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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

BRYAN PRINGLE, an individual,
Plaintiff,

vs.

WILLIAM ADAMS, JR.; STACY
FERGUSON; ALLAN PINEDA; and
JAIME GOMEZ, all individually and
collectively as the music group The
Black Eyed Peas, *et al.*,
Defendants

Case No. SACV 8:10-CV-01656 JST
(RZx)

**DECLARATION OF PAUL
GELUSO**

I, PAUL GELUSO, declare as follows:

I. EXPERT QUALIFICATIONS

1. I am an expert in music technology, music production and sound recording, and have worked professionally as an audio engineer, producer, and musician for more than 20 years. I have been credited as producer, recording engineer, mastering engineer and/or musician on more than 100 commercially available albums across numerous musical genres, including electronic, rock, hip-hop, jazz and classical. I have also mixed soundtracks for award-winning films and broadcast television programs, and have served as sound editor and mixer for several media companies, including HBO, Miramax, MTV II, Outpost Digital and Radical Media.

DECLARATION OF PAUL GELUSO

1 2. I hold a Bachelor of Science in Electrical Engineering and a Masters of
2 Music in Music Technology from New York University where I currently serve as
3 full-time professor and the Chief Recording Engineer for the Department of Music
4 and Performing Arts Professions. Prior to joining the full-time faculty at New York
5 University, I taught classes in music production and sound recording at the Peabody
6 Institute of The Johns Hopkins University, at Bard College and at the State
7 University of New York at Oneonta. I have lectured extensively on topics related to
8 music technology, including analog electronics, digital electronics, digital signal
9 processing, sound art, electronic music, critical listening, music production, sound
10 recording, sound processing and sound mixing.

11 3. I have previously been retained to perform expert forensic music
12 analysis in copyright infringement lawsuits involving claims of digital sampling. A
13 copy of my CV is attached to this report.

14 4. I have personal knowledge of the facts stated herein, and if called as a
15 witness, could and would testify competently regarding the following facts.

16
17 II. SCOPE OF ASSIGNMENT

18 5. I was asked by Loeb & Loeb LLP to analyze, and attempt to determine
19 the origin of, a sequence of guitar sounds (referred to as the “guitar twang
20 sequence”) that appear in the song “Take a Dive” (Dance Version) which was
21 submitted by Bryan Pringle to the United States Copyright Office for copyright
22 registration in November 2010 under registration number SR 659-360. I understand
23 that Mr. Pringle alleges that certain of the Defendants misappropriated the guitar
24 twang sequence from “Take a Dive” (Dance Version) for use in the song “I Gotta
25 Feeling” which was co-produced by David Guetta and Frederic Riesterer and
26 released by The Black Eyed Peas in 2009.

1 6. I was provided with the following materials in connection with my
2 analysis:

- 3 (1) the United States Copyright Office’s deposit copy of “Take a Dive”
4 (Dance Version) under registration number SR 659-360;
5
6 (2) the November 2010 Declaration and Report of Mark Rubel with certain
7 audio exhibits, including the publicly available version of “I Gotta
8 Feeling” and an isolated version of the guitar twang sequence;
- 9 (3) an NRG file titled “Disk05.NRG” produced by Pringle which I understand
10 constitutes a back-up disk image of “Take a Dive” (Dance Version) for an
11 Ensonic ASR10 keyboard/workstation;
- 12 (4) the Declaration of Frederic Riesterer, dated November 9, 2011;
- 13 (5) creation files for “I Gotta Feeling” produced by Frederic Riesterer under
14 bates numbers RIESTERER 1-9, 38;
- 15
16 (6) the Declaration of Clark Warner, Vice President of Beatport, LLC, dated
17 October 6, 2011, and an accompanying CD containing a collection of
18 isolated instrumental and vocal parts of “I Gotta Feeling” which the
19 Defendants caused to be posted to the website Beatport.com in or around
20 August and September 2009, and which were available for download
21 from that website in connection with an “I Gotta Feeling” re-mix
22 competition;
- 23 (7) the Declaration of Alain J. Etchart, Director of Marketing and Creative
24 Manager of Univers Sons (d/b/a Ultimate Sound Bank), dated November
25 4, 2011.

1 7. I was also referred to a Broadjam.com website¹ from which I
2 downloaded a song titled “Take A Dive vs I Gotta Feeling” that is credited to Mr.
3 Pringle. This song contains certain of The Black Eyed Peas’ vocal tracks that
4 appear in “I Gotta Feeling,” superimposed over “Take a Dive” (Dance Version).

5 8. I independently obtained the computer hardware and software
6 necessary to examine all of the relevant computer and audio files. This included
7 obtaining an ASR10 keyboard/workstation with a CD-ROM drive which I used to
8 analyze Pringle’s NRG file. To analyze the “I Gotta Feeling” creation files
9 produced by Mr. Riesterer, I used a Mac PowerBook G4, Logic Pro 8 software,
10 PlugSound Vol. 2: Fretted Instruments virtual instrument sound bank, and a
11 CamelPhat sound processing plug-in. In conducting the waveform and listening
12 analysis discussed below, I used a MacBookPro computer with a 2.66Ghz Intel Core
13 2 Duo processor, Sennheisser HD600 headphones, Sony MDR 7506 headphones,
14 ProTools HD9, Wave Editor software and Sonogram software. This computer
15 hardware and music software is routinely used by experts in sound recording and
16 music production, and I regularly use and rely on this hardware and software in my
17 professional work.

18 9. I am being compensated for my work on this matter at the rate of
19 \$150.00 per hour.
20

21 III. SUMMARY OF CONCLUSIONS

22 10. The music creation files produced by Defendant Frederic Riesterer
23 show that Mr. Riesterer created the final guitar “twang” sound and composed the
24 chords that make up the guitar twang sequence. These files show that the origin of
25 the guitar “twang” sound is a sound bank named PlugSound: Fretted Instruments.
26

27 ¹<http://www.broadjam.com/artists/songs.php?artistID=1340&mediaID=508625> (last
28 visited November 9, 2011)

1 Mr. Riesterer then applied certain distortion, equalization and reverberation sound
2 processing techniques to create the sound of the guitar ‘twang’ sequence heard in “I
3 Gotta Feeling.” Mr. Riesterer’s creation files also contain a MIDI file which
4 contains the musical composition of the guitar twang sequence prior to any sound
5 processing. Using Mr. Riesterer’s MIDI file, as well as the PlugSound: Fretted
6 Instruments sound bank, computer hardware and sound processing software from
7 the same era that Mr. Riesterer used, I was able to re-create the guitar twang
8 sequence from scratch.

9
10 11. In contrast to Mr. Riesterer’s creation files, the NRG file produced by
11 Mr. Pringle indicates that he used sampling techniques to capture the guitar twang
12 sound and guitar chords of the guitar twang sequence that appear in “Take A Dive”
13 (Dance Version). These sampling techniques could have included (i) loading sounds
14 from a sound bank, (ii) capturing the the sounds from a pre-existing recording or
15 (iii) capturing the sounds while physically performing them on an electric guitar.

16 12. It is technologically impossible for the creators of “I Gotta Feeling” to
17 have copied the guitar twang sequence from Mr. Pringle’s “Take A Dive” (Dance
18 Version). This is because the guitar twang sequence in the mixed “Take A Dive”
19 (Dance Version) always appears with other layered sound elements which cannot be
20 completely removed through any known sound editing process, yet the guitar twang
21 sequence in “I Gotta Feeling” is free of any remnants of those layered sound
22 elements, known as sampling “artifacts” or “ghosts.”

23 13. The guitar twang chord samples that exist in the clear in Mr. Pringle’s
24 NRG file are essentially identical to the isolated guitar twang stem that the
25 Defendants caused to be posted to Beatport.com and which I understand were used
26 by third parties to create re-mixes of “I Gotta Feeling.” Because, as explained
27 above, the creators of “I Gotta Feeling” could not have sampled the guitar twang
28 sequence from “Take a Dive” (Dance Version), the only apparent explanation for

1 this identity is that Mr. Pringle sampled the isolated guitar twang sound file from
2 Beatport.com (or from one of the re-mixes that sampled the Beatport.com sound
3 file) and inserted the guitar twang sequence into his “Take a Dive” (Dance Version).

4 IV. THE GUITAR TWANG SEQUENCE

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6 14. The guitar twang sequence at issue is a repeating 8-bar musical phrase
7 made up of three guitar chords. It is about 15 seconds long and appears with a
8 tempo of 130 BPM in “Take A Dive” (Dance Version) and at a slightly slower
9 tempo of 128 BBP in “I Gotta Feeling”. Figure 1 below is a musical transcription of
10 a MIDI file contained in Frederic Riesterer’s creation file (discussed below) that
11 represents the guitar twang sequence.



12 Fig 1. Musical notation view of the “David Pop Guitar” MIDI file
13 version of the guitar twang sequence.²

14 V. THE DEFENDANTS INDEPENDENTLY CREATED THE GUITAR 15 TWANG SEQUENCE

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17 15. The creation files produced by Mr. Riesterer, who has been credited as
18 a co-producer of “I Gotta Feeling”, include a Logic Pro (Version 8) session file³
19 entitled “David Pop Guitar,” which I understand was the initial name for “I Gotta
20 Feeling” before the lyrics were added. Within the “David Pop Guitar” Logic session
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24 ² The four lowest notes that appear on bars 153, 155, 157 and 159 in the notation
25 above are muted on the guitar twang sequence, leaving a sequence consisting of
26 three two-note guitar chords. These lowest notes do appear in certain instances in “I
27 Gotta Feeling” as variation to the basic guitar twang sequence, but do not appear in
28 “Take A Dive” (Dance Version).

³ A “Logic session file” is a collection of computer files associated with creating a
sound recording using Apple’s popular sound recording software, Logic Pro.

1 file, there exists a MIDI file representation of the guitar twang sequence.⁴ This
2 MIDI file contains the instructions for playing each individual note that comprises
3 each of the three chords of the guitar twang sequence, which was played using the
4 Strat with SM57 Stereo Spread PlugSound preset, and to which equalization,
5 distortion and reverb effects were later applied to create the unique “twang” sound.

6 16. Each individual note within Mr. Riesterer’s MIDI file can be muted
7 (turned on or off) and the distortion and equalization effect can be bypassed in the
8 Logic session.⁵ In other words, this MIDI file contains the foundational music
9 “building blocks” that were used to create the final guitar twang sequence.

10 17. In order to confirm whether Mr. Riesterer’s “David Pop Guitar” Logic
11 session file contains the original creation files for the guitar twang sequence that
12 appears in “I Gotta Feeling,” I attempted to re-create the guitar twang sequence
13 using similar hardware and software that Mr. Riesterer used when he created “I
14 Gotta Feeling” in 2008.

15 18. I did so by opening the “David Pop Guitar” Logic session in Logic
16 (Version 8) running on a Mac G4 computer, loading a preset “Strat with SM57
17 Stereo Spread” from a sound bank named “PlugSound: Fretted Instruments,”⁶ using
18 sound distortion software named “CamelPhat,” and applying sound equalization and
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23 ⁴ MIDI, which stands for Musical Instrument Digital Interface, is a type of computer
24 file that contains instructions for a computer or other musical equipment to play a
25 sound or group of sounds, including the particular musical notation and each
26 individual pitch, as well as the volume and tempo.

27 ⁵ An audio recording demonstrating this process is attached hereto as Audio Exhibits
28 6 and 7.

⁶ The newer version of Plug Sound, named “Plug Sound Pro UVI,” does not produce
the same sound as the older version of this software that Mr. Riesterer utilized in
2008.

1 dynamic compression effects using Logic. I then made minor settings adjustments
2 to match the guitar twang sound I hear in “I Gotta Feeling.”⁷

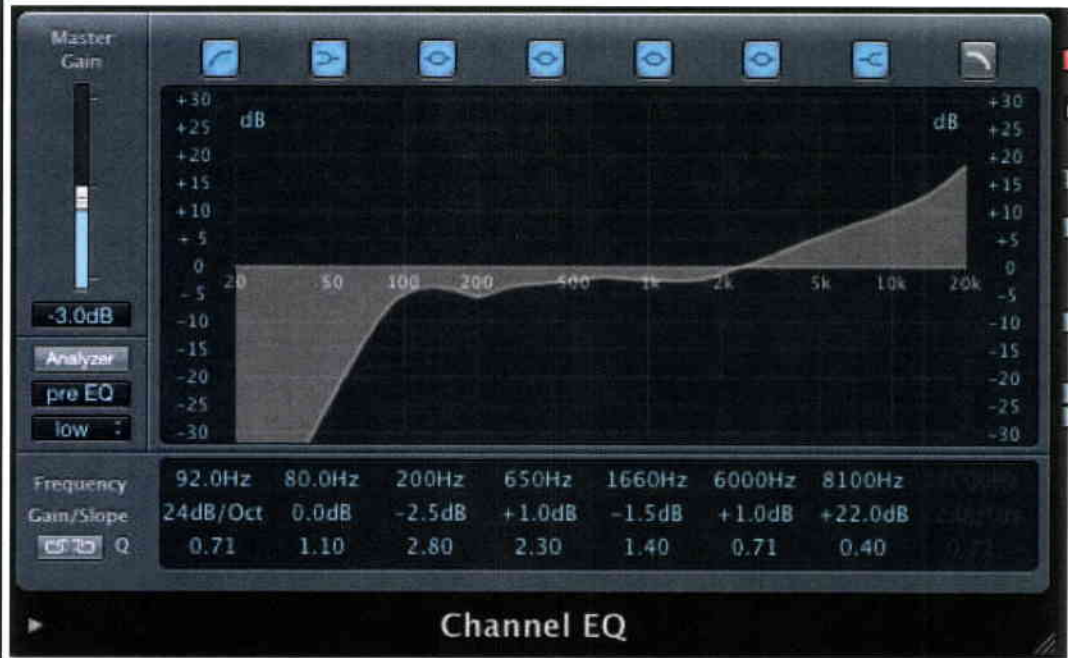
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4 19. Figures 2 through 5 below are screen shots of the music creation
5 software sound processors with the settings that I used to re-create the guitar twang
6 sequence that I hear in “I Gotta Feeling” from Mr. Riesterer’s MIDI creation file.
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8 Fig 2. PlugSound: Fretted Instruments plug-in settings



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24 ⁷ As is common when composing music, Mr. Riesterer may not have saved all of the
25 precise sound processing settings he used when creating the final guitar twang
26 sequence that was used in “I Gotta Felling”. This does not affect the validity of my
27 analysis, however, because I was able to use Mr. Riesterer’s Logic session file and
28 manually adjust the sound processing settings to produce the guitar twang sound that
I hear in “I Gotta Feeling.”

1 Fig. 3 Logic equalizer settings



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15 Fig. 4 Logic compressor settings

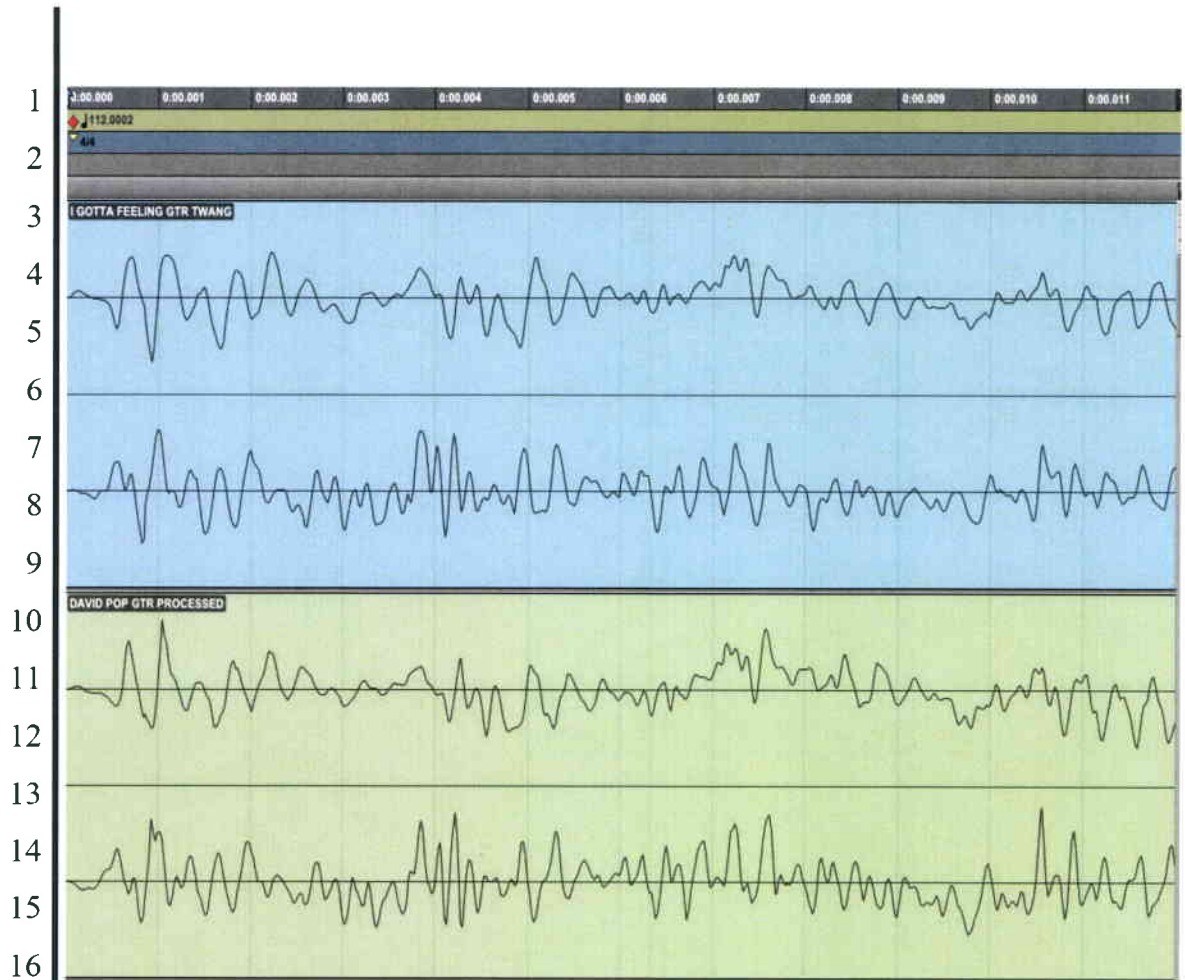


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Fig 5. CamelPhat distortion settings



20. After following the same steps that Mr. Riesterer followed when creating "I Gotta Feeling," I then compared the sound file that I had created from the MIDI file to the actual guitar twang sequence in "I Gotta Feeling" by a listening comparison and computer aided waveform analysis. Listening to the guitar twang sequence in "I Gotta Feeling" and the guitar twang sequence I created from the MIDI file side-by-side, it is nearly impossible to tell one from the other. The results of my computer waveform analysis are depicted in Figure 6 below.



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Fig 6. Stereo waveforms representing the first 12 milliseconds of the guitar twang sequence from “I Gotta Feeling” (top two) compared to the guitar twang sequence I re-created from the “David Pop Guitar” session using the PlugSound: Fretted Instruments “Strat with SM57 Stereo Spread” preset with added reverb and processed with equalization, compression and distortion using the settings described above (bottom two).

21. Although there are slight amplitude variations due to the additional processing and layered instrumentation contained in “I Gotta Feeling” and due to my approximations of settings made by Mr. Riesterer, there is nevertheless a very high degree of correlation. In my professional opinion, these waveforms would not match as closely as they do if Mr. Riesterer’s creation file and sound effects

1 processing techniques were not, in fact, the source of the guitar twang sequence in “I
2 Gotta Feeling.”

3 VI. THE DEFENDANTS COULD NOT HAVE SAMPLED THE GUITAR
4 TWANG SEQUENCE FROM “TAKE A DIVE” (DANCE VERSION)

5 22. As I explained in my January 10, 2011 declaration, it would have been
6 technologically impossible for the creators of “I Gotta Feeling” to have sampled the
7 guitar twang sequence from “Take a Dive” (Dance Version) as Pringle claims. This
8 is because the guitar twang sequence in “Take a Dive” (Dance Version) always
9 appears layered with other musical elements and sounds, whereas in a number of
10 instances in “I Gotta Feeling” (particularly at 0:31-0:33) the guitar twang sequence
11 appears with no other sound elements (often referred to as “artifacts” or “ghosts”)
12 which one would expect to find if the guitar twang sequence had been sampled from
13 “Take a Dive” (Dance Version).

14 23. Nothing in any of the materials that I have reviewed changes this
15 analysis. Indeed, the conclusion in my January 10, 2011 declaration is confirmed by
16 my subsequent analysis of the music creation files produced by Mr. Riesterer, which
17 show that Mr. Riesterer did not sample the guitar twang sequence from “Take a
18 Dive” (Dance Version), but rather created it independently.

19 24. Moreover, even if Pringle had distributed copies of his NRG file, as
20 opposed to a mixed CD or mp3 version of “Take a Dive” (Dance Version), it would
21 not have been technologically possible for the creators of “I Gotta Feeling” to have
22 “reverse engineered” the guitar twang sound to create an unprocessed version as it
23 exists in Mr. Riesterer’s Logic session by removing the final sound processing and
24 separating the fused notes that appear in Pringle’s NRG file and somehow adding
25 them to the PlugSound soundbank. If they had attempted to do so, there would have
26 been sampling artifacts found in Mr. Riesterer’s creation files (which there are not)
27 and the waveforms of the sound recording created using the PlugSound sound bank
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1 would not match Mr. Pringle’s isolated guitar twang sequence as closely as they do.
2 In other words, Mr. Riesterer possesses an earlier generation of the guitar twang
3 sequence which he could not have sampled from Mr. Pringle’s work.

4 VII. PRINGLE SAMPLED THE GUITAR TWANG SEQUENCE FROM
5 ANOTHER SOURCE

6 25. I understand that Pringle claims to have used an ASR10 sampling
7 keyboard workstation in creating “Take a Dive” (Dance Version). This device has
8 the ability to record, edit and playback new or pre-existing sound recordings. The
9 guitar “twang” sequence exists in Pringle’s NRG file as three separate sound
10 recordings (or “wavesamples”), one for each chord, and stored instructions to
11 playback the chords in a sequence.

12 26. I understand that, after Mr. Pringle created “Take a Dive” (Dance
13 Version) using the ASR10, he then saved the sequence and wavesamples from the
14 ASR10 to an NRG file format, which was subsequently produced in this litigation.
15 The individual instrumental parts that make up “Take a Dive” (Dance Version) are
16 accessible by loading the contents of the NRG file back into the ASR10. Once re-
17 loaded, these parts can be edited, removed and new parts added and re-saved on the
18 ASR10.

19 27. The NRG file does not contain a stereo-mixed sound recording, but
20 rather separate wavesamples of instrumental parts. Creating a stereo-mixed sound
21 recording from the instrumental parts contained in the NRG file is not a simple one-
22 step process. In order to hear a stereo-mix, such as the sound file on the deposit
23 copy of “Take a Dive” (Dance Version) submitted to the Copyright Office, it is
24 necessary to manually load each of these instrument files from the NRG file into a
25 specific “track” slot in the ASR10 and then re-play them together using an ASR10.
26 This process requires at least 20 separate steps and requires working knowledge of
27 the ASR10 and instructions specific to “Take A Dive” (Dance Version) to put it
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1 back together. Moreover, without access to the original mixed version of “Take a
2 Dive” (Dance Version), or to instructions as to which specific instrument file is
3 assigned to which specific track slot in the ASR10, there is no guarantee that the
4 process of re-loading the NRG files into the ASR10 will yield a sound recording that
5 was identical to the original.

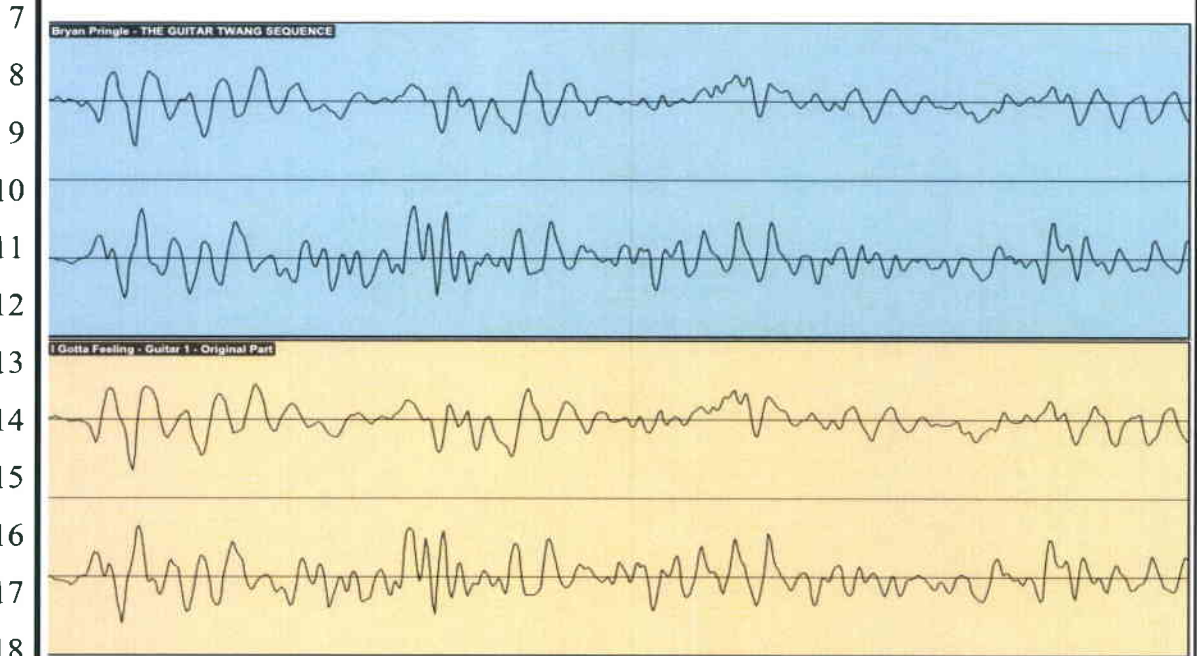
6 28. As noted above, Mr. Pringle’s NRG file for “Take a Dive” (Dance
7 Version) contains one wavesample for each of the three chords of the guitar twang
8 sequence. In each of these wavesamples, the two notes that make up the chord are
9 “fused” together, with the equalization, distortion and reverberation processing
10 already applied. The separate, unprocessed “clean” notes that make up each chord
11 of the guitar twang sequence do not exist in Mr. Pringle’s NRG file as they do in
12 Mr. Riesterer’s Logic session files. This indicates that the three sampled guitar
13 chords in Mr. Pringle’s NRG file were not independently created using the ASR10,
14 but were sampled from another source, either by recording sound in real time, or by
15 digitally sampling a pre-existing sound recording.

16
17 **VIII. THE GUITAR TWANG SAMPLES IN MR. PRINGLE’S NRG FILE ARE**
18 **ESSENTIALLY IDENTICAL TO THE GUITAR TWANG SEQUENCE**
19 **THAT WAS AVAILABLE ON BEATPORT.COM**

20 29. I understand that, shortly after the song “I Gotta Feeling” was released
21 by The Black Eyed Peas in 2009, the Defendants uploaded a collection of separate
22 vocal and instrumental tracks (or “stems”) from “I Gotta Feeling” to a website
23 named Beatport.com. DJs and musicians were then encouraged to download these
24 “I Gotta Feeling” stems, including the guitar twang sequence, and to re-mix them
25 into a new version of the song as part of a competition to see who could create the
26 best re-mix.

27 30. According to the Declaration of Clark Warner, Vice President of
28 Beatport, copies of the “I Gotta Feeling” stems that were available as part of the

1 Beatport.com re-mix competition are included on the CD attached his Declaration.
2 Using waveform analysis, I compared the Beatport guitar twang sequence stem with
3 Pringle's isolated guitar twang sequence that was submitted with Mr. Rubel's report.
4 The results of my waveform analysis are depicted in Figure 7 below. The
5 waveforms match so closely that I believe they are electronic copies of one another,
6 meaning that they could only have come from the same source.⁸



19 Fig 7. Waveforms representing the first 12 milliseconds of the isolated
20 guitar twang sample produced by Mr. Pringle and attached to Mr.
21 Rubel's report (top two) compared to "I Gotta Feeling - Guitar 1 -
22 Original Part" attached to the Declaration of Clark Warner, Vice
23 President of Beatport, which was available on Beatport.com (bottom
24 two).

25 ⁸ I understand that Mr. Pringle has acknowledged that he downloaded certain re-
26 mixes of "I Gotta Feeling" created as part of the Beatport re-mix competition, which
27 provide further evidence as to the origin of the guitar twang sequence in "Take a
28 Dive" (Dance Version), including additional confirmation that Mr. Pringle copied
the guitar twang sequence from the Beatport stems.

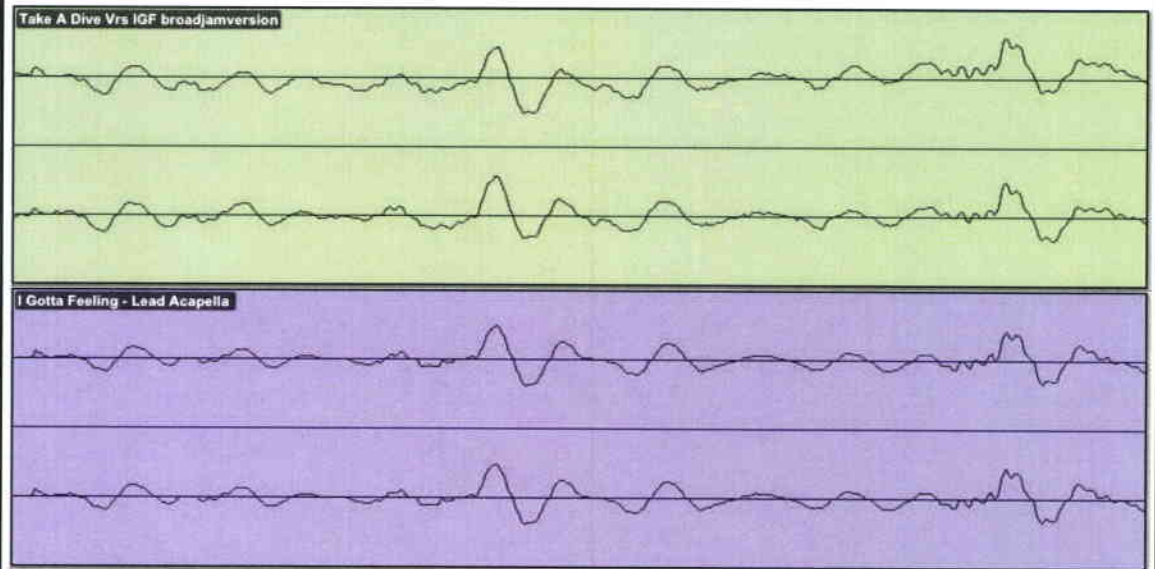
1 31. Based on the evidence I have analyzed, the fact that Pringle’s isolated
2 guitar twang sequence samples appear to be an electronic copy of the “I Gotta
3 Feeling” guitar twang stem from Beatport.com, means that either (i) Mr. Pringle
4 obtained a copy of the “I Gotta Feeling” guitar twang stem and then sampled the
5 chords from that stem and inserted them into his NRG file, which he then used to
6 create “Take a Dive” (Dance Version), or (ii) the creators of “I Gotta Feeling”
7 copied the guitar twang sequence from “Take a Dive” (Dance Version), inserted it
8 into “I Gotta Feeling,” and then uploaded the stem to Beatport.com. However, as
9 discussed in Section VI above, it is not technologically possible for the creators of “I
10 Gotta Feeling” to have sampled the guitar twang sequence from “Take a Dive”
11 (Dance Version). In addition, as discussed in Section V above, Mr. Riesterer’s
12 creation files demonstrate that he independently created the guitar twang sequence.
13 Thus, the only explanation for the correlation between these sounds is that Pringle
14 sampled the guitar twang sequence from the isolated stems that were available on
15 Beatport.

16 IX. PRINGLE SAMPLED OTHER BEATPORT.COM STEMS OF “I GOTTA
17 FEELING” IN CREATING OTHER SOUND RECORDINGS

18 32. I was referred to a website at BroadJam.com that contains a song
19 entitled “Take A Dive vs I Gotta Feeling” which is credited to Mr. Pringle.⁹ This
20 song features isolated vocal performances of The Black Eyed Peas from “I Gotta
21 Feeling” that have been sampled into “Take a Dive v. I Gotta Feeling.” I have
22 analyzed these vocal tracks and determined that they were not taken from the final
23 mixed version of “I Gotta Feeling,” but rather from certain of the isolated vocal
24 stems that were available for download on the Beatport.com website as part of the “I
25 Gotta Feeling” re-mix competition.

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27 ⁹See <http://www.broadjam.com/artists/songs.php?artistID=1340&mediaID=508625>
28 (last visited November 9, 2011)

1
2 33. The vocal tracks that Mr. Pringle sampled in “Take a Dive vs I Gotta
3 Feeling” contain the vocal performances of only two of the four members of The
4 Black Eyed Peas, whereas the final mixed version of “I Gotta Feeling” contains
5 additional background vocals. Similarly, the vocal tracks that were available for
6 download on Beatport.com consisted of one lead vocal track, and another
7 background vocal track. I have compared the vocal track sampled in Mr. Pringle’s
8 “Take a Dive vs I Gotta Feeling” with both the lead and background vocal stems
9 that were available on Beatport.com. Based on my listening analysis and my
10 waveform analysis depicted in Figure 8 below, I determined that the vocal track
11 sampled in Pringle’s “Take a Dive vs. I Gotta Feeling” is a copy of the lead Black
12 Eyed Peas vocal track that was available on Beatport.com.



24 Fig 8. Waveform analysis comparing the first 14 milliseconds at the
25 onset of “I Gotta Feeling - Lead Acappella - Original Part” from Audio
26 Exhibit to Declaration of Clark Warner, Vice President of Beatport
27 (bottom two), with the onset of vocals sampled in Pringle’s “Take A
28 Dive vs. I Gotta Feeling” (top two).

1 34. Listening to Mr. Pringle’s “Take a Dive vs. I Gotta Feeling” and the
2 final mixed version of “I Gotta Feeling,” I was able to confirm that Mr. Pringle
3 sampled only the lead vocals in “Take a Dive vs. I Gotta Feeling” (especially at
4 1:45.693 to 2:00.239), whereas the final mixed version of “I Gotta Feeling” contains
5 a background group vocal (especially at 1:30.202 to 1:45.202).

6 35. In addition, the vocal tracks in the mixed version of “I Gotta Feeling”
7 are layered with other sound elements that are not present in the vocal tracks in
8 Pringle’s “Take a Dive vs. I Gotta Feeling.” This further confirms that The Black
9 Eyed Peas’ vocals in Mr. Pringle’s “Take a Dive vs I Gotta Feeling” re-mix were
10 not taken from the final mixed version of “I Gotta Feeling” but from the Beatport
11 stems.

12 36. The fact that the Beatport lead vocal stem is contained in Pringle’s
13 “Take a Dive vs I Gotta Feeling” indicates that he had access to isolated parts of “I
14 Gotta Feeling” and the ability to insert them into his own sound recordings.

15
16 X. CONCLUSION

17 37. As discussed above, my waveform analysis indicates that the guitar
18 twang samples contained in Mr. Pringle’s NRG file that was used to create the
19 mixed version of “Take a Dive” (Dance Version) submitted to the Copyright Office,
20 are essentially identical to the isolated guitar twang sequence stem that the
21 Defendants made available for public download on Beatport.com as part of an “I
22 Gotta Feeling” re-mix competition.

23 38. As explained in my January 10, 2011 declaration and in Section VI
24 above, it would have been technologically impossible for the Defendants to have
25 copied the guitar twang sequence from the mixed “Take a Dive” (Dance Version)
26 that Mr. Pringle claims to have distributed, because the guitar twang sequence in
27
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1 that song is layered with other sound elements and artifacts which are not present in
2 “I Gotta Feeling.”

3 39. Furthermore, using the music creation files produced by Mr. Riesterer,
4 including the MIDI file, and the same type of equipment and music creation
5 software used by Mr. Riesterer in creating “I Gotta Feeling”, I was able to re-create
6 the guitar twang sequence without any of the layered sound elements that appear in
7 “Take a Dive” (Dance Version) or any sampling artifacts that would be present if
8 Defendants had sampled the guitar twang sequence from “Take a Dive” (Dance
9 Version). The guitar twang samples in Pringle’s NRG file, on the other hand,
10 contain no evidence of independent creation, and are essentially copies of other
11 sounds, in which the notes are already “fused” together, and the equalization,
12 distortion and reverberation has already been applied.

13 40. The Declaration of Alain J. Etchart, Founder, Director of Marketing
14 and Creative Manager of Univers Sons (d/b/a Ultimate Sound Bank), indicates that
15 the “Strat with SM57 Stereo Spread” guitar preset that Mr. Reisterer used in creating
16 the guitar twang sequence, was created in February 2001. Therefore, Mr. Pringle
17 could not have used the same PlugSound preset to create the guitar twang samples in
18 1999. Thus, the only apparent explanation for the near identity between the guitar
19 twang samples in Mr. Pringle’s NRG file and Defendants’ isolated guitar twang
20 sequence that was available at Beatport.com is that Mr. Pringle acquired a copy of
21 the guitar twang sequence in the clear (such as from the Beatport.com stem or from
22 one of the “I Gotta Feeling” re-mixes that featured the guitar twang sequence in the
23 clear) and sampled each of the chords that comprise the guitar twang sequence into
24 his ASR10 which he then used to create the derivative “Take a Dive” (Dance
25 Version) mix.
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1 41. It is therefore my professional opinion, to a high degree of certainty,
2 that the guitar twang sequence was independently created by Mr. Riesterer, and
3 subsequently copied by Bryan Pringle.

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5 I declare under penalty of perjury that the foregoing is true and correct.
6 Executed this 14th day of November, 2011.
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11 _____
12 Paul Geluso
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GLOSSARY OF TERMS

1
2 ASR10 (Advanced Sampling Recorder) - a sampling keyboard workstation which
3 has the ability to record, edit and playback new or pre-existing sound recordings

4 CamelPhat - the name of a particular computer program that is used to create
5 distortion and other sound processing effects

6 Logic session files - a collection of computer files associated with creating a sound
7 recording using Apple's popular sound recording software, Logic Pro.

8 MIDI (Musical Instrument Digital Interface) - a type of computer file that contains
9 instructions for a computer or other musical equipment to play a sound or group of
10 sounds, including the particular musical notation and each individual pitch, as well
11 as the volume and tempo

12 NRG - a type of computer file used to save a disc image

13 Preset - a computer file containing a collection of pre-recorded sounds that makes
14 music composed electronically sound as if it were being played on a traditional
15 musical instrument

16 PlugSound: Fretted Instruments - the name of a particular sound bank (or sound
17 library) produced by Univers Sons (d/b/a Ultimate Sound Bank) that contains
18 numerous guitar presets

19 Sound bank (a.k.a. Sound library) - a collection of presets and other sound
20 recordings used by music producers use to create music electronically

21 Stems - a collection of separate sound recordings, each of which corresponds to a
22 different instrumental sound heard within a mixed recording or song

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INDEX OF AUDIO EXHIBITS

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2	01 The Black Eyed Peas - "I Gotta Feeling"
3	02 Bryan Pringle - "Take A Dive" (Dance Version)
4	03 Bryan Pringle - isolated guitar twang sequence (Exhibit 3 to Rubel Report)
5	04 Guitar twang sequence created from MIDI file in "David Pop Guitar"
6	05 Unprocessed guitar twang sequence created from MIDI file in "David Pop Guitar"
7	06 Guitar twang sequence created from MIDI file in "David Pop Guitar" (high note only)
8	07 Guitar twang sequence created from MIDI file in "David Pop Guitar" (low note only)
9	08 "I Gotta Feeling" (left) and "David Pop Guitar" from MIDI (right)
10	09 Bryan Pringle - "Take A Dive vs. I Gotta Feeling" from Broadjam.com
11	10 "I Gotta Feeling - Guitar 1 - Original Part" from Audio Exhibit to Declaration of Clark Warner
12	11 "I Gotta Feeling - Lead Acapella - Original Part" from Audio Exhibit to Declaration of Clark Warner
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Curriculum Vitae

Curriculum Vitae : Paul Geluso

Academic Degrees

Masters of Music in Music Technology - New York University (1999)

Bachelor of Science in Electrical Engineering - New Jersey Institute of Technology (1988)

Work Experience

Full-Time Master Teacher, Chief Recording Engineer - New York University (2011)

Adjunct Faculty - New York University (1992 to 2011)

Visiting Professor - The Peabody Institute (2008-2009)

Visiting Professor of Music and Sound Recording - Bard College (2007)

Full Time Lecturer - State University of New York at Oneonta (2003-2005)

Chief Sound Engineer - Studio PASS Harvestworks Digital Media Arts (1993 – present)

Sound Editor and Mixer - outpost Digital, Radical Media, HBO, Miramax, MTV II (2002-2003)

Free-Lance Audio Engineer (1992 – present) (see discography below)

Expert Testimony (last 4 years)

Deposition testimony in *Kernel Records OY v. Mosley*, Case No. 09 Civ. 21597 (S.D. Fla.)

Awards

2004 James E Robison Foundation - Special Artists Grant, Composition

2004 Faculty Initiated Research Grant - SUNY Oneonta

2002 James E Robison Foundation - Special Artists Grant, Composition

2003 Meet The Composer - Performance Grant

2001 New York State Council For The Arts - Individual Artist Grant

Discography

2011 *Manorexia "Dinoflaellate Blooms"* (JG Thirwell) Octopic, 5.1 DVD mixer

2011 *I Night (Dominatrix re-mix)* Opelic Records, co-producerr, mix engineer

2011 *Manhattan Camerata* (Manhattan Camerata), recording and mix engineer

2011 *Don't Wake Me (A Taut Line & Hong Kong In The 60s)* Disktopia, remixer

2010 *Christmas From The Blue Note (Various Artists)* Half Note Records, engineer

2010 *The World Below G and Beyond* (Mari Kimura) Mutable Music, engineering

2010 *Nord* (Ike Yard) Desire Records, production and engineering

2010 *Complete String Quartets* (Iannis Xanakis) Mode Records, 5.1 DVD mixer

2010 *Ost* (Ike Yard) Phisteria Records, recording and mix engineer

2009 *Plastic Materials* (Marina Rosenfeld) Room40, mastering
2009 *Out Of My Hands* (Christopher O'Riley) White Tie Classics, producer and engineer
2009 *Sourmash* (George Lewis and Marina Rosenfeld) Innova, mixing and mastering
2009 *Faulty* (Andea Parkins) Important Records, engineering
2009 *Seven Sounds Seven Circles* (Lothar Baumgarten) Kunstthous Bregenz, mixer, mastering
2009 *Now Then After* (Various Artists) Tellus , 5.1 DVD mixer
2008 *Comic Tales of Tragic Heartbreak* (Robert Whaley) producer and engineer
2008 *Sonogram* (Gamelan Son Of Lion) INNOVA, recorded, mixed and mastered
2008 *City Of A Gods Son , A Hip Hop Opera* (Kenzo) mastering
2008 *Lock and Load* (Gambler Nun Radio) Vurse, producer and engineer
2007 *Bloodwine* (Gambler Nun Radio) Vurse, producer and engineer
2007 *15:15* (Bai Kamara Jr) Bang Records, mastering
2006 *Freddie And Me* (Little Annie) Durtro, bass
2006 *Iva* (Iva) Vurse, co – producer/engineer, bass
2006 *1980-92 Collected* (Ike Yard) Acute Records, re-mastering engineer
2006 *Songs From The Coal Mine Canary* (Little Annie) Durtro Jnana, bass
2006 *Pac-Man Mission* (Paul Geluso) Greeting Cats Music, composer and producer
2005 *Fernando Landeros* (Fernando Landeros) Forte Records, recordist and mix engineer
2005 *Sound Bites* (John Davey) Lil' Pumkin Records, engineering and mixing
2005 *Two Novels: Gaze / In the Cochlea* Crónica 012~2004 (o.blaat), engineering and mixing
2005 *Pertes Noises* (Sunny Murray) Eremite Records, engineering
2004 *Meditations For Piano* (Borah Bergman) Tzadik, engineering and editing
2004 *Prismatic Hearing* (David Simons) Tzadik, engineering and mixing
2004 *The Bi Conical Of The Rammellzee* (Rammellzee) Goma, bass, engineering and mixing
2004 *DCC America* (Death Commit Crew) Troubleman, engineering and mixing
2004 *This Is Riphop* (Death Commit Crew) Troubleman, engineering and mixing
2004 *Don't Stop Remix* (Tussle) Troubleman, Re-Mix engineering and mixing
2004 *And the Black Moths Play the Grand* (Dean Roberts) Staubgold, engineering
2003 *The Birth of George* (Simons Carrer Band) Tellus Media, engineering and mixing
2003 *Sonic Images* (Society of Composers Inc) Capstone, mastering
2003 *Hea-Yanomami Recordings* (Stephen Vitiello) Cartier Foundation, mixing
2003 *The Open Rhythm Section* (The Beat Kids) Freestylus Records, engineering and mixing
2003 *Borah Bergman and Thomas Chapin* (Bergman) Boxholder Records, eng
2003 *What is it Like To Be A Bat* (Brazelton/Naphtali) Tzadik, live electronics
2002 *Underwater Adventure Hop Secret Treasure* (Secret Frequency Crew), mixing
2002 *Bending The Gending* (Gamelon Son of Lion) GSOL Records, engineering and mixing

2002 *Alan Silva & The Sound Visions Orchestra* (Alan Silva) Erimite, engineering
2001 *Raincoat In The River* (William Parker) Erimite Records, mixing
2001 *I Fell in Love With A Dead Boy* (Antony and the Johnsons), recordist
2001 *Deep Blue* (Secret Frequency Crew) Counterflow Recordings, mastering
2001 *Of Silver Sleep* (Backworld) Harbinger House, bass
2001 *Home Wreckcordings* (Rebecca Moore) Knitting Factory Records, mastering
2001 *Dance Manatee* (Avey Tare, Panda Bear & Geologist) Catsup Plate, mastering
2001 *Bright And Dusty Things* (Stephen Vitiello) New Albion Records, engineering
2001 *The Fourth Wall* (Backworld) World Serpent UK, bass
2001 *Anymore* (Children in Adult Jails) BWJ records, drums, producer
2001 *Radio Guitar* (Peggy Ahwesh/Barbara Ess) Ecstatic Peace!, mastering
2001 *Borah Bergman & Roscoe Mitchell* (Bergman) Soul Note, engineering and editing
2000 *A Sun Came* (Sufjan Stevens) Asthmatic Kitty, mastering (original release)
2000 *Anthems From Pleasure Park* (Backworld) World Serpent UK, bass
2000 *NU: Cultural Alchemy* (Singe and Verb) Soundlab, bass
2000 *Scratchy Marimba* (Stephen Vitiello) Beggar's Banquet/Sulphur, bass, engineering and mixing
2000 *Night and Day II* (Joe Jackson) SONY, MIDI technician
2000 *Attention 2001 State of the Union* (Toni Dove) EMF, engineering
2000 *Joe The King* (feature film) movie soundtrack, bass and mixing
1999 *Radiance* (Susie Ibarra Trio) Hopscotch Records, mixing
1999 *Anthems from The Pleasure Park* (Backworld) Harbinger House, bass
1999 *World Trade Center Recordings* (Stephen Vitiello), mixing
1999 *Uitti/Vitiello* (Frances-Marie Uitti/Stephen Vitiello) JDK, engineering and mixing
1999 *The Hollow World* (Assif Tshar) Hopscotch Records, mastering
1999 *Absolute Ensemble* (Adams/Schoenberg) CCnC Records, recordist and mixing
1999 *A New Organization* (Lake, Bergman) Black Saint/Soul Note, editing and mixing
1999 *World of Darkness* (Stephen Vitiello) Postmasters Gallery, engineering
1998 *Matrikamantra* (Lydia Lunch) Cripple Dick Hot Wax, mastering
1998 *B/Side* (Ikue Mori) Tzadik, recording and mixing
1998 *Isles of the Blessed* (Backworld) Harbinger House, mastering
1998 *Emergency Music* (Judy Dunaway) CRI, engineering and mixing
1998 *Light of Falling Cars* (Stephen Vitiello) JDK Productions, bass, engineering and mixing
1998 *Salsa Strut* (Rick Davies) MSR, engineering and mixing
1998 *Vadim Ghin piano* (Liszt/Ginatera/Mussorgsky) Forte Records, recordist and mixing
1997 *The Short Form* (Rapehe Malik) Erimite Records, mastering

- 1997 *Ikosa Mura* (Frode Gjersted Quartet) Cadence Jazz Records, mixing and editing
- 1997 *Every Screaming Era* (Dr. Nerve) Cuneiform Records, engineering and mixing
- 1997 *The Computer and the Computer Age* (Larry Austin) Centaur, engineering
- 1997 *Exhilaration* (Bergman/Brotzman/Cyrille) Soul Note, engineering
- 1997 *Monsters From The Deep* (Ned Sublette) Qbadisc Records, engineering
- 1997 *Binky Boy* (Nick Didkovski) Punos Music, engineering and mixing
- 1997 *Blue Zoo* (Borah Bergman) Konnex Records, mixing and editing
- 1997 *Bergman/Braxton/Brotzman* (Borah Bergman) Mixtery Records, mixing and editing
- 1997 *Eight By Three* (Anthony Braxton, Borah Bergman), mixing and editing
- 1997 *The Aquartet* (Mateen, Schmoyer, Lopez, Geluso) Riveting Music Works, bass
- 1996 *FINland* (Christopher Cauley) Erimite Records, mixing and mastering
- 1996 *Urban Archaeology* (The Far East Side Band) VICTO, mastering
- 1996 *Spasm* (Michael Lowenstein) New World Records, engineering
- 1996 *The Short Form* (Raphe Malik) Eremite, mastering
- 1995 *Stone House* (Borah Bergman, Hamid Drake) Black Saint, mixing and editing
- 1995 *The First Meeting* (Bergman, Roscoe Mitchel) Knitting Factory, mixing and editing
- 1995 *Ride Into The Blue* (Bergman, Brotzmann, Borgman) Konnex, mixing and editing
- 1993 *In The Dark* (Dopey Dummy/5chin400) New World Of Sound, bass
- 1992 *Hey God Stop Pushing* (5chin400) Earl Footlong Records, bass

Film / Video

- 2007 *Falling Away* (feature film) 5.1 mixer
- 2007 *Tea and Justice* (documentary) mixer
- 2005 *Charming Augustine* (experimental film) mixer
- 2004 *The Time We Killed* (feature film by Jennifer Reeves) mixer
- 2004 *Kill Bill Vol II* (Miramax TV spot) mixer
- 2004 *Ella Enchanted* (Miramax TV spot) mixer
- 2004 *Battle Grounds* (MTV II series) mixer
- 2004 *Not A Good Look* (MTV series) mixer
- 2003 *Company K* (feature film) mixer
- 2000 *Joe The King* (feature film) music production, bass
- 2000 *God on Their Side* (feature film) audio post
- 2000 *Bleach* (feature film) mixer
- 1998 *Daughters of the Troubled* (documentary) music mixer
- 1998 *Darling International* (feature film by Jennifer Reeves) mixer
- 1996 *Big Jim Folsom; The Two Faces of Populism* (documentary) mixer

1995 *Wild Style* (hip-hop cult-classic feature film) audio post for re-release

Interactive and Sound Installation

- 2011 *Blue Morph* by Victoria , Interactive Sound and Video system design and interactive programming. Govenors Island NYC
- 2011 *Nidus Vitreo* by Josely Carvalho , Interactive Sound and Video system designer, Museu Nacional de Belas Artes, Rio de Janeiro
- 2010 *Cannons*, performance and sound installation commissioned by the Faster Than Sound Festival created for Marina Rosenfeld presented at Aldenburg Music, Suffolk UK
- 2007 *The Luminists*, a 5.1 sound installation made in collaboration with Melanie Crean
- 2007 *Desencantando Salmu*, Sound design for installation by Josely Cravalho.
- 2006 *Homage to a Site*, a solo sound installation the Space Gallery, London
- 2005 *Sound Canvas*, a multi-channel sound installation created for the DUMBO Arts festival
- 2004 *Inside Out*, a site specific 5.1 sound installation at the Roxbury Arts Group

Music Composition Dance

- 2010 *Drawing the Body*, a sound score created and performed live for Molly Davies at North Hampton gallery.
- 2005 *Dancing by Numbers*, a live sound score created and performed live for Polly Motley performed St. Marks Church reviewed by the New York Times
- 2005 *Drawing the Body*, a sound score created and performed live for Molly Davies at Smith College
- 2004 *VARIABLE CITY*, a sound and music score commissioned by Julia Mandle Performance presented at the VanEllen Institute
- 2003 *FEAST*, sound and music sound score commissioned by Julia Mandle Performance installed at The Stable
- 2001 *RETURN*, a music and sound score commissioned by Julia Mandle Performance presented at Gale Gates et al
- 1999 *SIX SQUARES*, a music and sound score commissioned by Julia Mandle Performance at Vito Acconci's Storefront for Art and Architecture
- 1999 *WHEN*, a music score commissioned by Julia Mandle Performance performed at The New Museum of Contemporary Art

**Audio Exhibits
Manually Filed**

**Pringle v. Adams, et al.,
Case No. 10 Civ. 1656 (JST) (RZX) (C.D. Cal.)**



November 14, 2011

Declaration of Paul Geluso in Support of Motion
for Summary Judgment by Defendants Shapiro,
Bernstein & Co., Frederic Riesterer and David Guetta

AUDIO EXHIBITS 1-11