the exploitation of "Truth Hurts" in amounts to be proven
15 at trial;

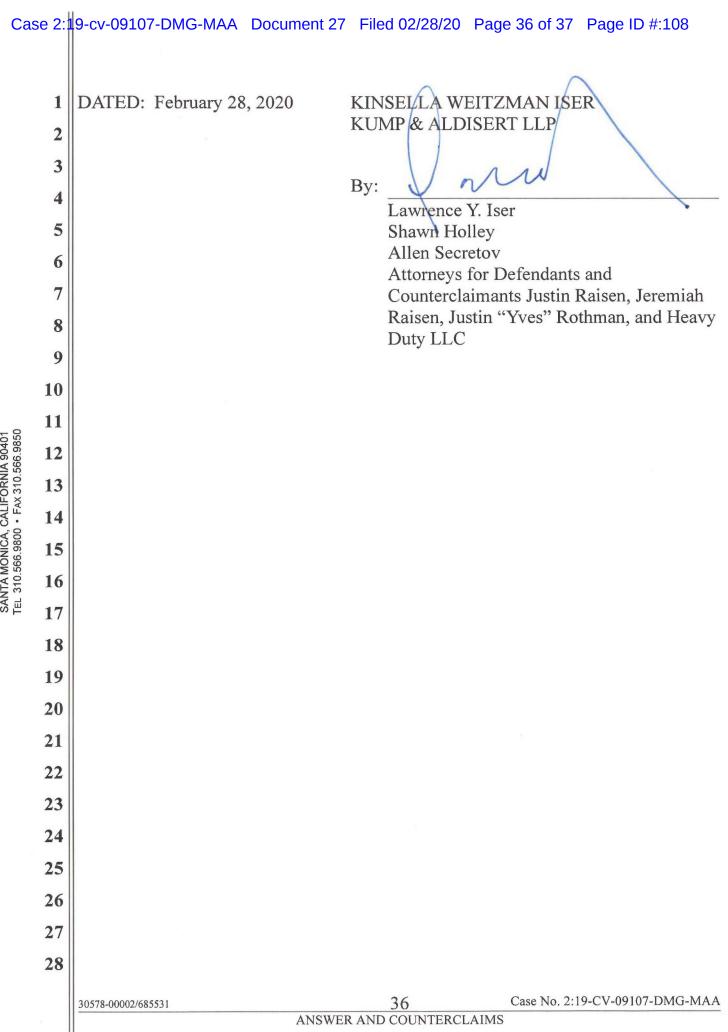
16 8. That the Court order an accounting of all revenues derived from the
17 exploitation of "Healthy" and "Truth Hurts" by Counterdefendants;

18 9. That the Court impose a constructive trust over the proceeds from the19 exploitation of "Truth Hurts" pending the final disposition of this matter;

20 10. That Counterclaimants be awarded their costs and attorney's fees
21 incurred in defending this action;

11. That Counterclaimants be granted such other and further relief as theCourt may deem just and proper.

24 25 26 27 28 30578-00002/685531 35 Case No. 2:19-CV-09107-DMG-MAA ANSWER AND COUNTERCLAIMS



KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP 808 WILSHIRE BOULEVARD, 3<sup>RD</sup> FLOOR SANTA MONICA, CALIFORNIA 90401 Tel 310.566.9800 • Fax 310.566.9850 1

6

#### **DEMAND FOR JURY TRIAL**

Pursuant to the Seventh Amendment of the United States Constitution and
Federal Rule of Civil Procedure 38, Defendants and Counterclaimants Justin Raisen,
Jeremiah Raisen, Justin "Yves" Rothman, and Heavy Duty LLC, and each of them,
hereby demand a trial by jury of all issues so triable.

	7	DATED: ]	February 28, 202			SELLA WEITZ	
	8	8 KUMP & ALDISERT LLP				RTLLP	
	9						
T LLP	10				By:	Sa	u )
OR OR 50	11					Lawrence Y. Ise	er
KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP 808 WILSHIRE BOULEVARD, 3 <sup>RD</sup> FLOOR SANTA MONICA, CALIFORNIA 90401 Tel 310.566.9800 • Fax 310.566.9850	12					Shawn Holley Allen Secretov	
CUMP ( ARD, 3 FORNI X 310.	13					Attorneys for D	
SER K ULEV CALI	v 14 0086-99						ts Justin Raisen, Jeremiah 'Yves" Rothman, and Heavy
MAN I IRE BC ONICA 66.980						Duty LLC	
VEITZ VILSH NTA M 310.5	16						
LLA V 808 \ SA TEL	17						
KINSE	18						
	19						
	20						
	21						
	22						
	23						
	24						
	25						
	26						
	27						
	28						
		30578-00002/6855	31			37	Case No. 2:19-CV-09107-DMG-MAA
				ANSWER	AND	COUNTERCLAIMS	