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11 Attorneys for Plaintiff  
 BRYAN PRINGLE

13 UNITED STATES DISTRICT COURT  
 14 CENTRAL DISTRICT OF CALIFORNIA  
 15 SOUTHERN DIVISION

16 BRYAN PRINGLE, an individual,  
 17 Plaintiff,  
 18 v.  
 19 WILLIAM ADAMS, JR.; STACY  
 FERGUSON; ALLAN PINEDA; and  
 20 JAIME GOMEZ, all individually and  
 collectively as the music group The  
 21 Black Eyed Peas, et al.,  
 22 Defendants.

Case No. SACV 10-1656 JST(RZx)  
**DECLARATION OF DAVID T.  
 GALLANT IN OPPOSITION TO  
 DEFENDANTS' MOTION FOR  
 SUMMARY JUDGMENT**  
 DATE: January 30, 2012  
 TIME: 10:00 a.m.  
 CTRM: 10A

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1 I, David Gallant, declare as follows:

2 1. I have personal knowledge of the facts set forth in this Declaration.  
3 If called as a witness I could and would testify competently to the following  
4 facts.

5 2. I am president of Gallant Computer Investigative Services (GCIS),  
6 LLC. GCIS is licensed as a Private Investigations Company by the Texas  
7 Private Security Bureau (A15633). I have over 23 years investigative experience,  
8 including over 15 years dedicated primarily to computer related crimes and  
9 computer forensics. I served as a federal agent in the US Air Force with the Air  
10 Force Office of Special Investigations (AFOSI) for almost 15 years, and was the  
11 case agent on numerous significant investigations and provided computer forensics  
12 support and/or consultation to hundreds of investigations. Following my retirement  
13 from the Air Force in 2001, I entered the corporate computer forensics/computer  
14 security industry with a startup company, and helped build it into an internationally  
15 recognized leader in computer forensics, incident response, and incident response  
16 training. I am an AccessData Certified Instructor and AccessData Certified Examiner,  
17 as well as a contract instructor for AccessData Corp., for whom I teach an  
18 introductory computer forensics course to both law enforcement and corporate  
19 investigators. I have trained hundreds of federal, state and local law enforcement  
20 officials, as well as IT security personnel in the proper methodology for  
21 securing and analyzing computer evidence. I am a Certified Information Systems  
22 Security Professional (CISSP), an internationally recognized computer security  
23 certification. I am a contract instructor for New Horizons Computer Learning Center,  
24 where I teach CISSP preparatory courses to IT security personnel. I have multiple  
25 computer forensics certifications and have published numerous articles on  
26 computer forensics, e- discovery, and other computer security-related matters.  
27 Specific information regarding my qualifications is contained in my CV as  
28

1 appended to my August 6, 2011 Expert Report (“Report”), a true and correct  
2 copy of which is attached as Exhibit 1 to this Declaration.

3 3. I was retained by the Gould Law Group on May 7, 2010, as a computer  
4 forensics expert, to analyze a CD-ROM that contained the creation file of the  
5 derivative version Bryan Pringle’s song, “Take a Dive,” to determine the date(s)  
6 the file(s) were created, as well as the date the CD-ROM was created (burned).

7 4. On December 21, 2010, Mr. Pringle personally delivered to me one  
8 CD-ROM for analysis. The disc was a white Verbatim brand, and the serial number  
9 was 9E24F22 1861. It was hand marked, “PROMO PHOTOS/ 1999  
10 ENSONIQ.NRG FILES.” (A copy of the disk’s label is appended to my Report.)  
11 Mr. Pringle informed me he was the person who labeled the disk. I initialed, dated,  
12 and initiated chain of custody on the evidence (Tag 2).

13 a. Mr. Pringle stated he created the music files contained on Tag 2  
14 in 1999 using an ASR-10 keyboard and saved the files to an external  
15 SCSI<sup>1</sup> hard drive. He then took the SCSI hard drive and connected it to  
16 a Windows computer (he believed a Windows 98 system) and used  
17 Ensoniq Disk Manager (EDM) software to create the .NRG images.  
18 (Mr. Pringle stated he no longer possesses the hardware or software he  
19 used to create Tag 2 due to a burglary of his storage facility located in  
20 Abilene, TX, in October 2000, in which over \$12,000 worth of  
21 equipment was stolen. Pringle provided a copy of the police report with  
22 is attached to this report). The .NRG image files not only contained the  
23 various parts to the music, but also contained the operating system files  
24 needed to boot the ASR-10 keyboard. These images appear to be Nero  
25 Image files (.NRG) (based solely on the file extension “NRG”). Mr.  
26 Pringle explained he used Nero to extract the image files to create a

27 \_\_\_\_\_  
28 <sup>1</sup> Small Computer Serial Interface. Computer technology that permits the “daisy  
chaining” of external computer hardware such as hard drives, CD-ROM drives, etc.

1 new CD-ROM to boot the ASR-10.

2  
3 b. I copied the file, "DISK05.NRG" to the desktop of a forensic  
4 computer running Windows XP Pro (64 bit), and burned this file as an  
5 image to a new CD-ROM using Nero Burning ROM Ver 6.6.0.3. I  
6 initiated chain of custody on this newly burned CD-ROM (Tag 3). Mr.  
7 Pringle then took this CD- ROM, and under my direct observation,  
8 booted an Ensoniq ASR- 10 keyboard that had an external CD- ROM  
9 drive attached. He demonstrated how the keyboard works, and played  
10 for me his song, "Take a Dive" from the ASR-10 keyboard. After the  
11 demonstration, I maintained control and custody of this CD-ROM.

12 5. On January 3, 2011, I created a forensic copy of both CD-ROMs (Tags  
13 2 and 3) using Forensic Toolkit Imager, Version 3.0.0.1443, and processed them  
14 with FTK Version 3.2.0.32216 (License number: 1-1205090). The CD's (Tag 2)  
15 volume name was "990909\_0118." This appears to be the default disk name that is  
16 used by most CD writing software. It typically corresponds to the date and time the  
17 CD is created. In this case, that would mean Sept 9, 1999 at 1:18.

18 a. Forensic analysis of Tag 2 determined there were two "sessions"  
19 written to the disk. This means that groups of files were saved to the  
20 disk on two different occasions. Session one contained one directory  
21 named "promo photos" which contained 134 digital photographs. This  
22 files were all dated 9-8- 1999. The second session contained four files  
23 present as follows: "DISK02.NRG," "DISK03.NRG," "DISK04.NRG,"  
24 and "DISK05.NRG." These files were all dated 8-22-1999. There was  
25 also a directory named "promo photos." cursory analysis metadata  
26 associated with each of the 134 images contained in the "promo photo"  
27 directory disclosed the images were all taken on 09-06-1999 and 09-08-  
28 1999 with an Olympus C900Z/D400Z digital camera. According to the



1 Olympus website (<http://www.olympus->  
2 [global.com/en/corc/history/camera/popup/digital\\_c900z\\_movie.cfm](http://www.olympus-global.com/en/corc/history/camera/popup/digital_c900z_movie.cfm)),  
3 this camera was released in 1998.

4 b. The file named "DISK05.NRG," which, according to Mr.  
5 Pringle, is the creation file containing the derivative version of  
6 Pringle's song "Take a Dive," has a creation date of 8-22-1999, with a  
7 last modified time of 12:54 p.m.

8  
9 c. I also examined the original CD-ROM (Tag 2) with a utility  
10 called NeroInfoTool, which determined that the content of this  
11 particular CD-ROM was created on "9 September 1999" (i.e. the CD-  
12 ROM was burned September 9, 1999). This corresponds to the CD  
13 volume name described above. NeroInfoTool is a free "non-forensic"  
14 application that identifies when a CD-ROM was burned, as well as  
15 other information concerning the computer's CD-ROM drives.

16  
17 d. As stated, there were only two sessions written to this disk, with  
18 the last session written on September 9, 1999. Due to this fact, no  
19 additional data was added to the CD-ROM, and thus none of the  
20 existing files on the CD-ROM, including "DISK05.NRG" were  
21 modified after September 9, 1999. This means that the guitar twang  
22 sequence existed in the original "DISK05.NRG" file and could not  
23 possibly have been added to the file contained on the CD-ROM after  
24 September 9, 1999 (i.e. Mr. Pringle could not have gone back and later  
25 added the guitar twang sequence to the "DISK05.NRG" file contained  
26 on the CD-ROM, after he heard "I Gotta Feeling").

1           6.     On January 3, 2011, I contacted Verbatim Americas, LLC, via their  
2 customer support web page and requested they research their records to determine  
3 the date the CD-ROM disc (Tag 2) (serial number 9E24F221861) was manufactured  
4 and sold in the United States. On March 17, 2011, Verbatim Customer Support  
5 advised by telephone, then via email, that this particular CD-ROM was  
6 manufactured in Taiwan on February 24, 1999 and this type of CD-ROM has been  
7 out of production since late 1999. The last shipment to a distributor was December  
8 29, 2003. A copy of their email is appended to my report.

9           7.     On March 15, 2011, Mr. Pringle forwarded to me an email from Mr.  
10 Gary Giebler, Giebler Enterprises, in which Mr. Giebler informed him he (Pringle)  
11 purchased EDM on May 18, 1999. The serial number for his copy of EDM was  
12 "3998." A copy of his receipt is attached to my report.

13           8.     On March 17, 2011, I purchased a copy of EDM from Giebler  
14 Enterprises and discussed with Mr. Giebler how the software created the .NRG files.  
15 He advised he wrote the EDM program, as well as the ASR-10 operating system.  
16 The ASR-10 operating system is not compatible with any other operating system,  
17 and it had to be booted using an EDM created disk. The EDM files are a  
18 "proprietary" .NRG format that are compatible with Nero for the purposes of  
19 creating a bootable CD-ROM or floppy disk. He advised that since I was able to  
20 extract the DISK05.NRG file from Tag 2, burn a new CD- ROM with Nero that was  
21 able to boot the ASR-10 keyboard, that .NRG file could ONLY have been created  
22 with EDM. I was able to use EDM to view the contents of the various .NRG files.  
23 When asked if there would be dates associated with the ASR-10 operating system  
24 that might help "date" the .NRG files, he advised there were not and that the best  
25 indicator of the original date of the files would be the dates on the CD-ROM. He  
26 also stated there was a possibility that the licensee and license number might be  
27 located within the .NRG files. Analysis of the .NRG files to locate this information  
28 pertaining to Mr. Pringle's license information was unsuccessful.

1           9.     Based on the analysis of the data provided to me, August 22, 1999, at  
2 12:54 pm was the last time the "DISK05.NRG" file, which contains the creation file  
3 for the derivative version of "Take a Dive," was modified. Additionally, my analysis  
4 concludes the CD-ROM that contained this file was created (burned) on September  
5 9, 1999, and could not have been subsequently burned (i.e. no new material could  
6 have been added) after that date. The totality of the information available to me  
7 supports Mr. Pringle's claim of creating the DISK05.NRG file and CD-ROM in  
8 1999. The manufacturing date of the CD-ROM itself (Feb 1999) and the date of his  
9 purchase of EDM (May 1999) along with my forensic findings, support this  
10 conclusion. None of the data or information I reviewed supports any other  
11 conclusion or otherwise refutes the authenticity of Mr. Pringle's claim.

12           10.    I have also reviewed the Declaration of Erik Laykin dated November  
13 14th, 2011, as well as the draft transcript of his deposition dated December 7, 2011,  
14 and offer an opinion as to some of the comments he made. A true and correct copy  
15 of my December 16, 2011 Rebuttal Report ("Rebuttal") containing those opinions is  
16 attached to this Declaration as Exhibit 2.

17           11.    Mr. Laykin stated in his declaration (page 4, paragraph 12) that Mr.  
18 Pringle reported his computer stolen in 2000 yet claimed he burned the music image  
19 to CD on May 17, 2001, thus could not have burned the CD-Rom containing his  
20 "Take a Dive" song at that time. Mr. Laykin seems to be basing the CD burn date of  
21 May 2001 from my declaration dated November 18, 2010. That burn date pertained  
22 to the first CD-Rom (Tag 1) analyzed and reported in that declaration. In my  
23 subsequent report dated August 6, 2011, in which I reported my findings for Tag 2,  
24 the CD-Rom containing the "Take a Dive" song, in paragraph 4C I stated:

25                    "I also examined the original CD-ROM (Tag 2) with a  
26 utility called NeroInfoTool, which determined that the  
27 content of this particular CD-ROM was created on "9  
28 September 1999" (i.e. the CD- ROM was burned  
September 9, 1999). This corresponds to the CD volume

1 name described above. NeroInfoTool is a free "non-  
2 forensic" application that identifies when a CD-ROM was  
3 burned, as well as other information concerning the  
4 computer's CD-ROM drives."

5 12. This burn date predates the theft of Mr. Pringle's property. I also  
6 reviewed the police report Mr. Pringle provided to me. He did not report his  
7 computer stolen, but rather "several items of music equipment" were stolen. The  
8 major items that were stolen were very specifically identified in the report, and it  
9 would be logical that if a computer had been stolen, Mr. Pringle would have listed it  
10 in the report. Mr. Pringle informed me that among the "several items of music  
11 equipment" were removable hard drives that contained the original compilations of  
12 the "Take a Dive" song. I also reviewed an excerpt of Mr. Pringle's deposition dated  
13 August 24, 2011, page 155, line 21 where he specifically stated he didn't recall if  
14 they stole his computer in 2000.

15 Q. So the hard drive that was taken along with the  
16 ASR-10 that was stolen, what was on that hard  
17 drive?

18 A. Well, there was many hard drives. It was  
19 instrumentation, MIDI 13:19:06 sequences,  
20 samples. I don't recall if they stole my computer too,  
21 but there was a lot of different drives and removable  
22 drives that were taken and basically just  
23 (demonstrating)

24 13. Mr. Laykin goes to great lengths to discuss the possibility of finding  
25 evidence Mr. Pringle downloaded the song, "I Gotta Feeling" from the Internet on  
26 the hard drive Mr. Pringle returned to the manufacturer due to defects. Mr. Pringle  
27 informed me he purchased his current computer in July 2004. He upgraded various  
28 hardware components on this computer through the years. It originally had a 200



1 GB hard drive which he upgraded to a 640 GB hard drive on/about May 18, 2009.  
2 At that time he reinstalled the operating system (Windows XP) from the original  
3 installation CD-ROM and transferred his data to the new drive. This would create a  
4 pristine installation without any residual system files (including Internet history)  
5 remaining from the previous hard drive. He also reinstalled the programs he  
6 commonly used and transferred data to the new hard drive. Again, this would not  
7 have transferred any system files (to include Internet history) to the new drive. On  
8 January 5, 2010, he purchased two new hard drives (500 GB each) and installed one  
9 in this system and believes he gave one to a friend. Again he reinstalled the  
10 operating system into the computer and transferred his data and programs to the new  
11 drive in the same manner as described above. No system files (including Internet  
12 history) would have transferred. In July/August 2011, Mr. Pringle began  
13 experiencing intermittent hardware issues with the computer and believed the issue  
14 may have been the hard drive he purchased in January 2010. On August 1, 2011,  
15 after receiving an return merchandise authorization (RMA) number from Western  
16 Digital, he returned the drive for an exchange after copying his data to an external  
17 source. He provided two copies of this data to me for safeguarding, and I provided  
18 one of these copies to Mr. Daniel Aga on August 8, 2011. Western digital shipped  
19 Mr. Pringle a replacement drive on August 9, 2011.

20 14. Internet browsers are typically configured by default to clear their  
21 internet history on a scheduled basis. Users can also manually delete the history at  
22 will, or set their browser to delete the history more or less frequently than the default  
23 settings, or automatically when they exit the program. These actions typically do a  
24 decent job of clearing the temporary internet files and cookies, but do on occasion  
25 leave remnants of files that can be forensically analyzed depending on how the  
26 remote web site was configured. For instance, sites that use the hypertext transfer  
27 protocol secure (HTTPS) protocol are designed to transmit the data in an encrypted  
28 format and the data that remains on the computer is encrypted. Sites that typically

1 use the HTTPS protocol are banking sites, most of the commonly used online email  
2 sites, or sites that accept credit card transactions. Computer forensics can not  
3 decrypt that data into clear text. In addition to history deletions, browsers now have  
4 an optional privacy function that prevents any browsing history from being written  
5 to the computer. This action thwarts computer forensics on systems unless they are  
6 forensically imaged on site while running since any remnant data that may remain  
7 will reside only in RAM. When a computer is turned off, for all intents and  
8 purposes, RAM is cleared of all data.

9       15. According to the web site [www.beatport.com](http://www.beatport.com)  
10 ([http://www.beatport.com/search?query=i%20gotta%20feeling&facets\[\]=fieldType:](http://www.beatport.com/search?query=i%20gotta%20feeling&facets[]=fieldType:)  
11 track), the song, "I Gotta Feeling" was first released on the site April 13, 2010. If  
12 Mr. Laykin's theory was accurate, then the internet history for the transaction would  
13 likely have been deleted either automatically or manually by Mr. Pringle through the  
14 course of normal computer activity. Also, if Mr. Laykin was accurate in portraying  
15 Mr. Pringle as a meticulous computer genius who was perpetrating a fraud, then one  
16 would expect him to not use his personal computer to download and create the  
17 music files, but would rather expect him to use an unknown computer. Mr. Laykin's  
18 theory is not consistent.

19       16. Additionally, the four available Black Eyed Peas' downloads all require  
20 the user purchase the download. In order to purchase the download, the user would  
21 need to create an account, log in and finalize the transaction with a credit card. As  
22 stated in paragraph 6 above, details of the credit card transaction would have been  
23 encrypted. Since the details of the credit card transaction, if it had been conducted,  
24 would be encrypted on on Mr. Pringle's defective hard drive (per Mr. Laykin's  
25 theory), an investigator would alternatively be able to obtain evidence of the  
26 purchase and download from Beatport.com. In my opinion, it would be better  
27 evidence to show a credit card purchase by Mr. Pringle to prove he actually  
28 downloaded the music - regardless of what computer he may have used.

1 Additionally, "Beatport" would likely have transaction logs that would show Mr.  
2 Pringle created an account that could be traced back to the Internet Protocol address  
3 of his computer. I left two messages (11-29-11 and 12-5-11) for Beatport to contact  
4 me to discuss these records - they did not return my calls.

5 17. One page 8, paragraph 28, Mr. Laykin stated, " In my experience, it is  
6 not uncommon for individuals who use CD Rom discs on a regular basis, such as  
7 those in the electronic music industry, to retain a number of unused CDs, and to  
8 burn data to those old CDs years later. CD Rom discs are often purchased in bulk,  
9 for instance in packages of 25, 50, 100 or even 250 discs. Indeed, Mr. Pringle  
10 testified to having repeatedly sent out demo CDs in batches as large as 200 at a time,  
11 over a period of many years. Pringle thus likely had access to old CDs from the late  
12 1990s which he could have used to burn the NRG discs in 2009 or 2010."

13 18. CD-Rom technology has evolved over the years. In the 1999 era, the  
14 technology was not reliable, the cost per disk was comparatively high, and most  
15 importantly, the successful burn rate was extremely low. I can attest to a success  
16 rate during that time frame of less than 50% and sometimes even lower. There is  
17 nothing unreliable about a CD-Rom that was able to be successfully burned. The  
18 issue was that it took many attempts and many CD-Roms before one could be  
19 burned successfully.

20 19. On page 8, paragraph 27, Laykin stated, "Similarly, older digital  
21 storage media such as CDs, which are also readily available for purchase, have been  
22 known to be used to make it more difficult to determine the true date of back-dated  
23 files."

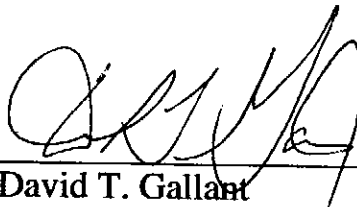
24 20. Contrary to Mr. Laykin's claim, "old digital storage media" from circa  
25 1999 is NOT readily available for purchase." I conducted a search on E-Bay for the  
26 Verbatim model 94328 CD-Rom used by Mr. Pringle to save the music files in  
27 question. There were NO vendors who could provide these CD-Roms. I then  
28 conducted a Google search for the Verbatim 94328 CD-Rom. None of the sites that

1 Google identified had any of these disks in inventory. I sent queries to some of the  
2 sites and they all responded that the particular CD-Rom was not available.

3 21. During his deposition on December 7, 2011, Mr. Laykin also discusses  
4 a theory that Mr. Pringle may have backdated the NRG files in question as well as  
5 the date the CD-Rom was burned. He stated that in order to attempt to prove that  
6 theory, a computer forensic examiner would need to have access to the computer  
7 used to perpetrate this fraud and that he had no proof to support this theory. He  
8 acknowledged in his deposition that he had no evidence to support his theory of  
9 backdating - including his analysis of the two CD-Roms I provided to him via Mr.  
10 Danial Aga on August 8, 2011.

11 I declare under penalty of perjury that the foregoing is true and correct.

12  
13 Executed this 18<sup>th</sup> day of December 2011.

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16   
17 David T. Gallant

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## CERTIFICATE OF SERVICE

1           On December 19, 2011, I electronically filed the foregoing DECLARATION  
2 OF DAVID T. GALLANT IN OPPOSITION TO DEFENDANTS' MOTION FOR  
3 SUMMARY JUDGMENT using the CM/ECF system which will send notification of  
4 such filing to the following registered CM/ECF Users:

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27           I am unaware of any attorneys of record in this action who are not registered  
28 for the CM/ECF system or who did not consent to electronic service.

          I certify under penalty of perjury under the laws of the United States of  
America that the foregoing statements are true and correct.

Dated: December 19, 2011        /s/Colin C. Holley

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