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16 Attorneys for Plaintiff
BRYAN PRINGLE

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **SOUTHERN DIVISION**

21 BRYAN PRINGLE, an individual,) Case No. SACV 10-1656 JST(RZx)
22 Plaintiff,) **DECLARATION OF DEAN A.**
23 v.) **DICKIE**
24 WILLIAM ADAMS, JR.; STACY)
25 FERGUSON; ALLAN PINEDA; and)
26 JAIME GOMEZ, all individually and)
collectively as the music group The Black)
27 Eyed Peas, *et al.*,)
Defendants.)

28

1 I, Dean A. Dickie, have personal knowledge of the facts contained within this
2 declaration, and if called as a witness, could and would testify regarding the
3 following facts:

4 1. I am the lead attorney representing the Plaintiff in this case. I make this
5 declaration in support of Plaintiff's contributions to the Joint Stipulation on Motion
6 By Defendants To Compel Supplemental Responses by Plaintiff Bryan Pringle To
7 Interrogatories And For Monetary Sanctions.

8 2. In their portion of the Joint Statement, Defendants make several
9 statements that are not only devoid of any factual support, but they also flatly
10 contradict the evidence in the record to date.

11 3. First, Defendants claim that Plaintiff has produced no evidentiary
12 support for the proposition that he created the "guitar twang sequence" that the Black
13 Eyed Peas used in their song "I Gotta Feeling." This simply is not true. Plaintiff has
14 produced evidence that establishes conclusively that he created the "guitar twang
15 sequence" in 1999.

16 4. More specifically, Plaintiff has produced evidence that establishes
17 conclusively that on August 22, 1999, he created several .NRG hard drive images
18 containing music files, including a file containing the "guitar twang sequence," using
19 an Ensoniq ASR-10 keyboard. *See* the attached Rule 26 Report of David T. Gallant.
20 Ex. A. Plaintiff has also produced a valid copyright registration with the number
21 SRU-387, filed with the Copyright Office on or about July 7, 1998, which contains
22 the original version of "Take A Dive" and other songs including one titled "Faith,"
23 which contains, and is the basis for, the "guitar twang" sequence of note; and another
24 song titled "Cruellest Joke," which Plaintiff has testified that to the best of his
25 knowledge, contains one of the actual layers of instruments he used to construct the
26 actual instrumentation of the "guitar twang sequence." Plaintiff has more than
27 satisfied the burden of proof that he, not the Defendants, first created the "guitar
28

1 twang sequence” in or around 1999, through substantial and uncontroverted
2 evidentiary support.

3 5. In addition to producing evidence that he created these music files,
4 Plaintiff has taken significant and considerable steps to preserve this evidence.

5 (a) After creating the music files, he saved them to a small computer
6 serial interface (SCSI) hard drive;

7 (b) After saving the music files to the SCSI hard drive, he connected
8 the hard drive to a Windows 98 based computer and, using
9 Ensoniq Disk Manager (EDM) software, he created .NRG image
10 files;

11 (c) The .NRG image files contained music files and the proprietary
12 operating system files that were required to boot the ASR-10
13 keyboard;

14 (d) Plaintiff burned the music files and operating system files onto a
15 CD-ROM on or about September 9, 1999;

16 (e) Plaintiff placed this CD-ROM in the possession of a forensic
17 expert who concluded that:

18 (i) August 22, 1999 at 12:54 p.m. was the last time that the
19 music file containing the “guitar twang sequence” was
20 modified;

21 (ii) The CD-ROM was burned on September 9, 1999 and no
22 new material was added to it after this date;

23 (iii) The CD-ROM was manufactured on February 24, 1999;

24 (iv) The Ensoniq Disk Manager software used to create the
25 image files was purchased on May 18, 1999.

26 6. Notwithstanding the uncontroverted evidence in support of Plaintiff’s
27 claim that he created the “guitar twang sequence” on August 22, 1999, Defendants
28 now make the reckless and wholly unsupported allegation that Plaintiff first heard

1 the “guitar twang sequence” some time after “I Gotta Feeling” was released in May
2 2009. They then make the incredible claim that Plaintiff somehow defied the time-
3 space continuum by copying the “guitar twang sequence” and using it in his song
4 “Take A Dive” (which was created in 1999). Plaintiff cannot magically go back in
5 time and change the structure of songs with sound recordings on file with the
6 Copyright Office since 1998, to fit parts from a song he heard in 2010. Not only is
7 the “guitar twang sequence” in the Plaintiff’s and Defendants’ songs substantially
8 and/or strikingly similar, but in fact every part of the Defendants’ song is based upon
9 and substantially similar to, the Plaintiff’s song.

10 7. In an email dated August 16, 2011 and two subsequent letters, dated
11 August 22, 2011 and October 31, 2011, respectively, Plaintiff’s counsel outlined the
12 absurdity of Defendants’ speculation and cautioned Defendants’ counsel against
13 making such wildly speculative allegations. Ex. B. Plaintiff’s counsel has also
14 demanded that Defendants produce any evidence they have in support of these wild
15 assertions. To date, no such evidence has been forthcoming.

16 8. Instead of providing Plaintiff’s counsel with the “evidence” that
17 Mr. Pringle has engaged in some nefarious scheme, they make the incredible and
18 unfounded claim that no such evidence exists because Plaintiff and his counsel
19 purposely destroyed it so that they could get away with “downloading and
20 manipulation of Black Eyed Peas music and backdating of electronic evidence
21 submitted to the Court.” Their supposition and claim is devoid of any factual
22 substance and irresponsible.

23 9. Defendants first propounded this ridiculous theory after learning that a
24 hard drive that Plaintiff purchased in 2010 crashed around December 2010 or
25 January 2011 and became unusable prior to Plaintiff being able to back it up
26 completely (even though Plaintiff did back up all the files that he could, minus the
27 corrupted Windows operating system files). Plaintiff had purchased a second hard
28 drive in 2010 that he installed for use around the time that the first hard drive

1 crashed. This hard drive also crashed, although Plaintiff was able to back up its
2 contents. Plaintiff backed up all of these files from the 2010-2011 hard drives onto a
3 CD-ROM. These backup files from the 2010-2011 crashed hard drives as copied and
4 imaged onto the CD-ROM by the Plaintiff, consisted of roughly (2500) files, with a
5 total size of around (8) gigabytes.

6 10. The actual hard drive that contained the “guitar twang sequence” was
7 purchased back in the 1990’s and was stolen in the year 2000, along with the
8 Ensoniq ASR-10 used to create the “guitar twang sequence.” *See* the attached Police
9 Report. Ex. C. This was about (11) years prior to the institution of this lawsuit and
10 roughly (10) years prior to the creation of the Defendants’ infringing song “I Gotta
11 Feeling” onto their *The E.N.D.* album. The Plaintiff’s hard drives from 2010-2011
12 have no relevant non-attorney-client privileged evidence pursuant to this lawsuit,
13 because those hard drives were not used to construct any parts of the original
14 versions of “Take A Dive” or “Take A Dive (Dance Version),” including the “guitar
15 twang sequence”; nor were these hard drives used to create the backup files for the
16 1999 .NRG hard drive image file. Every part of “Take A Dive” and “Take A Dive
17 (Dance Version),” including the “guitar twang sequence,” was constructed on a
18 “standalone” Ensoniq ASR-10 Keyboard which was connected to a compatible
19 external SCSI hard drive via an external SCSI cable, both of which were stolen in the
20 year 2000. Additionally, I understand that Ensoniq uses a propriety file format
21 which is not recognized by any personal computer, including Windows XP; which is
22 the operating system the Plaintiff has used since around 2004. Ensoniq Disk
23 Manager (EDM) software is the only computer program that recognizes and can burn
24 Ensoniq proprietary .NRG image files and the Ensoniq operating system required to
25 boot the Ensoniq ASR-10, like .NRG disk image the Plaintiff burned back in 1999,
26 which contains the “guitar twang sequence.” Ensoniq Disk Manager (EDM)
27 software will only work with Windows 95, 98, and Windows ME and can only be
28 loaded from a SCSI floppy disk drive. The Plaintiff has no working SCSI floppy

1 disk drive and doesn't use Windows 95, 98, or ME, and hasn't had these required
2 items needed to operate Ensoniq Disk Manager on a personal computer since around
3 2004. Also, the only way that the Plaintiff could have possibly "reverse engineered"
4 the "guitar twang sequence" and placed it onto a backdated .NRG image file which
5 boots the Ensoniq ASR-10 Keyboard, as the Defendants seem to be alleging, would
6 be to have a working "standalone" Ensoniq ASR-10 Keyboard which was connected
7 to a compatible external SCSI hard drive, a working Windows 95, 98, or ME
8 computer with a working SCSI floppy diskette and a copy of Ensoniq Disk Manager
9 (EDM) software. Significantly, too, none of the corrupted hard drives from the
10 Plaintiff's 2010-2011 computer were compatible with the Ensoniq ASR-10
11 Keyboard, because they were SATA, which I understand based on my investigation
12 is not compatible with the Ensoniq ASR-10 Keyboard. Additionally, the proprietary
13 operating system needed to boot the Ensoniq ASR-10 Keyboard, all of the
14 instrumentation, all of the tracks, and all of the sound effects needed to play the
15 entirety of "Take A Dive (Dance Version)," which contains the "guitar twang
16 sequence," are contained on the 1999 .NRG image file itself. Accordingly, the
17 Plaintiff could not have used his 2010-2011 corrupted hard drives to "reverse
18 engineer" and backdate any Ensoniq proprietary files, let alone the 1999 .NRG image
19 file contained on a disk manufactured on February 24, 1999, which contains the
20 "guitar twang sequence" because they are not compatible. *A fortiori*, there cannot
21 have been any spoliation of "evidence" by reason of the crashing and return of a
22 crashed hard drive in 2011 to the manufacturer for a warranty repair.

23 11. To insure that the relevant evidence would not be tainted, Plaintiff
24 placed the backed up files from the 1999 hard drive and from the 2010-2011 hard
25 drives in the possession of a forensic expert, Dave Gallant, who has been in
26 possession of the .NRG image copy of the 1999 hard drive contained on a CD-ROM,
27 since December of 2010; and in possession of the non-attorney client privileged
28 backup files from the Plaintiff's 2010-2011 crashed hard drives contained on a CD-

1 ROM, since around August 5, 2011. On or about August 8, 2011, Defendants’
2 purported forensic expert, Dana Anga, was given access to, and a copy of, all of the
3 backed up files on the 1999 hard drive .NRG file, which contained among other
4 things the “guitar twang sequence,” and a copy of the CD-ROM containing the
5 roughly (2500) non-attorney client privileged backup files from the Plaintiff’s 2010-
6 2011 hard drives.

7 12. On information and belief, Mr. Anga thereafter solicited the opinions of
8 an online technological forum, located at www.digitalfaq.com, as to the creation date
9 of the specific CD-ROM that Plaintiff delivered to his forensic expert on
10 December 21, 2010, which contained the “guitar twang sequence.” The users of this
11 forum confirmed that the disc was manufactured in 1999. Ex. D.

12 13. Notwithstanding Plaintiff’s uncontroverted evidence, and the conclusion
13 reached by Mr. Gallant, a sophisticated forensic analyst, Defendants cling to their
14 speculative and baseless claim in the faint hope of finding some way to discredit the
15 fact that Plaintiff’s song “Take A Dive (Dance Version)” was infringed by the
16 Defendants.

17 14. Defendants’ position in this regard is made more curious and
18 disingenuous by the fact that Defendants have repeatedly thwarted Plaintiff’s efforts
19 to discover information relating to the Defendants’ alleged creation of the “guitar
20 twang sequence” and have themselves even admitted to spoliating evidence that is
21 directly relevant to claims made in Plaintiff’s complaint.

22 15. It is uncontroverted that Plaintiff asked Defendant Riesterer to produce
23 for inspection his alleged source of the “guitar twang sequence” as well as a copy of
24 “all hard drives used in the creation, storage or transmittal of any ESI regarding or
25 relating to the creation, writing, production, or recording of ‘I Gotta Feeling.’”
26 Defendants failed to produce any of these things, claiming instead that the requests
27 sought information that was “not relevant to the claims or defenses in this action”
28 and that the requests were “overbroad and unduly burdensome.”

1 16. In fact, in Mr. Riesterer's deposition, he acknowledged both that the
2 declaration that was prepared by his lawyers contained materially false statements
3 and that he had disposed of the computers that he allegedly used to create "I Gotta
4 Feeling."

5 Q. Do you still have this computer?

6 A. No.

7 (Riesterer Dep at pp. 192, 193, attached hereto as Ex. E)

8 Q. Where is it now?

9 A. I gave it to a friend.

10 Q. Which friend did you give it to?

11 A. I don't remember. I have a lot of friends.

12 (*Id.* at p. 193).

13 Q. But what about all of the sounds that you saved on the computer,
14 do you still have those?

15 A. I made a lot of backups...

16 Q. Okay. So then you say you made a lot of backups, where did you,
17 on what type of device did you save these backups?

18 A. On hard disks, external hard drives, first of all, internal hard drive
19 and then external hard drives.

20 Q. And do you still have these backup copies of the sounds that you
21 had on that original computer?

22 A. Of course.

23 Q. And are these backups in France?

24 A. Yes.

25 (*Id.* at p. 194)

26 17. It is clear, therefore, that Plaintiff has done far more to preserve and
27 protect his original music composition than Defendants have. Plaintiff has caused
28 the evidence upon which he will rely to be placed in the care and custody of a

1 forensic expert who made the entirety of his materials available for inspection.
2 Clearly the same cannot be said of Defendants.

3 18. Other examples of Defendants' thwarting of Plaintiff's discovery efforts
4 include Defendant Riesterer's admission that he did not conduct any search for
5 responsive documents (Ex. E, p. 213), Defendant Guetta's admission that he never
6 searched his records for documents relating to the allegations in the lawsuit (Guetta
7 Dep. at pp. 76, 77, attached hereto as Ex. F), and Defendant Adams' admission that
8 he first searched for responsive documents "a couple of days" before his deposition
9 and three months after he purportedly responded to the discovery requests. (Adams
10 Dep. at p. 65, attached hereto as Ex. G).

11 I declare under penalty of perjury that the statements contained in this
12 Declaration are true and correct.

13 Executed this 14th day of November, 2011.

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17 Dean A. Dickie
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