

EXHIBIT E



Transcript of the Testimony of **ERIK LAYKIN**

Date: December 7, 2011

Case: BRYAN PRINGLE v. WILLIAM ADAMS, et al.

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1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

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BRYAN PRINGLE, an individual,)
)
Plaintiff,)
)

vs.

) Case No.
) SACV 10-1656 JST(RZx)

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.)
_____)

DEPOSITION OF ERIK LAYKIN

TAKEN ON WEDNESDAY, DECEMBER 7, 2011, AT 9:49 A.M.

REPORTED BY:

TRACY M. FOX

CSR NUMBER 10449

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1 APPEARANCES OF COUNSEL (CONTINUED):

2

3 FOR THE DEFENDANTS UMG RECORDINGS, INC.,

4 and INTERSCOPE RECORDS:

5 CALDWELL LESLIE AND PROCTOR, PC

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Page 7

1 I N D E X

2

3 DEPONENT: EXAMINED BY: PAGE:

4 ERIK LAYKIN MR. HOLLEY 9, 145

5 MR. PINK 136

6 (AFTERNOON SESSION) 42

7

8

9 EXHIBITS FOR IDENTIFICATION:

10 DEPOSITION:

11 42 - Plaintiff's Notice of Deposition

12 of Erik Laykin 13

13

14 43 - Defendants' Responses and Objections

15 to Plaintiff's Notice of Deposition

16 and Requests for Documents to

17 Erik Laykin 14

18 44 - Chain-of-Custody Form 17

19 45 - Declaration of Erik Laykin 25

20 46 - Declaration of Erik Laykin in

21 Support of Defendants' Opposition

22 to Ex Parte Application of Plaintiffs

23 for a Temporary Restraining Order

24 and Order to Show Cause Regarding

25 Preliminary Injunction 28

47 - Plaintiff's Expert Disclosures

Pursuant to Rule 26(a)(2) of the

Federal Rules of Civil Procedure 122

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1 I N D E X (CONTINUED):

2

3 EXHIBITS FOR IDENTIFICATION:

4 DEPOSITION:

5 48-A - E-mail to info.uk@verbatim-europe.com

6 from Danny Aga dated 9/21/11 124

7

8 48-B - E-mail to daga@renewdata.com

9 from webmaster@ritekusa.com 124

10 48-C - Postings on MYCE Beta 124

11 48-D - Postings on MYCE Beta 124

12 48-E - Postings on digitalFAQ 124

13 48-F - E-mails between Danny Aga and

14 Carrie Ng 124

15

16 48-G - Postings on digitalFAQ 124

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18

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22 QUESTIONS UNANSWERED BY THE DEPONENT:

23

24

25

PAGE: LINE:

14 21

31 8

INFORMATION REQUESTED:

(NONE.)

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1 LOS ANGELES, CALIFORNIA, WEDNESDAY

2 DECEMBER 7, 2011

3 9:49 A.M.

4

5 ERIK LAYKIN,

6 called as a deponent and sworn in by

7 the deposition officer, was examined

8 and testified as follows:

9

10 DEPOSITION OFFICER: Would you raise

11 your right hand.

12 (DEPONENT COMPLIED.)

13 DEPOSITION OFFICER: Do you solemnly

14 state that the testimony you are about to give in the

15 following deposition will be the truth, the whole

16 truth, and nothing but the truth, so help you God?

17 THE DEPONENT: Yes.

18 DEPOSITION OFFICER: Thank you.

19

20 EXAMINATION

21 BY MR. HOLLEY:

22 Q. Good morning.

23 A. Good morning.

24 Q. Could you state your full name and

25 spell it for the court reporter, please.

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1 A. Erik Laykin. E-r-i-k, L-a-y-k-i-n.
 2 Q. Good morning, Mr. Laykin.
 3 A. Good morning.
 4 Q. I take it from the materials -- your
 5 declaration and some of the materials produced in
 6 this case -- that you have had your deposition taken
 7 many times; is that right?
 8 A. Yes.
 9 Q. Approximately how many times?
 10 A. 20 or 30 times.
 11 Q. And as an expert witness in other
 12 cases?
 13 A. Yes.
 14 Q. All right. So you understand the
 15 process.
 16 I just want to make sure you
 17 understand you are testifying under oath as if you
 18 were in a court of law.
 19 Do you understand that?
 20 A. Yes.
 21 Q. If you want to take a break at any
 22 time, just let me know. I just ask that if I have a
 23 question pending, you answer the question and then
 24 ask for a break; okay?
 25 A. Yes.

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1 MR. MILLER: Colin, you suggested that
 2 I do this on the record.
 3 MR. HOLLEY: Go ahead.
 4 MR. MILLER: Before the deposition
 5 started today, I was having trouble with my e-mail
 6 this morning. I intended to e-mail you these
 7 documents this morning.
 8 I gave you the Defendants' Responses
 9 and Objections to Plaintiff's Notice of Deposition
 10 and Requests for Documents to Erik Laykin that we
 11 were served with on Monday.
 12 And then I also produced to you a
 13 document that, from what I understand, is a
 14 chain-of-custody form that we received from
 15 Mr. Laykin.
 16 MR. HOLLEY: Okay. And I'll have
 17 Mr. Laykin walk me through those documents in a
 18 second.
 19 MR. MILLER: And just for the record,
 20 unfortunately I just didn't have time to Bates-stamp
 21 that document.
 22 MR. HOLLEY: And my understanding is
 23 that you are going to serve the responses and
 24 objection to the notice of deposition at some point
 25 today.

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1 MR. MILLER: Exactly. I'll do it
 2 formally with a notice -- or a proof of service.
 3 MR. HOLLEY: Okay.
 4 MR. MILLER: Again, I just didn't have
 5 time to do that.
 6 MR. HOLLEY: For the record, they have
 7 been served, at least to me, before we started.
 8 I understand that.
 9 MR. MILLER: Okay. Thank you very
 10 much.
 11 MR. HOLLEY: Does anybody have any
 12 admonitions they'd like to add before we go forward?
 13 (NO AUDIBLE RESPONSE BY ALL COUNSEL.)
 14 MR. HOLLEY: Okay. The next question
 15 is: Does anybody know what the next exhibit number
 16 in sequence is?
 17 MR. PINK: No.
 18 MR. HOLLEY: Let's go off the record
 19 for a second.
 20 DEPOSITION OFFICER: Off the record.
 21 (WHEREUPON, A RECESS WAS HELD
 22 FROM 9:52 A.M. TO 10:14 A.M.)
 23 DEPOSITION OFFICER: Back on the
 24 record?
 25 MR. HOLLEY: Back on the record.

Page 13

1 Mark this as Exhibit 42, please.
 2 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER
 3 42 WAS MARKED FOR IDENTIFICATION BY
 4 THE DEPOSITION OFFICER.)
 5 DEPOSITION OFFICER: Here you go.
 6 MR. HOLLEY: Thank you.
 7 BY MR. HOLLEY:
 8 Q. Mr. Laykin, Exhibit 42 is plaintiff's
 9 notice of your deposition in this case, which was
 10 served just two days ago on Monday.
 11 Have you seen this document before?
 12 A. Yes.
 13 Q. And if you turn to page 2, Appendix A
 14 has a list of documents to be produced.
 15 DEPOSITION OFFICER: One moment,
 16 please.
 17 (DUE TO TECHNICAL ISSUES, A RECESS
 18 WAS HELD FROM 9:52 A.M. TO 10:14 A.M.)
 19 MR. HOLLEY: Back on the record.
 20 DEPOSITION OFFICER: Back on the
 21 record.
 22 BY MR. HOLLEY:
 23 Q. Have you discussed this list of
 24 documents with counsel?
 25 A. Yes.

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1 Q. And who did you discuss it with
 2 specifically?
 3 A. Don Miller and Tal Dickstein.
 4 Q. And is it your understanding that
 5 Loeb and Loeb, on behalf of Shapiro Bernstein and
 6 Company, David Guetta, and Frederic Riesterer, served
 7 responses and objections to the deposition notice
 8 we're looking at?
 9 A. Yes.
 10 MR. HOLLEY: Let's mark that as
 11 Exhibit 43.
 12 (WHEREUPON, DEPOSITION EXHIBIT NUMBER
 13 43 WAS MARKED FOR IDENTIFICATION BY
 14 THE DEPOSITION OFFICER AND ARE ATTACHED
 15 HERETO.)
 16 BY MR. HOLLEY:
 17 Q. Have you reviewed or seen the
 18 responses and objections to your deposition notice
 19 that's been marked as Exhibit 43?
 20 A. No.
 21 Q. Did you discuss with Mr. Miller and
 22 Mr. Dickstein whether there were any categories of
 23 documents listed in the deposition notice that were
 24 not going to be produced?
 25 MR. MILLER: I'm going to have to

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1 object to that question.
 2 I allowed the previous question. It
 3 was borderline on privilege. This one seems to be
 4 going too much into privileged communications based
 5 on work product, so I'm going to have to instruct the
 6 witness not to answer that question.
 7 BY MR. HOLLEY:
 8 Q. Which categories of documents have you
 9 produced from this list?
 10 MR. MILLER: And I'll object to
 11 "produce" as vague.
 12 (DOCUMENT REVIEWED BY THE DEPONENT.)
 13 THE DEPONENT: Category 3.
 14 BY MR. HOLLEY:
 15 Q. Okay.
 16 A. And Category 9 and Category 10 --
 17 excuse me -- and Category 6.
 18 Q. Anything else?
 19 A. No.
 20 Q. Okay. Have you produced everything
 21 you relied upon in preparing the declaration in
 22 support of summary judgment that was filed in this
 23 case?
 24 MR. MILLER: Again, I'll object to
 25 "produce" as vague.

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1 If you -- I don't want to testify for
 2 the witness, but just to help you out, Counsel.
 3 If you read the response and
 4 objections, it tells -- because of the time -- the
 5 timing of when we got these requests was on Monday.
 6 We tried to help you out in directing
 7 you where you could find a list of documents, where
 8 you could find his CV, where you could find the list
 9 of cases.
 10 We just simply didn't have time to get
 11 the materials together.
 12 MR. HOLLEY: Is that an extra copy of
 13 the response?
 14 MR. MILLER: Yes.
 15 (DOCUMENT HANDED TO COUNSEL.)
 16 MR. MILLER: So, for example, whereas
 17 the witness just testified he, quote/unquote,
 18 "produced" documents as to Number -- I think he said
 19 Number 3, we produced -- again, quote/unquote --
 20 "produced" in response to Number 1 by directing you
 21 to where you could find those documents, specifically
 22 telling you that they had already been produced.
 23 They're pleadings in the case.
 24 And referring you to paragraph 19 of
 25 Mr. Laykin's expert report, it gives you the list of

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1 documents he relied upon.
 2 BY MR. HOLLEY:
 3 Q. And we'll go through -- with respect
 4 to each opinion, we'll go through more specifically
 5 what supports it and where we can find that
 6 information; okay?
 7 A. Okay.
 8 MR. HOLLEY: Let's mark this as
 9 Exhibit 44.
 10 (WHEREUPON, DEPOSITION EXHIBIT NUMBER
 11 44 WAS MARKED FOR IDENTIFICATION BY
 12 THE DEPOSITION OFFICER AND IS ATTACHED
 13 HERETO.)
 14 THE DEPONENT: Thank you.
 15 (DOCUMENT REVIEWED BY THE DEPONENT.)
 16 MR. HOLLEY: I've just marked as
 17 Exhibit 44 the documents that Mr. Miller provided
 18 this morning.
 19 BY MR. HOLLEY:
 20 Q. Mr. Laykin, can you take me through
 21 each page of this document and explain to me what
 22 this document contains?
 23 A. Yes.
 24 The first page of Exhibit 44 is a
 25 Duff & Phelps Chain of Custody Form, which indicates

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1 that we took possession of three evidence -- three
 2 items of evidence with the internal numbers -- I
 3 should say the Duff & Phelps internal numbers of
 4 049377-01 -- excuse me -- 020001, 020002, and 020003.
 5 They represented two CDs and one DVD,
 6 and were collected by Danny Aga in Texas from
 7 David Gallant on August 8th, 2011.
 8 Q. It looks like the date received says
 9 "8/8/9."
 10 Is that --
 11 A. The date -- well, the acquisition date
 12 up at the top says "8/8/11."
 13 MR. MILLER: Right.
 14 THE DEPONENT: And then the date
 15 received in the Details of Transfer says "8/8/9," so
 16 I'm interpreting that as a typo.
 17 BY MR. HOLLEY:
 18 Q. Okay.
 19 A. The second page is a Data Acquisition
 20 Form, also from Duff & Phelps, which provides
 21 additional detail on the first of the three items
 22 referenced on the Chain of Custody Form.
 23 This Data Acquisition Form references
 24 evidence number 049377-020001. And it references a
 25 CD serial number of 130-H912072346D, as in David,

Page 19

1 10.
 2 And the CD was a CD that was in the
 3 possession of Bryan Pringle prior to imaging, and it
 4 was acquired by Danny Aga at Duff & Phelps' direction
 5 in Texas.
 6 Q. Who is Danny Aga?
 7 A. Danny Aga is a subcontractor to
 8 Duff & Phelps who resides in Austin, Texas. He is a
 9 computer-forensic expert.
 10 Q. Okay. Next page.
 11 A. The third page features a photographic
 12 reproduction of an optical disc with a serial number
 13 that matches the one that I just mentioned and also
 14 has the marking on it of 5/7/10, and what appears to
 15 be a handwritten note of "E-n-s-a-v." The rest of it
 16 is obscured, although I believe that it once may have
 17 said "Ensoniq," which is E-n-s-o-n-i-q.
 18 It also appears to say in handwritten
 19 marker, disc 3", although it's rather obscured. I
 20 can really only make out the "d-i-s" and perhaps part
 21 of a "k" and part of a "3," or even maybe a "2," for
 22 that matter. I'm not quite sure.
 23 Q. Do you know who added the handwriting
 24 to this disc?
 25 A. No.

Page 20

1 Q. Next page?
 2 A. The fourth page is a Data Acquisition
 3 Form from Duff & Phelps, which references the
 4 evidence number of 049377-020002.
 5 This also references a CD which was
 6 acquired from Bryan Pringle by Danny Aga in Texas on
 7 August 8th, 2011.
 8 And this particular CD had a serial
 9 number of 9E, as in Edward, 24F, as in Frank,
 10 221861.
 11 Q. And the next page?
 12 A. The fifth page appears to be a
 13 photographic reproduction of an optical disc. It's a
 14 poor quality reproduction and one can only see the
 15 outlines of the disc; however, it also appears that
 16 there was writing on the disc which reads "Promo
 17 Photos/1999," and then "Ensoniq" -- E-n-s-o-n-i-q --
 18 ".dot.nrg files."
 19 It also has what appears to be an "at"
 20 sign or a copyright sign, 12/21, slash -- I can't
 21 really make out the final date. It could be an '80
 22 or a '90 or a '10.
 23 Q. Do you know who added the handwriting
 24 to this disc?
 25 A. No.

Page 21

1 The disc also has the serial number
 2 imprinted in dot-matrix form in the center of the
 3 disc, and that serial number matches the serial
 4 number that I previously gave on the acquisition
 5 form.
 6 Q. And the next page?
 7 A. The next page, page 6, represents a
 8 Duff & Phelps Data Acquisition Form with the evidence
 9 number of 049377-020003.
 10 This represents the acquisition of a
 11 DVD from Bryan Pringle, also in Texas, by Danny Aga,
 12 date of 08/09/2011.
 13 Q. Okay. Next page.
 14 A. The next page -- page 7, I believe, is
 15 a page that contains the graphical logo of a company
 16 known as GCIS, or known as Gallant -- which is
 17 G-a-l-l-a-n-t -- Computer Investigative Services,
 18 LLC.
 19 It also contains a heading at the top
 20 of the page with the Gallant Computer Investigative
 21 Services name, address, telephone number, and website
 22 address.
 23 And it has a title of "Chain of
 24 Custody Form." It includes a reference for a case
 25 number, but there is none. It also has a subtitle

Page 22

1 which says "Photos of Evidence."
 2 Below that there are four boxes, one
 3 of which has a photographic reproduction of an
 4 optical disc which appears to be contained in a box
 5 container of some sort. And that optical disc is
 6 labeled "Backup disc 2011."
 7 The three additional boxes contain
 8 text which reads "Photo Here."
 9 Q. Do you believe the disc, a photo of
 10 which is on this page, that has the writing "Backup
 11 disc 2011" to be the media referenced on the prior
 12 page?
 13 A. The media referenced on the prior page
 14 in the comment section says "Labeled (Sharpie),
 15 Backup disc 2011," which would be consistent with
 16 what I'm seeing on the following page under "Photos
 17 of Evidence."
 18 I have not physically seen the disc so
 19 I can't affirm it entirely, but the Data Acquisition
 20 Form and the photograph do appear to match.
 21 Q. Have you physically seen any of the
 22 discs we've looked at in this document -- photos of
 23 in this document?
 24 A. No.
 25 Q. And the next page?

Page 23

1 A. The next page is also a document that
 2 contains the aforementioned Gallant Computer
 3 Investigative Services logo.
 4 And the information at the top of the
 5 page is also entitled "Chain of Custody Form." In
 6 this particular page, it does have a case number,
 7 which is 201012701.
 8 And this appears to be a chain of
 9 custody created on 8/8/2011 by David Gallant in which
 10 he indicates that he has received one DVD
 11 hand-labeled, quote, "Backup disc 2011," end quote,
 12 with a serial number of F, as in Frank, 00901D, as in
 13 David, 22.
 14 It's released by an individual with a
 15 signature that I cannot read. And it's received by a
 16 signature of an individual that I cannot read,
 17 although I do see what appears to be a G in it, so it
 18 should be David Gallant.
 19 Q. And then at the bottom there's a
 20 release to Mr. Aga?
 21 A. Yes.
 22 At the bottom it indicates that it is
 23 released to Danny Aga, my representative. And it is
 24 signed by what I believe to be Danny Aga's signature
 25 on August 8th, 2011.

Page 24

1 Q. Okay. Next page.
 2 A. The next page is titled disc 05," and
 3 then followed with what says "Important Notes." And
 4 then following that is a paragraph that -- of English
 5 text that is --
 6 Q. Well, you don't have to read it.
 7 A. Right. Okay.
 8 Q. You can just describe it.
 9 A. It appears to have notes concerning
 10 the disc and the characteristics of the disc known as
 11 Disc 05, or at least that's how I would interpret it.
 12 And it's followed by a directory
 13 listing which is titled "D-i-r" space, "1." And
 14 underneath that is a listing of what appear to be
 15 songs and track numbers.
 16 Q. And then there are directory listings
 17 through Directory 10; is that right?
 18 A. Directory listings, 2, 3, 4. On the
 19 next page it continues, 5, 6, 7, 8. On the next page
 20 it continues 9 and 10, many of which have track
 21 numbers with what appear to be either songs or
 22 samples of musical files.
 23 Q. And the entirety of Exhibit 44
 24 consists of documents from your file; is that
 25 right?

Page 25

1 A. Yes.
 2 Q. And where did you get these documents,
 3 you personally?
 4 A. These documents were provided to me by
 5 my Los Angeles-based Duff & Phelps' staff.
 6 MR. HOLLEY: All right.
 7 Exhibit 45.
 8 (WHEREUPON, DEPOSITION EXHIBIT NUMBER
 9 45 WAS MARKED FOR IDENTIFICATION BY
 10 THE DEPOSITION OFFICER AND IS ATTACHED
 11 HERETO.)
 12 THE DEPONENT: Thank you.
 13 MR. HOLLEY: Take as much time as you
 14 need, and let me know if you recognize Exhibit 45.
 15 (DOCUMENT REVIEWED BY THE DEPONENT.)
 16 THE DEPONENT: Yes, I recognize
 17 Exhibit 45.
 18 BY MR. HOLLEY:
 19 Q. What is Exhibit 45?
 20 A. It's a document entitled "Declaration
 21 of Erik Laykin."
 22 Q. And is it your understanding that this
 23 declaration was submitted in support of a motion for
 24 summary judgment on behalf of some of the defendants
 25 in this case?

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1 A. Yes.
 2 Q. If you turn to page 12 of the
 3 declaration, is that your signature on page 12?
 4 A. Yes.
 5 Q. And you signed this document?
 6 A. Yes.
 7 Q. On November 14th?
 8 A. Yes.
 9 Q. Did you personally draft any part of
 10 this declaration?
 11 A. Yes.
 12 Q. Did anyone else assist with the
 13 drafting of this declaration?
 14 A. No.
 15 Q. So you typed the entirety of the
 16 declaration yourself?
 17 A. Yes.
 18 Q. All right. Do you recall that in this
 19 lawsuit you also submitted a prior declaration in
 20 connection with defense opposition to motion for an
 21 injunction?
 22 Do you recall that?
 23 A. Yes.
 24 Q. And that was fairly early in the
 25 case -- right? -- if you recall.

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1 A. Yes.
 2 Q. Are there any opinions in your prior
 3 declaration, if you can recall as you sit here today,
 4 that are not also set forth to some extent -- let me
 5 say that again.
 6 Are there any opinions in that prior
 7 declaration that you, for want of a better word,
 8 discarded when you prepared this declaration?
 9 MR. MILLER: Objection; vague and
 10 ambiguous.
 11 THE DEPONENT: Not that I recall.
 12 BY MR. HOLLEY:
 13 Q. What I'm trying to get a sense of, is
 14 it fair to say that your summary-judgment declaration
 15 is a more fully developed statement of your opinions
 16 than your prior declaration?
 17 MR. MILLER: Objection; vague and
 18 ambiguous.
 19 MR. PINK: Join.
 20 THE DEPONENT: Yes.
 21 BY MR. HOLLEY:
 22 Q. Are there any opinions in your prior
 23 declaration that you no longer hold, sitting here
 24 today?
 25 A. I don't recall. I'd have to read the

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1 former declaration --
 2 Q. Okay.
 3 A. -- to review it.
 4 Q. Okay.
 5 A. But I do not recall any positions or
 6 opinions that I no longer hold.
 7 Q. You don't recall changing your mind
 8 about any opinion you previously held in this case;
 9 is that right?
 10 MR. MILLER: Objection; vague and
 11 ambiguous.
 12 THE DEPONENT: I do not recall
 13 changing my mind.
 14 DEPOSITION OFFICER: Please remember
 15 to keep your voice up.
 16 THE DEPONENT: Sorry.
 17 MR. HOLLEY: Let's go ahead and mark
 18 this as Exhibit 46.
 19 (WHEREUPON, DEPOSITION EXHIBIT NUMBER
 20 46 WAS MARKED FOR IDENTIFICATION BY
 21 THE DEPOSITION OFFICER AND IS ATTACHED
 22 HERETO.)
 23 DEPOSITION OFFICER: Here you go.
 24 THE DEPONENT: Thank you.
 25 MR. PINK: Thanks.

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1 MR. MILLER: Thanks.
 2 MR. HOLLEY: Uh-huh.
 3 BY MR. HOLLEY:
 4 Q. Take as much time as you need and
 5 let me know once you've had a chance to review
 6 Exhibit 46.
 7 (DOCUMENT REVIEWED BY THE DEPONENT.)
 8 BY MR. HOLLEY:
 9 Q. Are you familiar with this document?
 10 A. Yes.
 11 Q. What is it?
 12 A. It's -- this is the "Declaration of
 13 Erik Laykin in Support of Defendants' Opposition to
 14 Ex Parte Application of Plaintiffs for a Temporary
 15 Restraining Order and Order to Show Cause Regarding
 16 Preliminary Injunction."
 17 Q. And if you turn to page 10 of this
 18 document, is that your signature?
 19 A. Yes.
 20 Q. Did you sign this declaration on
 21 November 23rd, 2010?
 22 A. Yes.
 23 Q. Did you prepare any portion of this
 24 declaration yourself?
 25 A. Yes.

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1 Q. Did anyone else participate in
 2 preparing this declaration?
 3 And let me just clarify, other than
 4 the cover page. If you look at page 2, there's a
 5 title "Declaration of Erik Laykin."
 6 From that page, which is the second
 7 page of the exhibit, through the end of this
 8 document, did you prepare all of that material
 9 yourself?
 10 A. Can you define the word "prepare"?
 11 Q. Did you type it?
 12 A. Yes.
 13 Q. If you could turn to page 3, please.
 14 A. Okay.
 15 Q. Who was the first person who contacted
 16 you regarding -- well, potentially serving as an
 17 expert witness in connection with this lawsuit?
 18 A. I don't recall the name.
 19 Q. Okay. It was an attorney?
 20 A. I believe it was an attorney and a
 21 colleague of Kara Cenar of Bryan Cave.
 22 Q. Who was the first person who discussed
 23 what your assignment in this litigation would be with
 24 you?
 25 A. To the best my recollection, it would

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1 have been Kara Cenar.
 2 Q. What did she describe the assignment
 3 as the first time you talked to her?
 4 A. The assignment was described to me as
 5 an examination of digital files to determine the
 6 authenticity of those files and to determine the date
 7 in which the files were created.
 8 Q. Was there, when you first talked to
 9 Ms. Cenar, a particular party on whose behalf you
 10 were given this assignment?
 11 A. She indicated that her client --
 12 MR. MILLER: Let me object to that
 13 question.
 14 We're going outside the scope of the
 15 facts and data that you provided to form an opinion,
 16 so I'll have to instruct the witness not to answer
 17 that question.
 18 MR. HOLLEY: You're going to instruct
 19 him not to answer? He's not going to tell me who
 20 he's testifying on behalf of?
 21 MR. MILLER: No.
 22 If you want to ask that question, you
 23 can ask him upon whose party is he testifying. What
 24 you asked him is who -- "What did she tell you?" --
 25 or "What did he tell you is your assignment?"

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1 Different question.
 2 BY MR. HOLLEY:
 3 Q. Mr. Laykin, is it your understanding
 4 that you, since your engagement in connection with
 5 this lawsuit, have been retained to provide testimony
 6 on behalf of the same group of defendants for the
 7 entirety of the lawsuit or has that changed since
 8 you've gotten involved in the lawsuit?
 9 A. My awareness of the defendants has
 10 evolved over time.
 11 Q. Can you explain that for me.
 12 A. I initially was aware in my first
 13 telephone conversation that there was one defendant,
 14 a musical group known as The Black Eyed Peas and the
 15 individuals contained within that group.
 16 Subsequent to that, as I received more
 17 information, I learned that there were additional
 18 defendants.
 19 Q. That you also are providing testimony
 20 on behalf of in this case?
 21 A. Yes.
 22 Q. What additional defendants are you
 23 currently aware that you are providing testimony on
 24 behalf of?
 25 A. I would have to read the caption to

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1 give you all of their names. I don't recall all of
 2 their names off the top of my head.
 3 DEPOSITION OFFICER: Keep your voice
 4 up, please.
 5 THE DEPONENT: I'm sorry. Did you
 6 hear what I just said?
 7 DEPOSITION OFFICER: I did, but I'm
 8 working really hard to hear you.
 9 THE DEPONENT: Okay.
 10 BY MR. HOLLEY:
 11 Q. So at the outset, the assignment you
 12 understood you were given was an examination of
 13 digital files to determine authenticity and to
 14 determine the date in which files were created.
 15 Did the assignment in this lawsuit
 16 change in any way since that first discussion?
 17 Is your assignment broader now?
 18 Narrower? What is it now?
 19 A. The assignment evolved insofar that I
 20 was subsequently asked to prepare a declaration on my
 21 findings.
 22 However, the fundamental task is still
 23 the same as it was initially, to determine the
 24 authenticity of the files that were brought to my
 25 attention and to determine whether or not they were

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1 created or copied or saved on the dates that -- or to
 2 determine which dates those files were either
 3 created, saved, or copied.
 4 Q. Is there any other aspect of the
 5 assignment you've been asked to complete in this
 6 case?
 7 A. Not that I recall.
 8 Q. Have you been asked to opine in any
 9 respect on the issue of spoliation?
 10 A. I have commented on spoliation. I
 11 don't recall if I was specifically asked to.
 12 Q. In what respect have you commented on
 13 spoliation in this lawsuit?
 14 A. I commented in the declaration -- the
 15 most recent declaration -- that as a result of the
 16 discarding of important evidentiary media, spoliation
 17 has occurred in this matter.
 18 Q. Did you use the word "spoliation" in
 19 your declaration, if you recall?
 20 (DOCUMENT REVIEWED BY THE DEPONENT.)
 21 THE DEPONENT: I don't believe that I
 22 used the specific word "spoliation."
 23 BY MR. HOLLEY:
 24 Q. Okay. Are you familiar with the
 25 meaning of the term "spoliation" in the work that you

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1 do?
 2 A. Yes.
 3 Q. What do you understand it to mean?
 4 A. The alteration, modification,
 5 deletion, removal, obfuscation of evidence that is
 6 relevant to a matter by a party.
 7 Q. Do you have an understanding of the
 8 potential ramifications of spoliation by a party in
 9 civil litigation in the Ninth Circuit?
 10 A. I have a general understanding.
 11 Q. What's your general understanding?
 12 A. My general understanding is that a
 13 party could be subject to an adverse inference or
 14 sanctions or other negative rulings.
 15 Q. From where do you gain that
 16 understanding?
 17 A. Observations of cases that I have read
 18 about in the press as well as within -- or I should
 19 say information that I've learned through attending
 20 industry conferences --
 21 DEPOSITION OFFICER: I can't hear
 22 you --
 23 THE DEPONENT: I'm sorry.
 24 ...information that I've learned by
 25 attending conferences on electronic discovery and

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1 through direct experience with cases where spoliation
 2 has been an issue.
 3 MR. MILLER: You're not on video and I
 4 can hear you fine. But if you want to face that
 5 direction, that's fine with me.
 6 THE DEPONENT: Thank you.
 7 BY MR. HOLLEY:
 8 Q. Mr. Laykin, do you have a legal degree
 9 of any kind?
 10 A. No.
 11 Q. Do you know what the test is within
 12 the Ninth Circuit for a judge's exercise in
 13 discretion to impose any of the sanctions or
 14 inferences that you've referenced?
 15 A. No.
 16 Q. Are you opining in this case one way
 17 or another as to whether an adverse inference or any
 18 other sanctions should be imposed against Mr. Pringle
 19 based on spoliation?
 20 MR. PINK: I'm not sure I heard that.
 21 Did you say is he "opining"?
 22 MR. HOLLEY: Correct.
 23 MR. PINK: Thank you.
 24 THE DEPONENT: It would be outside the
 25 scope of my expertise to opine as to what a Court

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1 should or should not do as it relates to the
 2 spoliation that took place in this case.
 3 BY MR. HOLLEY:
 4 Q. Are you opining that spoliation did
 5 take place?
 6 A. Based on the record and the available
 7 information that I have, yes.
 8 Q. Is it your belief that you have
 9 reviewed all evidence available in the case that
 10 might bear upon whether there has been spoliation?
 11 MR. PINK: Objection; overly broad,
 12 vague and ambiguous.
 13 MR. MILLER: Join.
 14 THE DEPONENT: I do not know if I have
 15 reviewed all of the available evidence because I do
 16 not know what has not been produced.
 17 BY MR. HOLLEY:
 18 Q. Have you reviewed every deposition
 19 that was taken in this case?
 20 A. I do not know.
 21 Q. Okay.
 22 A. But I'm not aware of a list of all of
 23 the depositions, so I would not be able to say one
 24 way or the other.
 25 Q. Do you know whether or not you have

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1 reviewed all of the documents that the plaintiff has
 2 produced in the case?
 3 A. I have reviewed all of the documents
 4 that the plaintiff has produced to me, yes.
 5 Q. Well, did the plaintiff produce
 6 anything directly to you?
 7 A. Yes.
 8 Q. How did -- in terms of the chain of
 9 custody you looked at?
 10 A. Yes.
 11 Q. Have you reviewed all of the documents
 12 that the plaintiff produced in this case to the
 13 defendants?
 14 A. I do not know.
 15 Q. Have you, for instance, reviewed any
 16 documentation regarding police reports in connection
 17 with thefts of Mr. Pringle's property?
 18 A. Yes.
 19 Q. Do you have any understanding one way
 20 or another whether a motion has been filed in this
 21 case to seek any of the adverse inferences or
 22 sanctions that you've described?
 23 A. No.
 24 Q. Have you spoken directly with any of
 25 the parties to this case?

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1 A. Yes.
 2 Q. With whom have you spoken?
 3 A. William Adams, Jr.
 4 Q. Is Mr. Adams the only party to this
 5 lawsuit that you've spoken directly to?
 6 A. Yes.
 7 Q. And when did you speak to Mr. Adams?
 8 A. I don't recall the exact date, but it
 9 was, from memory, late August, early September of
 10 2011.
 11 Q. How many times did you speak to him?
 12 A. Three or four.
 13 Q. And how many -- how long did you speak
 14 each time?
 15 A. I had a couple of short conversations
 16 and then a longer conversation which lasted a few
 17 hours.
 18 Q. What were the topic areas that you
 19 talked to him about?
 20 A. We talked about a recording that he
 21 was trying to retrieve from a BlackBerry. And we
 22 talked about our shared experiences in the same
 23 school. And we talked about the advantages or
 24 disadvantages of using iPhones versus BlackBerries.
 25 I'm sure the conversation covered a

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1 few other issues, but I don't recall at this time
 2 what they were.
 3 Q. Do you recall anything else about what
 4 type of recording Mr. Adams was trying to find from a
 5 BlackBerry?
 6 A. It was a recording of a voice note
 7 that he had made using the BlackBerry voice-note
 8 function on one of his BlackBerries.
 9 Q. Did he describe to you anything about
 10 the subject matter of the voice mail?
 11 A. It had to do with a -- I'm not in the
 12 music business, but I would call it a riff that he
 13 had developed and recorded on the BlackBerry that he
 14 was attempting to recover.
 15 Q. Did it have anything to do with the
 16 songs at issue in this case, to your understanding?
 17 A. No.
 18 Q. Did you discuss with Mr. Adams
 19 anything having to do with this lawsuit, to your
 20 recollection?
 21 A. Yes.
 22 Q. What was that?
 23 A. He indicated his displeasure.
 24 (WHEREUPON, THERE WAS AN INTERRUPTION IN
 25 PROCEEDINGS DUE TO BUILDING FIRE DRILL.)

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1 MR. HOLLEY: Off the record.
 2 DEPOSITION OFFICER: Off the record.
 3 (WHEREUPON, A LUNCHEON RECESS WAS
 4 HELD FROM 11:01 A.M. TO 12:21 P.M.)
 5 ///
 6 ///
 7 ///
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1 LOS ANGELES, CALIFORNIA, WEDNESDAY
 2 DECEMBER 7, 2011
 3 12:21 P.M.
 4
 5 DEPOSITION OFFICER: Back on the
 6 record?
 7 MR. HOLLEY: Yes.
 8
 9 EXAMINATION (RESUMED)
 10 BY MR. HOLLEY:
 11 Q. Before we broke, Mr. Laykin, you had
 12 testified that during a discussion with Mr. Adams, he
 13 said something about his displeasure.
 14 Do you remember that testimony?
 15 A. Yes.
 16 Q. What more can you recall about his
 17 statement of displeasure?
 18 MR. PINK: Objection; overly broad.
 19 THE DEPONENT: I recall that we had a
 20 brief discussion in which he expressed his
 21 displeasure over the issue of this particular case.
 22 I don't recall any specifics that I
 23 could add.
 24 BY MR. HOLLEY:
 25 Q. You don't recall specifically what he

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1 said?
 2 A. No. We didn't discuss the facts of
 3 the case, if I remember correctly.
 4 Q. Is there anything else beyond that
 5 particular topic you can recall discussing with
 6 Mr. Adams that relates to this lawsuit?
 7 A. No.
 8 Q. Did your discussion with Mr. Adams
 9 happen at your request?
 10 A. No.
 11 Q. What was the reason for having a call
 12 with Mr. Adams, if it was a call?
 13 MR. MILLER: Thank you.
 14 THE DEPONENT: It was an in-person
 15 meeting, a couple of in-person meetings, to address
 16 the issues of his BlackBerry.
 17 BY MR. HOLLEY:
 18 Q. And that issue was separate from your
 19 representation for purposes of this lawsuit; is that
 20 right?
 21 A. I believe so, yes.
 22 Q. Okay. Have you done any other work
 23 for Mr. Adams before your involvement in this
 24 lawsuit?
 25 A. No.

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1 Q. Okay.
 2 A. Excuse me. I'm sorry to jump out of
 3 my seat. I just remembered. I retract my answer.
 4 I did, yes.
 5 Q. And what was that?
 6 A. I built a website -- actually, I think
 7 their first website, The Black Eyed Peas' first
 8 website, back in the 1990s when I owned a
 9 web-development company.
 10 The client actually, I believe, was
 11 Interscope Records at the time.
 12 Q. Beyond building that website, have you
 13 ever done any other work apart from this lawsuit for
 14 either The Black Eyed Peas or Interscope?
 15 A. I may have had -- I may have had other
 16 projects for Interscope Records that I don't recall
 17 at this time, but not for The Black Eyed Peas, no.
 18 Q. Do you know one way or another whether
 19 Ms. Cenar got your contact information from The Black
 20 Eyed Peas or Interscope before she contacted you?
 21 MR. PINK: Objection; overly broad,
 22 also lacks relevance.
 23 THE DEPONENT: I believe Ms. Cenar was
 24 referred to one of my partners in my Chicago office
 25 by the name of Peggy Daley, and Peggy Daley

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1 introduced her to me.
 2 BY MR. HOLLEY:
 3 Q. Referred by whom?
 4 A. I don't understand the question.
 5 Q. Who referred Ms. Cenar to your
 6 partner?
 7 A. I do not know.
 8 Q. Okay.
 9 A. I may have known a year and a half
 10 ago. I don't recall at this time.
 11 Q. Okay.
 12 A. I believe I had earlier testified that
 13 there was another individual that I initially spoke
 14 with before Ms. Cenar.
 15 Q. Right.
 16 A. So that individual may have been the
 17 person, and I don't recall the name.
 18 Q. So you don't know whether your firm's
 19 involvement in this case was a result of a suggestion
 20 from The Black Eyed Peas or Interscope?
 21 A. I don't know that. And I would
 22 venture to guess that they -- that Interscope or The
 23 Black Eyed Peas would not have referred Ms. Cenar to
 24 my firm because of me.
 25 I don't believe there was any

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1 connection --

2 Q. Okay.

3 A. -- if that's the question.

4 Q. All right. So the fact that you did

5 work for The Black Eyed Peas and/or Interscope on the

6 website in the past is a coincidence?

7 A. Yes, it is a coincidence.

8 Q. Okay.

9 A. And it was my -- it was the firm that

10 I owned that did the work for Interscope at the

11 time.

12 Q. Not your current firm?

13 A. Correct, a predecessor firm.

14 Q. And I believe you testified that

15 Mr. Adams was the only party to this lawsuit with

16 whom you directly had spoken regarding this lawsuit;

17 is that right?

18 A. I believe so, to the best of my

19 recollection.

20 Q. Have you communicated with either

21 Mr. Adams or any other party to this lawsuit in

22 writing regarding the lawsuit?

23 A. Any other party to the lawsuit?

24 Q. Right.

25 A. Not that I recall.

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1 Q. Have you communicated orally or in

2 writing with Mr. Riesterer about the lawsuit?

3 A. Not that I recall.

4 Q. How about Mr. Guetta?

5 A. Not that I recall.

6 Q. Have you communicated orally or in

7 writing with anyone other than Mr. Adams about this

8 lawsuit who you believe to have been involved in the

9 creation of the song "I Gotta Feeling"?

10 A. No.

11 Q. Have you, before this lawsuit,

12 testified as an expert -- let me start that over.

13 Prior to this lawsuit, have you been

14 retained as an expert witness in connection with any

15 other copyright-infringement cases?

16 A. Yes.

17 Q. Approximately how many?

18 A. I would have to read through my --

19 well, let me back up.

20 Retained as an expert -- did you say

21 "retained as an expert" or "retained"?

22 Q. Retained as an expert.

23 A. Retained as an expert, I would

24 estimate four or five cases. It could be more, it

25 could be less. I would have to review the list of

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1 cases.

2 Q. And how about just retained?

3 A. Significantly more.

4 Q. More than 20?

5 A. Yes.

6 Q. More than 50?

7 A. No.

8 Q. And of those cases where you were

9 retained, but not as an expert, in what capacity were

10 you retained?

11 A. I've been retained to perform both

12 investigative work, computer-forensic work, and

13 electronic-discovery work in cases that pertain to

14 copyright issues.

15 In addition, then, I've also been

16 retained as an expert in some of those cases.

17 Q. Just so you know, for all my questions

18 from this point forward, I'm not intending this to be

19 a memory test. If you want to refer to either of

20 your declarations or anything else to provide me with

21 the answer, you are perfectly welcome. You can do

22 that.

23 A. Thank you.

24 Q. Whether it's your CV or your opinions,

25 whatever the case may be.

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1 Do you recall anything about the

2 issues in dispute in the four or five cases -- other

3 copyright-infringement cases in which you were

4 involved as an expert?

5 A. Loosely, yes.

6 Q. What do you remember?

7 A. I remember that I've had a number of

8 cases that involved copyright infringement of -- or

9 alleged copyright infringement of electronic files

10 and data contained on websites, as well as electronic

11 data that has been used for commercial purposes.

12 I've also been retained on issues

13 related to software copyright-infringement issues.

14 Those are the ones that I can think of

15 at present.

16 Q. When you say "electronic data used for

17 commercial purposes," can you be any more specific?

18 What kind of commercial purposes?

19 A. Electronic data that has been used to

20 form a -- or to create a file that is subsequently --

21 subsequently used for commercial purposes such as a

22 photograph.

23 Q. Do you remember any of the parties to

24 any of the lawsuits in which those issues were --

25 DEPOSITION OFFICER: "Issues were...?"

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1 MR. HOLLEY: -- were in play?
 2 THE DEPONENT: Not -- as I said
 3 earlier today, I would have to review my various
 4 cases and try to reconstruct that.
 5 BY MR. HOLLEY:
 6 Q. Can you go ahead and look through your
 7 declaration -- either one -- and identify the cases
 8 on the list in which you were retained as an expert
 9 in a copyright-infringement action?
 10 (DOCUMENT REVIEWED BY THE DEPONENT.)
 11 THE DEPONENT: So the third item,
 12 Straitshot Communications.
 13 BY MR. HOLLEY:
 14 Q. First of all, which exhibit are you
 15 looking at?
 16 A. I'm sorry.
 17 I'm looking at Exhibit 45.
 18 Q. Okay.
 19 A. Page 10 of 13 -- actually, page 23
 20 of 26. My apologies.
 21 Q. Page 23 of 26 with the electronic
 22 coding from the court at the top?
 23 A. Yes.
 24 Q. Okay.
 25 A. So the third item, Straitshot

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1 Communications vs. Telekenex, has a copyright
 2 component.
 3 And the third from the bottom, Control
 4 Components vs. Juan Ricardo Simeoni had a copyright
 5 component.
 6 Sedona Corporation vs. Open Solutions
 7 had a copyright component.
 8 Baja -- the next page, page 24 of 26,
 9 the second from the top, Baja Bound Insurance
 10 Services vs. Mexbound had a copyright component.
 11 The next one, NAU Holding Company vs.
 12 Crop 1 Insurance Direct had a copyright component.
 13 On the next page, 25 of 26, the third
 14 item down, Easton Sports, Inc. vs. Warrior Lacrosse
 15 had a copyright component.
 16 The fourth one down, Logicom
 17 Inclusive vs. W.P. Stewart & Company had a copyright
 18 component.
 19 Fifth one down, Laguna Coast
 20 Publishing vs. Performance Racing Industry -- excuse
 21 me.
 22 Laguna Coast Publishing, d/b/a
 23 Performance Racing Industry vs. Gomembers, Inc., had
 24 a copyright component.
 25 The next one down, Compuware

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1 Corporation vs. IBM had a copyright component to it.
 2 McFarlin Graphic Systems vs. Shell Oil
 3 Company had a copyright component.
 4 Q. Okay.
 5 A. The next page, 26 out of 26, the
 6 second one down, India World Communications vs.
 7 ASP Solutions had a copyright component.
 8 Q. "ASAP"?
 9 A. ASAP. My apologies.
 10 And the second from last, Honeywell
 11 International vs. ABB had a copyright component to
 12 it.
 13 Q. In any of the cases you've just
 14 identified, did you testify as an expert on behalf of
 15 the party who claims their copyright had been
 16 infringed?
 17 A. I'll have to review the list again.
 18 Q. Okay. I haven't checked the ones that
 19 you've mentioned, if that's helpful, if you want to
 20 look at my copy.
 21 A. Thank you.
 22 MR. PINK: Just for clarification, on
 23 behalf of the plaintiff?
 24 MR. HOLLEY: Not necessarily. I guess
 25 it depends. If they declared for a judgment,

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1 actually, it wouldn't necessarily be a plaintiff.
 2 But, yes, along those lines -- representing the party
 3 who claims their copyright was infringed.
 4 THE DEPONENT: So the first one that I
 5 mentioned, yes.
 6 BY MR. HOLLEY:
 7 Q. Which case is that?
 8 A. Straitshot.
 9 Q. Okay.
 10 A. The second one, Controll Components;
 11 the fourth one, Baja Bound; the sixth one, Easton
 12 Sports; the eighth one, Laguna Coast Publishing --
 13 strike that.
 14 I don't recall exactly how the claims
 15 worked. It was very complicated. I don't recall on
 16 that one.
 17 The second-to-the-last one, India
 18 World Communications vs. ASAP.
 19 Q. Prior to this lawsuit, have you ever
 20 been engaged as an expert witness in a
 21 copyright-infringement lawsuit involving a song?
 22 A. No.
 23 Q. Prior to this lawsuit, have you ever
 24 been engaged as an expert witness to provide an
 25 opinion in connection with the issue of spoliation?

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1 A. Can you restate the question?
 2 Q. Prior to this lawsuit, have you ever
 3 been engaged as an expert witness to render an
 4 opinion regarding whether spoliation has occurred?
 5 MR. PINK: Lacks foundation.
 6 I don't know that he's been retained
 7 in this case for that purpose, so prior to this case?
 8 MR. HOLLEY: Well, he's rendered an
 9 opinion regarding spoliation.
 10 MR. MILLER: And I'll object it's
 11 vague and ambiguous.
 12 BY MR. HOLLEY:
 13 Q. Do you understand the question?
 14 A. Not entirely.
 15 Q. Let me ask it this way: Prior to this
 16 lawsuit, have you ever provided an opinion as an
 17 expert witness on the issue of spoliation?
 18 MR. MILLER: Same objections.
 19 MR. PINK: Join.
 20 THE DEPONENT: Yes.
 21 BY MR. HOLLEY:
 22 Q. How many times?
 23 A. I don't recall.
 24 Q. More than five?
 25 A. I would expect so.

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1 Q. And in which cases have you rendered
 2 such an opinion?
 3 A. This is going to be a more difficult
 4 question to answer. I'll probably end up having to
 5 review reports and files.
 6 Q. Well, we don't have those here, so
 7 it's not that critical.
 8 A. In many of the cases that I've
 9 rendered opinions on, there have been efforts to
 10 obscure data or to delete or damage data; however, I
 11 don't know if in all of those cases I specifically
 12 rendered an opinion on spoliation in a final
 13 report.
 14 So, again, I would have to review
 15 those reports to be entirely certain.
 16 Q. Have you ever testified at trial as an
 17 expert on the issue of spoliation?
 18 A. I believe so.
 19 Q. Do you recall how many times?
 20 A. No. And I believe those cases are
 21 older, and we may not have even used the word
 22 "spoliation" but would have used words such as
 23 "destruction of evidence."
 24 Q. And did you testify in any of those
 25 cases regarding what you opined the missing evidence

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1 could have shown?
 2 A. I would have expected to, yes.
 3 Q. Do you recall, sitting here right now,
 4 specifically any cases where you did that?
 5 A. I don't recall the details of some of
 6 the older cases. I recall a case in which I
 7 testified on some of those types of issues about
 8 three weeks ago.
 9 Q. What case was that?
 10 A. It's a case known as the "JLG matter."
 11 Q. "JLG"?
 12 A. JLG.
 13 Q. Is that on the list of cases in your
 14 declaration?
 15 A. No.
 16 Q. Okay.
 17 A. It's a current matter.
 18 Q. And who are the parties to that
 19 case?
 20 A. JLG v. Skyjack.
 21 Q. What is the venue?
 22 A. King County, Illinois.
 23 Q. State court?
 24 A. State court.
 25 Q. Which party -- for which party are you

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1 testifying in that case?
 2 A. JLG.
 3 Q. And what law firms represent JLG?
 4 A. Schiff Hardin.
 5 Q. Do you know the law firm or law firms
 6 representing Skyjack or any of the parties in that
 7 case?
 8 A. One of the firms is a local Chicago
 9 firm named Buzogany & Marks, I believe.
 10 Q. Could you spell that for the court
 11 reporter?
 12 A. No.
 13 Q. Okay.
 14 A. It would have to be phonetic.
 15 Buzogany & Marks, M-a-r-k-s, I presume.
 16 Q. Have you been involved in any lawsuits
 17 in which one of the parties attempted to exclude your
 18 testimony by way of a motion to the Court?
 19 A. There have been fights. I don't know
 20 if there have been motions. Could be.
 21 Q. Do you specifically recall any cases
 22 in which one of the parties filed a -- what's called
 23 a Daubert challenge to your testimony?
 24 A. No.
 25 Q. Have you ever heard that term

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1 before?
 2 A. Yes.
 3 Q. Can you recall any cases in which a
 4 Court has ruled that you are not allowed to
 5 testify?
 6 A. No.
 7 Q. Do you recall any cases in which you
 8 served as an expert in which a Court has ruled that
 9 the issues upon which you were allowed to testimony
 10 were limited?
 11 MR. PINK: Objection; vague and
 12 ambiguous and overly broad.
 13 THE DEPONENT: Not that I recall.
 14 BY MR. HOLLEY:
 15 Q. Other than the current lawsuit, have
 16 you been retained in any other lawsuits in which the
 17 party -- in which the party for whom you'll be
 18 testifying is represented by Bryan Cave?
 19 A. I don't believe so, no.
 20 Q. Have you been involved in any other
 21 lawsuits in which the party for whom you're
 22 testifying is or was represented by Loeb and Loeb?
 23 A. During the action in which I was
 24 testifying, I presume?
 25 Q. That's right.

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1 A. Not that I'm aware of, no.
 2 Q. We discussed a little while earlier
 3 what your assignment was in this lawsuit, and you
 4 said that it had evolved a bit during the course of
 5 the lawsuit; is that right?
 6 A. Yes.
 7 Q. Based on your current understanding of
 8 your current assignment, do you believe you've
 9 completed that assignment?
 10 A. No.
 11 Q. What remains to be done, to your
 12 understanding?
 13 A. I know that there is a rebuttal report
 14 that I have yet to review in detail, or a
 15 supplemental declaration from Gallant which I would
 16 expect to respond to.
 17 Q. So it's your understanding you are
 18 going to be preparing a rebuttal or rebuttal
 19 opinions -- a rebuttal opinion or rebuttal opinions
 20 in connection with Mr. Gallant's opinions; is that
 21 right?
 22 A. Perhaps.
 23 Q. Okay. And have you started that
 24 work?
 25 A. No.

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1 Q. Have you reviewed the plaintiff's
 2 disclosure in November of 2011 of a report from
 3 Mr. Gallant?
 4 A. Would you mind repeating the title
 5 again?
 6 Q. Maybe it's easier if I do it this way.
 7 For the record, I'm going to show the
 8 witness Plaintiff's Expert Disclosures Pursuant to
 9 Rule 26(a)(2) of the Federal Rules of Civil
 10 Procedure, dated November 11th, 2011, to which is
 11 attached a report by Mr. Gallant dated August 6th,
 12 2011.
 13 I'm not going to mark it right now.
 14 Just take a look at that document and
 15 let me know if you've reviewed any part of that yet,
 16 before today.
 17 (DOCUMENT REVIEWED BY THE DEPONENT.)
 18 THE DEPONENT: I have seen this
 19 document and I'm in possession of it. I have briefly
 20 reviewed it, but not to a sufficient level of detail
 21 that I could comment on.
 22 BY MR. HOLLEY:
 23 Q. So you haven't formed any opinions yet
 24 in connection with that report; is that right?
 25 A. Yes.

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1 Q. All right.
 2 MR. MILLER: That did not become an
 3 exhibit?
 4 MR. HOLLEY: It did not become an
 5 exhibit.
 6 MR. MILLER: Okay.
 7 BY MR. HOLLEY:
 8 Q. Other than preparing opinions in
 9 rebuttal to Mr. Gallant's opinions, are there any
 10 other aspects of your assignment that you believe you
 11 have not yet completed?
 12 A. I'm not aware of any other aspects of
 13 the assignment that I have yet to complete.
 14 Naturally, if additional evidence
 15 becomes available, I would expect to examine that
 16 evidence.
 17 Q. Is there any evidence that you have
 18 asked to see in connection with forming your opinions
 19 in this case that you have not yet seen?
 20 A. Yes.
 21 Q. And what is that?
 22 A. The computers upon which the files
 23 were originally created.
 24 Q. Whose files?
 25 A. The files that were burned to the DVDs

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1 or CDs.
 2 Q. Are you talking about Mr. Pringle's
 3 material?
 4 A. Yes.
 5 Q. Are there any other documents or items
 6 that you have requested in connection with forming
 7 your opinion that you have not yet received?
 8 A. Copies of the demo DVDs that were
 9 distributed by Mr. Pringle to the music industry.
 10 Q. Are those items that are described in
 11 either of your declarations?
 12 A. No.
 13 Q. How is it you're aware of demo DVDs
 14 that Mr. Pringle distributed to the music industry?
 15 MR. PINK: I'm sorry. I didn't hear
 16 the question.
 17 BY MR. HOLLEY:
 18 Q. How is it that you're aware of those
 19 demo DVDs?
 20 MR. PINK: Thank you.
 21 THE DEPONENT: I was made aware of
 22 those demo DVDs by reading Pringle's deposition
 23 transcript.
 24 BY MR. HOLLEY:
 25 Q. Any other documents or items -- I'm

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1 going to broaden it, the question, now.
 2 Whether you have requested them or
 3 not, are there any other documents you have not
 4 mentioned -- documents or items that you would like
 5 to receive in connection with your opinions in this
 6 case?
 7 A. I would like to receive computers,
 8 hardware or software or peripheral devices or media
 9 that would corroborate the times and dates of the
 10 purported burning and/or creation of Pringle's files.
 11 Q. Anything else?
 12 A. No.
 13 Q. In forming the opinions that you have
 14 formed in connection with this lawsuit, what
 15 assumptions have you made?
 16 We can do that on an
 17 opinion-by-opinion basis, if that's easier.
 18 A. That would be easier.
 19 Q. So now if you could turn to Exhibit
 20 46.
 21 And what I would like to do is -- I'm
 22 assuming that your summary-judgment declaration and
 23 your prior declaration overlapped to some extent in
 24 terms of the issues addressed.
 25 So I just want you to tell me if

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1 there's an opinion that's discussed in your earlier
 2 declaration that you've explained more fully in your
 3 most recent declaration.
 4 Why don't you tell me that as we go
 5 along so that we can just deal with the opinion once
 6 rather than trying to hit it twice in two
 7 declarations?
 8 Does that make sense?
 9 A. Yes. I will try to do that.
 10 Q. First, how many opinions have you
 11 formed in connection with this lawsuit to date?
 12 MR. PINK: Objection; overly broad.
 13 THE DEPONENT: Well, there's one
 14 fundamental opinion.
 15 BY MR. HOLLEY:
 16 Q. So is there one fundamental opinion
 17 and then subopinions relating to that fundamental
 18 opinion?
 19 A. That may be a better way to describe
 20 it, yes.
 21 Q. Why don't you break it down for me?
 22 A. The one fundamental opinion is that it
 23 is not possible to validate or authenticate the
 24 original dates of the files that were burned to the
 25 DVDs or CDs -- let's just call it optical media --

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1 that I was provided.
 2 Q. Okay. And what are the subopinions
 3 relating to that opinion?
 4 And, again, if you need to refer or
 5 want to refer to any of the declarations, either one,
 6 just go ahead and do that.
 7 A. Well, without limiting myself to
 8 additional opinions that may appear in my possible
 9 forthcoming either rebuttal report or declaration,
 10 I'll be commenting on the points that I've
 11 articulated in these two documents.
 12 And the first document, which is the
 13 first declaration known as Number 46, deals initially
 14 with the methodology that was used by Gallant to
 15 identify, preserve, analyze, and report on the
 16 evidence that he was provided with.
 17 And it also, if I remember correctly,
 18 came to a conclusion that the CD may have even had a
 19 date which was inaccurate -- which was more
 20 contemporary than the dispute.
 21 Subsequently I learned after issuing
 22 my report, that Pringle had provided the wrong
 23 optical media with the wrong files.
 24 Q. To Mr. Gallant?
 25 A. To Mr. Gallant.

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1 New media was subsequently examined,
 2 and as a result of my examination, I developed some
 3 additional conclusions.
 4 The first primary conclusion being
 5 that the date of the NRG file cannot be authenticated
 6 without analysis of the computers used to create the
 7 file and burn it to the NRG disc.
 8 As far as assumptions -- I believe
 9 you've asked about my assumptions I've made.
 10 My assumption -- the assumptions I've
 11 made as it relates to that particular opinion is that
 12 the files were at some point burned to the disc.
 13 I don't know of any other way that
 14 those files would end up on the disc.
 15 I'm also under the assumption that
 16 computer software and computer hardware were used to
 17 burn those files to the disc.
 18 I'm also under the assumption that at
 19 some point in time, Mr. Pringle had access and
 20 control over those devices.
 21 My second opinion, which is perhaps
 22 really just a subopinion because it deals with the
 23 destruction of evidence, is that the hard drives that
 24 Mr. Pringle disposed of may have contained evidence
 25 that would have substantiated or refuted his claim as

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1 to the date that the NRG files were burned to disc.
 2 And that -- and we would have learned
 3 a great deal, presumably, by examining those hard
 4 drives, whether they were operational or not.
 5 My third opinion deals with the issue
 6 of the downloading by Pringle of the "I Gotta
 7 Feeling" music files.
 8 And, again, the examination of his
 9 computer hard drives may have provided us with
 10 insight as to whether or not those files were
 11 downloaded in 2009 or 2010 or, for that matter, if
 12 any other activity took place online of interest in
 13 this matter.
 14 DEPOSITION OFFICER: "Took place..."?
 15 THE DEPONENT: -- took place online of
 16 interest in this matter.
 17 DEPOSITION OFFICER: Thank you.
 18 THE DEPONENT: So going back to your
 19 original question about assumptions.
 20 As it relates to the third point, the
 21 downloading of music, my assumption there is that
 22 there is a possibility that "I Gotta Feeling" was
 23 downloaded by Pringle in 2009 or 2010 because it was
 24 available for download on the Internet.
 25 My other assumption relates to "B" --

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1 Sorry. I'm working backwards. I know
 2 that's confusing.
 3 BY MR. HOLLEY:
 4 Q. I'm with you.
 5 A. -- is that there's a strong likelihood
 6 that the computers that were disposed of by Pringle
 7 were the computer hard drives that had effectuated
 8 the burning of the files to the DVDs or CDs,
 9 regardless of the time frame in which that took
 10 place.
 11 Alternatively, had they been
 12 descendent hard drives from earlier hard drives that
 13 Mr. Pringle owned, there very well may have been data
 14 on those drives that have been migrated from older
 15 drives that also would have provided insight.
 16 Q. Anything else?
 17 A. No.
 18 Q. Let's take the first subopinion, as
 19 I'll call it, which I believe is that -- let me just
 20 go to your report.
 21 A. Page 9.
 22 Q. Page 9 of your summary-judgment
 23 declaration; right?
 24 A. Yes.
 25 Q. Well, page 6 is the first subopinion;

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1 right?
 2 (DOCUMENT REVIEWED BY THE DEPONENT.)
 3 THE DEPONENT: Yes. My apologies.
 4 BY MR. HOLLEY:
 5 Q. Okay. Now, when you use in your
 6 opinion the term "authenticated," and you say the
 7 data of the NRG file cannot be, quote/unquote,
 8 "authenticated" without analysis of the computer or
 9 computers used to create the file and to burn it to
 10 the NRG disc, what level of certainty are you
 11 referring to when you use the term "authenticated"?
 12 MR. MILLER: Objection; vague and
 13 ambiguous.
 14 MR. PINK: Join.
 15 THE DEPONENT: I'm specifically
 16 referring to the date in which the file was created.
 17 One can authenticate that it, in fact,
 18 is a file by virtue of the fact that it exists, so
 19 that portion of the file can be authenticated. It is
 20 a file.
 21 What cannot be authenticated is the
 22 date in which it was burned to the disc.
 23 BY MR. HOLLEY:
 24 Q. Okay. The file itself has a date,
 25 does it not?

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1 A. Yes.
 2 Q. And what is the date?
 3 A. I don't recall. I would have to look
 4 at the documents.
 5 Q. Do you have any of those documents
 6 here?
 7 (DOCUMENT REVIEWED BY THE DEPONENT.)
 8 THE DEPONENT: Excuse me. It's on
 9 my -- it appears to be on my declaration.
 10 BY MR. HOLLEY:
 11 Q. The same declaration we're looking
 12 at?
 13 A. Yes.
 14 Q. Okay. Where?
 15 A. On page 4.
 16 Q. Where?
 17 A. On paragraph 12.
 18 I state that:
 19 "...after Pringle's computer
 20 equipment was allegedly stolen.
 21 Pringle also submitted his own
 22 declaration dated November 17th,
 23 2010, stating that he saved the NRG
 24 file that contained, 'Take a Dive'
 25 (Dance Version), to his personal

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1 computer on June 14th, 1999; and
 2 that he burned that NRG file from
 3 his computer to a blank CD in May
 4 of 2001."
 5 Q. So is it the case that the NRG file
 6 has a last-modified date of June 14th, 1999?
 7 (DOCUMENT REVIEWED BY THE DEPONENT.)
 8 THE DEPONENT: I would have to bring
 9 up the evidentiary media to comment on the specific
 10 dates on the files.
 11 We have that evidentiary media in our
 12 evidence lockup, and I would be uncomfortable quoting
 13 specific dates being that they are not actually in my
 14 declaration.
 15 BY MR. HOLLEY:
 16 Q. Okay. So your opinion has to do with
 17 the inability to authenticate the date of the NRG
 18 file.
 19 What I'm just trying to get at is what
 20 date are you trying to authenticate?
 21 A. I'd like to authenticate both the date
 22 in which the file was created and the date in which
 23 the file was burned to the disc.
 24 Q. And the NRG file itself that you have
 25 analyzed has a creation date; right?

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1 A. Yes.
 2 Q. But you can't recall whether that date
 3 is June 14th, 1999?
 4 A. I did not include the dates of the
 5 files or a listing of the files in my declaration,
 6 and I don't have it here in front of me, so I can't
 7 quote specific dates.
 8 Q. Do you recall whether the date was in
 9 1999?
 10 A. I don't want to guess. It was either
 11 1999, 2000, or 2001. That was the relevant time
 12 frame of the dates that I was reviewing on the
 13 disc.
 14 Q. So when you opine in this declaration
 15 that the date of the NRG file cannot be
 16 authenticated, is that opinion essentially that you
 17 can't determine with any certainty whether the date
 18 that the NRG file currently has has been
 19 manipulated?
 20 A. Correct.
 21 Q. And is it your understanding that
 22 Mr. Pringle has provided testimony that the creation
 23 date -- that he has not manipulated the creation date
 24 of the NRG file?
 25 A. I seem to recall that.

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1 Q. And when, in your opinion, you use the
 2 term "authenticated," what I'm trying to get at is,
 3 is there a level of certainty that you're trying to
 4 reach in terms of authenticating the date?
 5 Do you have a level of certainty in
 6 mind?
 7 A. Yes.
 8 Q. And what is that level of certainty?
 9 MR. PINK: Let me just ask for one
 10 clarification as to which NRG disc you're talking
 11 about here.
 12 I think there were --
 13 MR. HOLLEY: The NRG file referenced
 14 in the deponent's summary-judgment declaration. In
 15 particular, starting on page 6.
 16 MR. MILLER: All right. I think
 17 there's a question pending.
 18 I'll object it's vague and ambiguous
 19 and that "level of certainty" might call for a legal
 20 conclusion.
 21 DEPOSITION OFFICER: One more time. I
 22 couldn't hear you.
 23 MR. MILLER: It might call for a legal
 24 conclusion.
 25 DEPOSITION OFFICER: Before that.

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1 MR. MILLER: Vague and ambiguous.
 2 BY MR. HOLLEY:
 3 Q. Do you remember the question?
 4 A. I do.
 5 Q. Okay.
 6 A. Because of the significance of the
 7 issue at hand, I would be most comfortable with what
 8 I would consider absolute certainty.
 9 If this was a dispute over a child
 10 backdating a file in school, I may not want such
 11 certainty.
 12 But this is a significant issue. I
 13 believe that it warrants having absolute certainty.
 14 Q. Is it your belief that the trier of
 15 fact in this case should apply an absolute certainty
 16 standard to this issue versus a preponderance of the
 17 standard -- a preponderance-of-the-evidence standard?
 18 MR. MILLER: Certainly calls for a
 19 legal conclusion.
 20 MR. PINK: Beyond the scope of this
 21 witness's expertise and ability to testify.
 22 THE DEPONENT: I have no basis by
 23 which to form an opinion of that -- as to that
 24 question.
 25 ///

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1 BY MR. HOLLEY:
 2 Q. But in any event, your opinion is that
 3 the date of the NRG file cannot be authenticated with
 4 absolute certainty; correct?
 5 A. No.
 6 Q. What is your opinion?
 7 A. It could be authenticated with
 8 absolute certainty if the hardware and software that
 9 was used to create the file would be made available.
 10 Q. Are you rendering an opinion as to
 11 whether or not the date of the NRG file can be
 12 determined with any level of certainty based on the
 13 current evidence that you've seen?
 14 A. No.
 15 Q. Okay. So you are not rendering an
 16 opinion as to whether, based on a preponderance of
 17 the evidence, the date of the NRG file has been
 18 manipulated?
 19 THE DEPONENT: Could you repeat the
 20 question?
 21 MR. PINK: Vague and ambiguous.
 22 MR. HOLLEY: Can you read that back.
 23 (THE RECORD WAS READ AS FOLLOWS:
 24 Q. Okay. So you are not
 25 rendering an opinion as to

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1 whether, based on a preponderance
 2 of the evidence, the date of the
 3 NRG file has been manipulated?)
 4 MR. MILLER: Calls for a legal
 5 conclusion.
 6 MR. PINK: Join.
 7 THE DEPONENT: I don't understand the
 8 question.
 9 BY MR. HOLLEY:
 10 Q. Have you been asked to review all of
 11 the evidence that's available in the case right now
 12 and render an opinion based on a preponderance of the
 13 evidence?
 14 Do you understand that term at all?
 15 A. The sum of the evidence?
 16 Q. Let me redefine it for you.
 17 A "preponderance of the evidence" is
 18 the evidence on one side of the issue has to outweigh
 19 the other by just over half, above 50 percent; okay?
 20 Have you been asked to render an
 21 opinion in this case as to whether based on the
 22 evidence that has been produced, whether or not the
 23 date of the NRG file has been manipulated?
 24 A. No.
 25 Q. Do you expect to offer such an opinion

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1 in this case?
 2 A. I don't know what my future opinions
 3 will be because they will be impacted by potential
 4 future evidence that I review.
 5 Q. But sitting here today, you have not
 6 been asked to opine on whether, based on a
 7 preponderance of the evidence that's been produced in
 8 this case, the date of the NRG file has been
 9 manipulated; is that right?
 10 A. That's right.
 11 Q. Do you have any understanding as to
 12 whether any other expert has been asked to provide
 13 such an opinion?
 14 A. No.
 15 MR. MILLER: Well, I don't --
 16 THE DEPONENT: Sorry.
 17 MR. MILLER: You've answered.
 18 I think there's an answer on the
 19 record.
 20 BY MR. HOLLEY:
 21 Q. Did you answer?
 22 MR. MILLER: She has an answer.
 23 THE DEPONENT: I answered.
 24 BY MR. HOLLEY:
 25 Q. Okay. Did you say "No"?

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1 A. I said "No."
 2 Q. Do you agree that irrespective of the
 3 amount of evidence, there is at least some evidence
 4 in the record in this case from which a trier of fact
 5 could determine that the date of the NRG file has not
 6 been manipulated?
 7 A. Yes.
 8 MR. PINK: Objection -- okay.
 9 BY MR. HOLLEY:
 10 Q. And what evidence would that be?
 11 Mr. Pringle's testimony?
 12 A. A trier of fact is going to render an
 13 opinion. An opinion can swing any way that the trier
 14 of fact decides.
 15 Q. Well, but I specifically referred to
 16 evidence.
 17 What evidence do you think there is in
 18 the record that would allow a trier of fact to
 19 determine that the date has not been manipulated?
 20 A. I think that if a trier of fact were
 21 to seek the same level of certainty of the
 22 authenticity of the files that I am seeking, they
 23 would not be able to render an opinion that the file
 24 is, in fact, authentic.
 25 Q. That's not my question, though.

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1 I asked you whether there was evidence
 2 in the record in this case based upon which a trier
 3 of fact could determine that the date of the NRG file
 4 had not been manipulated.
 5 Would Mr. Pringle's testimony be such
 6 evidence?
 7 MR. PINK: Objection; calls for
 8 speculation, overly broad, vague and ambiguous.
 9 MR. MILLER: Join.
 10 THE DEPONENT: Would you mind reading
 11 back the question?
 12 (THE RECORD WAS READ AS FOLLOWS:
 13 Q. Okay. That's not my
 14 question, though.
 15 I asked you whether there
 16 was evidence in the record in
 17 this case based upon which a
 18 trier of fact could determine
 19 that the date of the NRG file
 20 had not been manipulated.
 21 Would Mr. Pringle's testimony
 22 be such evidence?)
 23 MR. PINK: Also calls for a legal
 24 conclusion. I can't remember whether I noted that
 25 one.

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1 THE DEPONENT: I'm not rendering a
 2 legal opinion here as a non-attorney, but if I were
 3 to rely on Mr. Pringle's testimony, I would not be
 4 able to render such an opinion.
 5 BY MR. HOLLEY:
 6 Q. Can you explain that? I don't
 7 understand that answer.
 8 A. Based upon Mr. Pringle's testimony, I
 9 personally would not be able to authenticate or reach
 10 a conclusion that the files are, in fact, authentic.
 11 I require hard facts in order to
 12 support such a conclusion, and at present I don't
 13 have them.
 14 Q. Okay.
 15 A. In fact, I would say that
 16 Mr. Pringle's testimony would only cast further doubt
 17 on the authenticity of the files.
 18 Q. Are you aware of any evidence showing
 19 that Mr. Pringle backdated the date of the NRG
 20 file?
 21 A. No.
 22 Q. Okay. Are you aware of any evidence
 23 showing that anyone backdated the date of the NRG
 24 file?
 25 A. Not at this time.

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1 Q. Have you communicated at all with any
 2 of the other expert witnesses for the defendants in
 3 this case?
 4 A. No.
 5 Q. And just to clarify, does your answer
 6 cover communications orally or in writing?
 7 A. Yes.
 8 Q. What is the manufacture date of the
 9 CD to which the NRG file was burned?
 10 (DOCUMENT REVIEWED BY THE DEPONENT.)
 11 MR. MILLER: Objection; calls for
 12 speculation, lacks foundation.
 13 THE DEPONENT: I did not include the
 14 specific date of manufacture in my report.
 15 If I remember correctly, the CD was
 16 determined to have been manufactured in 1999, but I
 17 would like to review the CD again itself before I
 18 hold myself to it.
 19 BY MR. HOLLEY:
 20 Q. If you could turn to page 7 of your
 21 summary-judgment declaration.
 22 A. Okay.
 23 Q. If you can take a look through
 24 paragraph 22 and let me know when you've reviewed
 25 that.

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1 (DOCUMENT REVIEWED BY THE DEPONENT.)
 2 THE DEPONENT: I've read it.
 3 BY MR. HOLLEY:
 4 Q. Do you have -- have you seen any
 5 evidence based upon which you can conclude that
 6 Mr. Pringle did any of the things identified in
 7 paragraph 22 of your report -- your declaration?
 8 A. No.
 9 MR. PINK: Overly broad; vague.
 10 THE DEPONENT: No. I have had no
 11 access to any of the machines that Mr. Pringle has
 12 used, so no.
 13 BY MR. HOLLEY:
 14 Q. Have you seen any evidence that anyone
 15 other than Mr. Pringle engaged in any of the conduct
 16 referenced in paragraph 22 of your declaration?
 17 MR. PINK: Same objections --
 18 THE DEPONENT: Not in this
 19 particular --
 20 MR. PINK: -- compound.
 21 THE DEPONENT: Not in this particular
 22 case.
 23 BY MR. HOLLEY:
 24 Q. Have you seen any evidence in this
 25 case that Mr. Pringle or anyone else modified or

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1 backdated any time or date stamps on any of the media
 2 at issue --
 3 A. I have no evidence.
 4 Q. -- or as to any file at issue?
 5 A. No.
 6 Q. Do you have any evidence -- have you
 7 seen any evidence that either Mr. Pringle or anyone
 8 else rolled back the computer clock in connection
 9 with any of the media or files at issue in this
 10 case?
 11 A. I don't have access to the computer
 12 that these files were created on, so I have no way of
 13 reviewing any of that evidence, so the answer would
 14 be no.
 15 Q. Have you seen any evidence in this
 16 case showing that Mr. Pringle disposed of any hard
 17 drives, computer equipment, or any other items for
 18 the purpose of covering up, modification, or
 19 backdating of files or media?
 20 MR. PINK: Calls for speculation,
 21 assumes facts, overly broad.
 22 THE DEPONENT: I have no way of
 23 knowing Mr. Pringle's intent; however, I would say
 24 that if you were to have those intentions, the
 25 process that he used to destroy the hard drives at

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1 issue here would have been the right approach.
 2 BY MR. HOLLEY:
 3 Q. What process is that?
 4 A. From what I recall, he turned these
 5 hard drives in to the manufacturer and replaced them
 6 with new hard drives.
 7 In so doing, the manufacturer
 8 provided -- presumably provided him with new blank
 9 hard drives.
 10 Q. Can you think of any reason for
 11 Mr. Pringle to have done that other than to hide a
 12 modification or backdating of files?
 13 MR. PINK: Calls for speculation.
 14 MR. HOLLEY: That, I agree with.
 15 BY MR. HOLLEY:
 16 Q. But can you answer the question,
 17 please.
 18 A. The only other reason that I could
 19 think of would be the legitimate reason of wanting to
 20 exchange hard drives that you've paid for that don't
 21 function in exchange for new hard drives that do
 22 function.
 23 Q. Have you seen any evidence in this
 24 case based upon which you can determine whether
 25 Mr. Pringle turned in the hard drives for that

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1 legitimate reason or for purposes of hiding a
 2 backdating or modification of file dates?
 3 A. Well, I'm aware that Mr. Pringle's
 4 claim is that the hard drives were no longer
 5 functioning and that is why he sent them into Maxtor.
 6 That act runs counter to what I would
 7 consider common sense for an individual who is
 8 embroiled in litigation where the contents of those
 9 hard drives are a vital resource.
 10 And also it flies in the face of what
 11 I've experienced in the digital-arts world, where
 12 individuals who prepare digital media for a
 13 livelihood are very concerned about maintaining the
 14 integrity of their digital media.
 15 And even when media fails, go to
 16 extreme steps to try to preserve the data contained
 17 on that media.
 18 I personally have fielded dozens of
 19 such requests over the years from individuals in the
 20 music business and other digital-arts businesses like
 21 Mr. Pringle, and was quite surprised to learn that he
 22 simply sent the hard drives to Maxtor to be replaced.
 23 Q. Are you rendering an opinion in this
 24 case concerning whether Mr. Pringle turned in those
 25 hard drives for the legitimate purpose identified or

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1 for the purpose of hiding a modification or
 2 backdating of files?
 3 A. With the evidence that I have at hand,
 4 I have no way of understanding or knowing
 5 Mr. Pringle's intent.
 6 Q. Is it fair to say that one would have
 7 to speculate to make that determination?
 8 MR. PINK: Objection; overly broad.
 9 Mr. Pringle wouldn't.
 10 MR. HOLLEY: Agree with that also.
 11 BY MR. HOLLEY:
 12 Q. You can answer the question.
 13 A. I think any investigation or inquiry
 14 requires an element of speculation, and you try to
 15 substantiate your theories and ideas with facts.
 16 The more complex and the more
 17 important the investigation, the more weight you
 18 place on those facts; and the purpose of wanting to
 19 validate a file such as -- or files such as the ones
 20 at the heart of this dispute are consistent with
 21 that.
 22 Q. You haven't personally seen any
 23 evidence based upon which you can conclude that
 24 Mr. Pringle turned in the hard drives for the purpose
 25 of hiding the backdating or modification of file

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1 dates; isn't that true?
 2 MR. PINK: Objection; overly broad.
 3 THE DEPONENT: I don't know what
 4 Mr. Pringle's intent was.
 5 BY MR. HOLLEY:
 6 Q. And you have not seen any evidence
 7 that would indicate that intent; correct?
 8 MR. PINK: Overly broad.
 9 THE DEPONENT: If I were to put on my
 10 hat of a skeptic, I would weigh very heavily on the
 11 side of malfeasance on the part of Pringle.
 12 However, in this particular matter,
 13 I've tried very hard to remain as independent as
 14 possible, particularly as it relates to the actual
 15 date and authentication of the file.
 16 The purpose of remaining independent
 17 of that matter is because I know that with the
 18 original computers, the original hard drives, and the
 19 original software that was used to create these
 20 files, we would have a black-and-white answer.
 21 And that's where my expertise lies.
 22 I'm not a psychiatrist. I can't analyze
 23 Mr. Pringle's intent.
 24 MR. HOLLEY: Can you ask my question
 25 again, please. Can you read it back.

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1 (THE RECORD WAS READ AS FOLLOWS:
 2 Q. And you have not seen any
 3 evidence that would indicate that
 4 intent; correct?)
 5 BY MR. HOLLEY:
 6 Q. Isn't that correct?
 7 MR. PINK: Same objections.
 8 THE DEPONENT: I think there's a
 9 missing piece to the puzzle and, as a result, I can't
 10 answer the question with a yes or a no.
 11 BY MR. HOLLEY:
 12 Q. What's the missing piece?
 13 MR. MILLER: It sounds -- I'm sorry.
 14 Let me just object because it sounds
 15 like it calls for a legal conclusion.
 16 Perhaps the witness doesn't understand
 17 the difference between direct and circumstantial
 18 evidence.
 19 MR. HOLLEY: Thank you for the
 20 speaking objection. I advise you not to do anymore
 21 speaking objections.
 22 MR. MILLER: Well, calls for a legal
 23 conclusion.
 24 MR. HOLLEY: Thank you.
 25 ///

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1 BY MR. HOLLEY:
 2 Q. What's the missing piece?
 3 A. The missing piece is knowing what
 4 Mr. Pringle's intent was.
 5 Q. But do you understand that there can
 6 be evidence of intent in a case?
 7 A. Yes.
 8 Q. Do you see any evidence of intent in
 9 this case? Have you seen any evidence of intent?
 10 MR. PINK: Objection; overly broad,
 11 beyond the scope of his expertise.
 12 MR. HOLLEY: Again, I agree with that.
 13 BY MR. HOLLEY:
 14 Q. Can you answer the question?
 15 MR. PINK: Hold on. I don't think I'm
 16 done.
 17 Calls for speculation.
 18 THE DEPONENT: It's clear that
 19 Mr. Pringle destroyed evidence that was vital to the
 20 case. I can't comment on what his intent was. I
 21 don't know.
 22 BY MR. HOLLEY:
 23 Q. And by "destroyed," you mean turning
 24 in the hard drives to the manufacturer?
 25 A. Yes.

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1 Q. Okay.
 2 MR. MILLER: Is this a good time?
 3 MR. HOLLEY: Sure. You want to take a
 4 break?
 5 MR. MILLER: Yes.
 6 DEPOSITION OFFICER: Off the record.
 7 (WHEREUPON, A RECESS WAS HELD
 8 FROM 1:39 P.M. TO 1:55 P.M.)
 9 DEPOSITION OFFICER: Back on the
 10 record?
 11 MR. HOLLEY: Yes.
 12 BY MR. HOLLEY:
 13 Q. I'd like to turn your attention back
 14 to the summary-judgment declaration that we have been
 15 looking at.
 16 A. I'm sorry. We are really in the
 17 middle of an answer.
 18 Q. I don't think so. If you have
 19 something you think you need to add to an answer, you
 20 can do that.
 21 A. Could we read back just the last
 22 portion just to reorient myself?
 23 Q. Sure.
 24 A. I would appreciate it. Thank you.
 25 ///

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1 (THE RECORD WAS READ AS FOLLOWS:
 2 Q. And by "destroyed," you
 3 mean turning in the hard drives
 4 to the manufacturer?
 5 A. Yes.)
 6 THE DEPONENT: That was it?
 7 DEPOSITION OFFICER: Yes.
 8 THE DEPONENT: Okay. Fine. Fine.
 9 For some reason in my mind I thought
 10 we were somewhere else.
 11 Last page of my declaration, page --
 12 BY MR. HOLLEY:
 13 Q. Page 8.
 14 A. Okay.
 15 Q. If you look at paragraph 27, and a
 16 little more than halfway through the paragraph you
 17 say:
 18 "Similarly, older digital
 19 storage media such as CDs, which
 20 are also readily available for
 21 purchase, have been known to be
 22 used to make it more difficult to
 23 determine the true date of
 24 backdated files."
 25 A. Yes.

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1 Q. Do you see that statement?
 2 A. Yes.
 3 Q. Have you seen any evidence in this
 4 case regarding when the -- any of the storage media
 5 at issue were purchased?
 6 A. No.
 7 Q. Okay. In paragraph 28 you state:
 8 "In my experience it is not
 9 uncommon for individuals who use
 10 CD-ROM discs on a regular basis,
 11 such as those in the
 12 electronic-music industry, to
 13 retain a number of unused CDs and
 14 to burn data to those old CDs years later."
 15 Do you see that?
 16 A. Yes.
 17 Q. Have you seen any evidence in this
 18 case one way or the other suggesting that Mr. Pringle
 19 did or did not do that?
 20 A. No.
 21 Q. In the last sentence of paragraph 28,
 22 you state:
 23 "Pringle thus likely had
 24 access to old CDs from the late
 25 1990s which he could have used to

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1 burn the NRG discs in 2009 or 2010."
 2 Have you seen any evidence in this
 3 case that in 2009 or 2010 Mr. Pringle had access to
 4 old CDs from the late 1990s?
 5 A. Yes.
 6 Q. What's that?
 7 A. He produced CDs -- or a CD, at least,
 8 that was manufactured in approximately 1999.
 9 Q. Meaning the one that he produced as
 10 having the NRG file on it?
 11 A. Yes.
 12 Q. But do you have any evidence that he
 13 burned that disc in 2009 or 2010?
 14 A. No.
 15 Q. So again I'll ask you: Have you seen
 16 any evidence in this case showing that Mr. Pringle
 17 had access to old CDs from the late 1990s that he
 18 used to burn NRG discs in 2009 or 2010?
 19 A. No.
 20 Q. Paragraph 30 on page 9.
 21 A. Yes.
 22 Q. You say in the second sentence:
 23 "Examination of those drives
 24 could yield evidence that Pringle
 25 backdated the creation and last

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1 accessed dates of the NRG files."
 2 Isn't it true that that statement is
 3 speculation about what evidence that does not exist
 4 currently in this case could show?
 5 MR. PINK: Well, overly broad, vague
 6 and ambiguous.
 7 THE DEPONENT: I don't know if the
 8 evidence exists or doesn't exist, but I do know that
 9 if I had access to that evidence, it's speculation
 10 that it could show that, yes.
 11 BY MR. HOLLEY:
 12 Q. Paragraph 32.
 13 A. Yes.
 14 Q. Am I right that the second sentence
 15 of paragraph 32 beginning with "This activity could
 16 show..." relates to your subopinion that information
 17 on the hard drives that are not currently available
 18 may have contained evidence showing that Mr. Pringle
 19 downloaded Black Eyed Peas' music from the
 20 Internet?
 21 A. Yes.
 22 Q. Have you seen any evidence in this
 23 case that Mr. Pringle did that?
 24 A. No.
 25 Q. So that statement, the second sentence

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1 of paragraph 32, where you say:
 2 "This activity could show that
 3 the music files in question were
 4 actually downloaded from the Internet
 5 in 2009 or 2010 after the release of
 6 "I Gotta Feeling" and subsequently
 7 backdated and/or modified to appear
 8 as though they had been created in
 9 1999," is a speculative statement,
 10 isn't it?
 11 A. It's a speculative statement that
 12 provides a possible set of events that could have
 13 been learned from those hard drives had we had access
 14 to them.
 15 Of course, it's also possible that
 16 Mr. Pringle did not download that song in 2009 or
 17 2010, which is precisely why it would have been --
 18 well, it's precisely why it's very unfortunate that
 19 he destroyed the drives.
 20 Q. And you haven't seen any evidence in
 21 this case showing that Mr. Pringle downloaded the
 22 music files in question from the Internet in 2009 or
 23 2010; right?
 24 A. No.
 25 MR. PINK: Objection; overly broad.

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1 BY MR. HOLLEY:
 2 Q. I might have asked that in a double
 3 negative.
 4 Is it true that you have seen no such
 5 evidence in this case?
 6 A. Yes.
 7 Q. Again, in your response to two
 8 questions ago where you said Mr. Pringle destroyed
 9 the drives, you're talking about when he turned the
 10 hard drives in to the manufacturer?
 11 A. Turning the hard drives in to the
 12 manufacturer is the equivalent of destroying the
 13 drives.
 14 It's a more elegant way of perhaps
 15 throwing them into a lake or hitting them with a
 16 hammer.
 17 The manufacturer destroys the drives
 18 when they receive them and sends out new drives.
 19 Q. But there would be -- as you've
 20 already testified, there is a potential legitimate
 21 reason for turning the hard drives in to the
 22 manufacturer if there's an issue with their
 23 performance, which would make it different from
 24 hitting it with a hammer; isn't that true?
 25 A. Yes. And, in fact, if I were to

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1 dispose of drives, I think it's why I throw them in a
 2 landfill.
 3 If you can send them back to the
 4 manufacturer and get new ones, it seems logical.
 5 Q. But the bottom line, and what I'm
 6 trying to get at is you're using the term "disposed
 7 of" to reference his turning the hard drives in to
 8 the manufacturer; right?
 9 A. I used the word "destroy."
 10 Q. Destroy. Okay.
 11 A. Yes.
 12 Q. That's the way you were using that
 13 word?
 14 A. I've chosen the word "destroy" as
 15 opposed to "disposed of" because I think that it
 16 properly illustrates the action.
 17 It's more than just taking an
 18 unneeded, unwanted, or broken hard drive that is of
 19 no value and throwing it into a trash can or using it
 20 as a paperweight or returning it to a manufacturer.
 21 This is a drive that contained vital
 22 data related to this litigation. And the act of
 23 disposing of it in that regard, I consider
 24 destruction, so that's why I'm using that word.
 25 Q. In paragraph 36 on page 11, you say

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1 that it's your opinion:
 2 "...that Pringle's act of
 3 discarding his computer hard drives
 4 due to their claimed mechanical
 5 failures falls far below the accepted
 6 standard of preservation of
 7 electronic evidence in litigation..."
 8 What standard is that?
 9 A. There's a number of standards that are
 10 applied in electronic -- excuse me -- to the
 11 preservation of electronic evidence in litigation
 12 depending on the state or jurisdiction or federal
 13 jurisdiction or even the country that you're in.
 14 But broadly speaking, there is an
 15 accepted standard of care that electronic files and
 16 the electronic equipment or optical equipment or
 17 magnetic media that contain those files that are
 18 relevant to litigation need to be preserved in that
 19 litigation just as you would preserve a paper
 20 document or any other item of evidence that would be
 21 relevant.
 22 Q. Okay.
 23 A. To continue, if I may?
 24 Q. Sure.
 25 A. There actually are standards that have

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1 been developed by a number of trade groups and also
 2 by some industry groups.
 3 One of them that is relatively
 4 well-known is called the Sedona Conference, which
 5 addresses issues of data preservation and what is
 6 appropriate in the electronic discovery space as it
 7 relates to data preservation.
 8 There are also efforts by certain
 9 federal circuits to sort of harmonize some of those
 10 rules and states.
 11 So I think there's a broad consensus
 12 within the United States legal system that I've
 13 witnessed in multiple jurisdictions and across all
 14 levels of legal expertise, that there is an
 15 obligation to preserve evidence and data when that
 16 data has a material relationship to the litigation
 17 that is ongoing.
 18 Q. What is your understanding as to the
 19 timing of Mr. Pringle's what you call "destruction"
 20 of the hard drive?
 21 MR. PINK: Can I have that read back?
 22 (THE RECORD WAS READ AS FOLLOWS:
 23 Q. What is your understanding
 24 as to the timing of Mr. Pringle's
 25 what you call "destruction" of the

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1 hard drive?)
 2 MR. PINK: Thank you.
 3 THE DEPONENT: The specific dates I
 4 can probably look up on his deposition transcript.
 5 But in my document, I reference them as 2009 and
 6 2010.
 7 BY MR. HOLLEY:
 8 Q. Is it your understanding that
 9 Mr. Pringle turned all of those hard drives into the
 10 manufacturer while this lawsuit was ongoing?
 11 A. I don't know the date of the filing of
 12 the lawsuit. So on the 2009 drive, I can't be
 13 certain.
 14 On the 2010 drive, I believe the
 15 lawsuit had already been filed but, again, I would
 16 have to review the filings.
 17 I don't think I actually have the
 18 Complaint itself --
 19 DEPOSITION OFFICER: I'm sorry?
 20 "I don't think I have..."?
 21 THE DEPONENT: I'm sorry.
 22 I don't believe I have the actual
 23 Complaint itself, so I don't know when it was filed.
 24 BY MR. HOLLEY:
 25 Q. Have you ever reviewed the

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1 Complaint?
 2 A. I remember reviewing the Complaint,
 3 but when I went to look for it, I didn't find it. So
 4 I don't recall.
 5 Q. Do you have any understanding as to
 6 the standard within the Ninth Circuit for when the
 7 duty to preserve evidence in connection with a
 8 disputed claim arises?
 9 A. I don't know if the Ninth Circuit has
 10 issued specific rules concerning when the duty to
 11 preserve begins.
 12 I do know that the noted federal judge
 13 Shira Scheindlin has released a number of documents
 14 in the form of guidance that many of the federal
 15 circuits have adopted.
 16 And in those -- or in that guidance,
 17 she indicates that when a reasonable expectation of
 18 litigation is anticipated, there is a duty to
 19 preserve electronic evidence.
 20 It may seem like a loose definition,
 21 but I know that it's been noted that that reasonable
 22 expectation includes the time period prior to the
 23 filing of litigation itself, and that the party who
 24 has that reasonable expectation is to undertake an
 25 effort to identify and preserve documents,

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1 particularly electronic documents for that purpose.
 2 Q. If you could look at paragraph 34 on
 3 the same page.
 4 That paragraph begins:
 5 "While Pringle claims to have
 6 saved certain computer files from
 7 the hard drives that he used in
 8 2009 and 2010 and discarded during
 9 this lawsuit, he has acknowledged
 10 that he did not conduct a forensic
 11 backup of those hard drives..."
 12 It goes on from there.
 13 What do you recall about Mr. Pringle's
 14 claims that you are referencing in that paragraph?
 15 A. I don't recall the specific language
 16 of Mr. Pringle's claims.
 17 And it very well may have been that he
 18 had claimed that he did not make a backup of those
 19 hard drives or a forensic backup of those hard
 20 drives.
 21 I may have gleaned that language from
 22 his testimony or his deposition transcript or his
 23 declaration or perhaps from conversations that I had
 24 with counsel.
 25 The long and short of it is that I'm

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1 under the impression that Mr. Pringle has indicated
 2 that he did not make backups of the hard drives that
 3 he destroyed.
 4 Q. What is your understanding regarding
 5 the nature of the computer files he did save?
 6 A. My understanding is that there were
 7 some specific music files and other miscellaneous
 8 files that he had saved, and I believe a listing of
 9 those files were provided to me on a DVD.
 10 Q. Is there anything in the --
 11 A. If I may continue?
 12 Q. Go ahead.
 13 A. I would also speculate that those
 14 files that he did save came from other sources,
 15 because in his testimony I believe he said that the
 16 two drives that he discarded in 2009, 2010 were
 17 nonfunctioning hard drives.
 18 So I don't know how he would have made
 19 a backup from nonfunctioning hard drives or how he
 20 would have copied files from a nonfunctioning hard
 21 drive.
 22 Q. So when you say at the beginning of
 23 paragraph 34 that "Pringle claims to have saved
 24 certain computer files from the hard drives that he
 25 used in 2009 and 2010," is it your understanding that

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1 he had saved files from those hard drives before they
 2 failed to function?
 3 A. Well, that's one --
 4 MR. MILLER: I'm sorry.
 5 Objection; calls for speculation.
 6 THE DEPONENT: That's one way to
 7 interpret it. I don't know.
 8 BY MR. HOLLEY:
 9 Q. Is that how you interpreted his
 10 statements?
 11 A. That is how I interpreted his
 12 statements at the time, yes.
 13 I was drawing the distinction in my
 14 previous dialogue only because one could also draw
 15 the interpretation from Pringle's statement that he
 16 claims that he saved those files from these drives at
 17 the time that they were not functional.
 18 I would, you know, have to talk to
 19 Pringle about it to really understand when and how he
 20 did it.
 21 Q. Is there anything in the -- what
 22 you've identified as the accepted standard of
 23 preservation of electronic evidence in litigation --
 24 is there anything within that accepted standard that
 25 sets a bright-line rule requiring a party to make a

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1 forensic backup of hard drives that have failed to
 2 function before those hard drives are discarded or
 3 disposed of?
 4 MR. PINK: Overly broad, vague and
 5 ambiguous, compound.
 6 MR. MILLER: It calls for a legal
 7 conclusion as well.
 8 THE DEPONENT: I won't comment on what
 9 the Ninth Circuit has said in terms of a, quote,
 10 "bright-line," end quote, because that's again a
 11 conclusion that I would have to draw, I believe, as
 12 somebody who is an expert on the Ninth Circuit and/or
 13 as an attorney, both of which I'm not.
 14 But what I would say is that it is
 15 accepted that the preservation of a drive, at
 16 minimum, requires the physical collection of that
 17 drive and then the preservation of it by storing it
 18 in a secure location where it will not be tampered,
 19 molested, or interfered with.
 20 If the drive is to be disposed -- as
 21 you mentioned in your scenario, if the drive is to be
 22 disposed of and it is nonfunctioning, I would think
 23 that a bit-by-bit duplication of that drive would be
 24 the appropriate approach to take.
 25 And such a copy of the hard drive, if

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1 you can get it to function, would in some cases
 2 equate to a forensic backup of the drive.
 3 To further that point, when you have a
 4 damaged hard drive -- a nonfunctioning hard drive,
 5 it's -- the process of accessing the file system and
 6 retrieving individual files is not always
 7 successful.
 8 It's more common to simply attempt to
 9 make a bit-by-bit actual physical copy of the
 10 drive.
 11 And in so doing, you retain all of the
 12 active data as well as the unallocated space of the
 13 drive.
 14 At such point I suppose one could be
 15 free to dispose of the drive if you are confident
 16 that you reliably preserved the evidence.
 17 But I would probably go back to the
 18 easiest, simplest, and most commonsense approach and
 19 I would simply take the drive and lock it up in a
 20 box.
 21 BY MR. HOLLEY:
 22 Q. You're familiar with the standard
 23 suggested by Sedona; right?
 24 A. Somewhat, yes. I'm a member of their
 25 conference.

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1 Q. The standard suggested by Sedona does
 2 not include a bright-line rule that would have
 3 required Mr. Pringle to make a bit-by-bit backup of
 4 these hard drives in these circumstances; isn't that
 5 true?
 6 A. I believe --
 7 MR. MILLER: Calls for a legal
 8 conclusion.
 9 THE DEPONENT: I believe so.
 10 BY MR. HOLLEY:
 11 Q. You believe that's true?
 12 A. Yes.
 13 Q. That there's no bright-line rule;
 14 isn't that correct?
 15 DEPOSITION OFFICER: "That there's
 16 no..."?
 17 MR. HOLLEY: Bright-line rule to that
 18 effect.
 19 THE DEPONENT: I think there's -- I
 20 have a hard time with the words "bright-line" because
 21 I don't know how you're defining it or how I'm going
 22 to define it.
 23 What I would say that the rule is, is
 24 a commonsense rule. And that is that if there's
 25 equipment or media that potentially has data on it,

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1 that there is an obligation to preserve it.
 2 If the media is not functioning, you
 3 still have an obligation to preserve it as opposed to
 4 destroying it.
 5 There are many ways to preserve
 6 things. And I don't believe Sedona says that you
 7 have to take a failed hard drive and somehow make it
 8 work and create a forensic copy of it.
 9 But I would probably interpret the
 10 Sedona rules to say, "Well, if it doesn't function,
 11 at least you have to lock up the drive and put it
 12 aside."
 13 Q. Assuming it's reasonable to believe
 14 that there's evidence on that drive that is not --
 15 that doesn't exist elsewhere; correct? Evidence
 16 pertaining to the lawsuit?
 17 MR. PINK: Calls for a legal
 18 conclusion.
 19 THE DEPONENT: Yes.
 20 MR. PINK: Overly broad.
 21 MR. MILLER: Let him finish.
 22 THE DEPONENT: Sorry.
 23 BY MR. HOLLEY:
 24 Q. If you assume hypothetically that at
 25 the time Mr. Pringle's hard drive stopped -- well,

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1 first assume hypothetically that the hard drives did
 2 stop functioning.
 3 And assume that Mr. Pringle believed
 4 that all information on those hard drives that had
 5 any relevance to the disputed claims in this lawsuit
 6 had been saved on other media in his possession.
 7 Then isn't it true that his turning
 8 those hard drives into the manufacturer would not be
 9 spoliation of evidence?
 10 MR. MILLER: Calls for a legal
 11 conclusion.
 12 THE DEPONENT: You're asking me to
 13 make assumptions about what Mr. Pringle believed or
 14 what Mr. Pringle did?
 15 BY MR. HOLLEY:
 16 Q. Yes, I am.
 17 A. I have no clue what he believed.
 18 Q. I didn't ask you to decide what he
 19 believed; I asked you to make those assumptions.
 20 MR. PINK: Could I have the question
 21 read back, please.
 22 (THE RECORD WAS READ AS FOLLOWS:
 23 Q. If you assume hypothetically
 24 that at the time Mr. Pringle's
 25 hard drive stopped -- well, first

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1 assume hypothetically that the
 2 hard drives did stop functioning.
 3 And assume that Mr. Pringle
 4 believed that all information on
 5 those hard drives that had any
 6 relevance to the disputed claims
 7 in this lawsuit had been saved on
 8 other media in his possession.
 9 Then isn't it true that his
 10 turning those hard drives in to
 11 the manufacturer would not be
 12 spoliation of evidence?)
 13 MR. PINK: Calls for a legal
 14 conclusion.
 15 MR. MILLER: May be an improper
 16 hypothetical.
 17 THE DEPONENT: In your hypothetical, I
 18 don't see how Mr. Pringle could have come to the
 19 conclusion that the data could have been preserved if
 20 these drives didn't function.
 21 BY MR. HOLLEY:
 22 Q. That the data relevant to the lawsuit
 23 had been saved elsewhere prior to the drive not
 24 functioning.
 25 A. So in your hypothetical, he has a

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1 forensic copy of the hard drives?
 2 Q. No. I mean, you're -- let me explain.
 3 You're making an assumption that data
 4 existed on these hard drives showing backdating or
 5 showing -- that may have existed showing backdating,
 6 may have existed showing downloading of music from
 7 The Black Eyed Peas.
 8 If such data didn't exist on the hard
 9 drives, and Mr. Pringle knew that and he believed
 10 that he had saved all his relevant music files
 11 elsewhere, then there was no spoliation of evidence;
 12 correct?
 13 MR. PINK: Well, I'm going to
 14 object --
 15 MR. MILLER: Argumentative.
 16 MR. PINK: -- calls for a legal
 17 conclusion.
 18 MR. HOLLEY: That question is no more
 19 speculative than anything in this report, and I'm
 20 going to demand an answer to it.
 21 MR. PINK: I disagree. Calls for
 22 speculation.
 23 MR. HOLLEY: Make your objections.
 24 MR. PINK: That is what I am doing.
 25 You can demand an answer all you like. No one has

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1 instructed him not to answer it, for God's sake.
 2 MR. HOLLEY: Okay.
 3 MR. MILLER: And it's argumentative.
 4 MR. PINK: Calls for a legal
 5 conclusion.
 6 THE DEPONENT: I want to make sure I
 7 get it right, so if you could read back the question,
 8 please.
 9 (THE RECORD WAS READ AS FOLLOWS:
 10 Q. No. I mean, you're -- let
 11 me explain.
 12 You're making an assumption
 13 that data existed on these hard
 14 drives showing backdating or
 15 showing -- that may have existed
 16 showing backdating, may have
 17 existed showing downloading of
 18 music from The Black Eyed Peas.
 19 If such data didn't exist
 20 on the hard drives, and
 21 Mr. Pringle knew that and he
 22 believed that he had saved all his
 23 relevant music files elsewhere,
 24 then there was no spoliation of
 25 evidence; correct?)

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1 THE DEPONENT: No.
 2 BY MR. HOLLEY:
 3 Q. Why is that not correct?
 4 A. Because the music files are not at the
 5 heart of the dispute.
 6 The files that are more at the heart
 7 of the dispute are system files and application files
 8 and residual data on the computer which would help
 9 ascertain whether or not the files were, in fact,
 10 burned at the time that they were burned.
 11 If Mr. Pringle simply copied off files
 12 from the computer that bore the same date as the
 13 files that he burned to the CDs, presuming that those
 14 dates were backdated, then he hasn't really preserved
 15 anything of value.
 16 He simply made another copy of what
 17 he's already presented on the CDs.
 18 If Mr. Pringle, on the other hand, had
 19 preserved the hard drives with the operating systems
 20 and the application files and the temporary files,
 21 and all of the other miscellaneous files that exist
 22 on a drive, then you would have the whole picture and
 23 you'd be able to conclusively say whether or not
 24 Mr. Pringle had backdated the files and burned them
 25 to CDs or, in fact, created those files when he says

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1 he created them and burned them to the CDs when he
 2 says that he burned them to the CDs.
 3 Q. Do you know which computer -- on which
 4 computer Mr. Pringle originally saved the NRG file
 5 referenced in paragraph 21 of your report?
 6 (DOCUMENT REVIEWED BY THE DEPONENT.)
 7 THE DEPONENT: No.
 8 BY MR. HOLLEY:
 9 Q. Do you even know if the computer on
 10 which the NRG file was saved was the computer -- a
 11 hard drive of which was turned in to the manufacturer
 12 in 2009 or 2010?
 13 A. I have no visibility into any of the
 14 hard drives that are at issue in the case because
 15 I've examined none of them.
 16 Q. Do you know whether the computer from
 17 which the NRG file was burned to the NRG disc is the
 18 same computer the hard drives of which were turned in
 19 to the manufacturer in 2009 and 2010?
 20 A. No.
 21 Q. So isn't it true that Mr. Pringle's
 22 act of turning those hard drives in in 2009, 2010,
 23 may not have even involved the computers at issue?
 24 MR. PINK: Calls for speculation.
 25 THE DEPONENT: If that's true, then it

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1 was an awfully self-destructive act, because it would
 2 have proven his case, perhaps.
 3 If that was the case, why would you
 4 destroy the evidence?
 5 If these were the computers that
 6 burned those CDs, they would show it. If they
 7 weren't, that would certainly help, too.
 8 BY MR. HOLLEY:
 9 Q. So your view is in Mr. Pringle's mind,
 10 he should have kept those hard drives around to prove
 11 a negative; meaning, even if those weren't the
 12 computers on which the NRG file was saved and on
 13 which the NRG file was burned, he should have kept
 14 those around to show those weren't the computers?
 15 A. Certainly. Particularly in light of
 16 the fact that he probably brought forward or migrated
 17 data from the old computers -- if they were older
 18 computers -- onto these new hard drives.
 19 So absolutely he should have kept
 20 those hard drives.
 21 Q. When you say he "probably migrated
 22 data," is that probably speculation on your part?
 23 A. It's absolute speculation.
 24 I would expect that if an individual
 25 is operating on a hard drive on a computer and

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1 subsequently buys a new computer, that they will
 2 migrate some or all of the data contained on the
 3 first computer onto the second computer.
 4 This is the general chain of events
 5 for those that own and use computers. It's not
 6 exclusive. Certainly some people start fresh when
 7 they buy a new computer.
 8 Q. What is your understanding regarding
 9 when Mr. Pringle claims he saved the NRG file to a
 10 computer for the first time?
 11 A. I believe it was 1999.
 12 Q. And what is your understanding as to
 13 when Mr. Pringle claims he burned the NRG file to an
 14 NRG disc for the first time?
 15 A. From memory, I believe it was 2001.
 16 Q. And when Mr. Pringle, to use your
 17 term, destroyed these hard drives in 2009 and 2010,
 18 this was ten years plus after Mr. Pringle says he
 19 saved the NRG file and eight years plus after he says
 20 he burned the NRG file to an NRG disc; right?
 21 A. Yes.
 22 Q. And you don't have any evidence to
 23 show whether or not Mr. Pringle had any reason to
 24 believe that the hard drives he turned in to the
 25 manufacturer eight to ten years later had any data on

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1 them that would show that the NRG file was saved in
 2 1999 or that the NRG file was burned to the disc in
 3 2001; isn't that true?
 4 MR. PINK: Objection as vague and
 5 ambiguous.
 6 THE DEPONENT: I apologize. But
 7 either -- if you could read the question back or if
 8 you could restate the question, please.
 9 MR. HOLLEY: Sure.
 10 If you could read it back, please.
 11 (THE RECORD WAS READ AS FOLLOWS:
 12 Q. And you don't have any
 13 evidence to show whether or not
 14 Mr. Pringle had any reason to
 15 believe that the hard drives he
 16 turned in to the manufacturer
 17 eight to ten years later had any
 18 data on them that would show that
 19 the NRG file was saved in 1999 or
 20 that the NRG file was burned to
 21 the disc in 2001; isn't that true?)
 22 MR. PINK: I'll add vague and
 23 ambiguous, compound.
 24 THE DEPONENT: No, I have no way of
 25 knowing what Mr. Pringle thought, nor do I have any

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1 way of knowing what was on those drives.
 2 BY MR. HOLLEY:
 3 Q. Do you have any knowledge as to how
 4 many computers Mr. Pringle used between 1999 and
 5 2009?
 6 A. No.
 7 Q. If you could look at Exhibit 46. Take
 8 your time.
 9 Just let me know if there are any
 10 opinions or subopinions, however you want to look at
 11 it, you expressed in your declaration that's been
 12 marked as Exhibit 46 that we have not talked about
 13 today during this deposition.
 14 A. Okay.
 15 (DOCUMENT REVIEWED BY THE DEPONENT.)
 16 THE DEPONENT: Well, I would really
 17 break these opinions up -- or statements up into
 18 three groupings.
 19 The first eight pages all deal with
 20 Gallant's -- or Gallant's report and the inadequacy
 21 of that first report. And I think we've discussed
 22 that at some length.
 23 The second and third sections are on
 24 page 9.
 25 One, the need to review the computer

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1 that burned the CD. I think we've covered that.
 2 And the third point is the -- is also
 3 on page 9, the need to review the actual files in a
 4 forensic manner. And we've covered that point as
 5 well.
 6 I mean, we've reviewed them on the CD.
 7 You know, it would be nice to review them on the
 8 original media, and we've discussed that.
 9 So I don't believe there's any other
 10 issues that we haven't discussed.
 11 Q. Coming back to Exhibit 45, your
 12 summary-judgment declaration, are there any issues or
 13 subissues contained in that declaration -- sorry --
 14 opinions or subopinions contained in that declaration
 15 that we haven't talked about today?
 16 (DOCUMENT REVIEWED BY THE DEPONENT.)
 17 THE DEPONENT: We've discussed all
 18 three points in that document as well.
 19 BY MR. HOLLEY:
 20 Q. Okay. More generally, and without
 21 reference to either of your declarations, are there
 22 any opinions, other than anticipated rebuttal to
 23 Mr. Gallant's most recent report, that you anticipate
 24 offering in this case other than what we've talked
 25 about today?

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1 A. Based on the information that I have
 2 at hand today, no.
 3 Q. Okay. The work that you've done in
 4 this case in preparing the opinions you've provided
 5 to date, have you done that work all yourself or have
 6 you relied upon others in your firm to an extent?
 7 A. I've had assistants.
 8 Q. Okay. And what have your assistants
 9 done for you?
 10 A. I've had a number of people in our
 11 Los Angeles computer-forensic lab handling evidence,
 12 managing evidence and files, and I believe also
 13 examining some of the evidence.
 14 And I've had one person in the field,
 15 Danny Aga, actually go and collect evidence. That
 16 was in Texas.
 17 We don't operate a -- while we have
 18 offices in Texas, it's necessary to have a private
 19 investigator's license to forensically collect data,
 20 so I use Danny Aga as a subcontractor because he has
 21 a private investigator's license.
 22 Q. Can you estimate how many hours you've
 23 billed on this case to date?
 24 A. I don't recall.
 25 Q. Can you estimate the amount of fees

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1 and costs that you've billed on this case to date?
 2 A. I don't recall. I would have to
 3 review our corporate billing records.
 4 Q. Do you know if it's more than
 5 25,000?
 6 A. I don't recall. I would expect it to
 7 be, but I don't recall the number.
 8 Q. Do you know, sitting here today,
 9 whether your firm has collected any amount of that
 10 billing?
 11 A. No -- excuse me. My apologies.
 12 I do believe we have -- there have
 13 been collections, yes, but I do not know the
 14 amounts.
 15 Q. Do you know if there's any amount
 16 outstanding at the moment? In other words, still to
 17 be paid that has been billed?
 18 A. I believe there is, yes.
 19 Q. Do you have any understanding as to
 20 what that amount is?
 21 A. I think there's a recent bill in
 22 the -- it's over 5,000, under 10,000. I don't
 23 remember the number.
 24 Q. Prior to working on this litigation,
 25 had you ever heard of Dave Gallant before?

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1 A. No.
 2 Q. Do you have any opinion regarding his
 3 qualifications to conduct the analysis he is
 4 conducting in this case?
 5 A. I would like to review his CV again.
 6 MR. HOLLEY: You know what? I'm going
 7 to go ahead and -- we've referenced this document
 8 before, but I might as well mark it since you're
 9 going to take a look at his CV.
 10 First, let me make sure it's in here.
 11 So we're at 47.
 12 (WHEREUPON, DEPOSITION EXHIBIT NUMBER
 13 47 WAS MARKED FOR IDENTIFICATION BY
 14 THE DEPOSITION OFFICER AND IS ATTACHED
 15 HERETO.)
 16 MR. PINK: Thank you.
 17 BY MR. HOLLEY:
 18 Q. Exhibit 47 is "Plaintiff's Expert
 19 Disclosures Pursuant to Rule 26(a)(2) of the Federal
 20 Rules of Civil Procedure" served by the plaintiff on
 21 November 11th, 2011.
 22 Attached to the disclosure is a report
 23 from Mr. Gallant dated August 6, 2011.
 24 If you can turn to a few pages in --
 25 you're already there at his CV?

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1 A. Yes.
 2 Q. Take as much time as you need and let
 3 me know when you've reviewed them.
 4 (DOCUMENT REVIEWED BY THE DEPONENT.)
 5 MR. MILLER: While he's doing that,
 6 you might have noticed earlier my assistant came in
 7 and handed me a folder.
 8 What she handed me were documents that
 9 were given to us --
 10 DEPOSITION OFFICER: Speak up,
 11 please.
 12 MR. MILLER: -- were given to us this
 13 morning by the witness's office and I'm giving those
 14 to you now.
 15 I think they are all one set of
 16 documents.
 17 MR. HOLLEY: Okay.
 18 MR. MILLER: One topic, that is.
 19 MR. HOLLEY: Okay.
 20 MR. MILLER: Although they are all
 21 stapled individually.
 22 MR. PINK: Thanks.
 23 MR. MILLER: They were also -- from my
 24 understanding, they were also e-mailed to everyone
 25 earlier today, maybe an hour ago; yes?

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1 MR. HOLLEY: Okay.
 2 MR. PINK: I can confirm that I
 3 received them.
 4 MR. HOLLEY: I saw that e-mail.
 5 MR. MILLER: Okay.
 6 (DOCUMENT REVIEWED BY THE DEPONENT.)
 7 THE DEPONENT: Mr. Holley, the
 8 question one more time?
 9 MR. HOLLEY: You can hold on to that.
 10 BY MR. HOLLEY:
 11 Q. The question was: Do you have any
 12 opinion as to Mr. Gallant's qualifications to render
 13 the types of opinions he's rendering in this case?
 14 A. Based on the experience listed on his
 15 CV, I would say that Mr. Gallant has the requisite
 16 experience and training to render an opinion in this
 17 matter. Whether I agree with his opinion or not is
 18 another story.
 19 MR. HOLLEY: Let's go ahead and mark
 20 this group just as a single exhibit, Exhibit 48.
 21 (WHEREUPON, DEPOSITION EXHIBIT NUMBERS
 22 48 A-G WERE MARKED FOR IDENTIFICATION BY
 23 THE DEPOSITION OFFICER AND ARE ATTACHED
 24 HERETO.)
 25 THE DEPONENT: Thank you.

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1 DEPOSITION OFFICER: Sure.
 2 BY MR. HOLLEY:
 3 Q. Why don't you -- since that exhibit is
 4 a number of stapled documents, why don't you move the
 5 rest of the exhibits away into a pile so you don't
 6 mix up anything?
 7 And then open up the clip and take a
 8 look at -- through those documents.
 9 (DOCUMENT REVIEWED BY THE DEPONENT.)
 10 THE DEPONENT: Okay. I've read
 11 through them.
 12 BY MR. HOLLEY:
 13 Q. Are all of the documents that are in
 14 the set marked as "Exhibit 48," documents that are
 15 being provided by your firm in response to the
 16 deposition notice?
 17 A. Yes.
 18 Q. Have you seen all of the documents
 19 before today?
 20 A. Some of them.
 21 Q. Why don't you just take me through
 22 what they are.
 23 What is the first page?
 24 A. The first page is an e-mail from
 25 Danny Aga to Verbatim Europe, and he's asking

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1 Verbatim for information on the meaning of their
 2 serial numbers.
 3 The second document is --
 4 Q. Before we move on --
 5 A. Sure.
 6 Q. -- the serial numbers that are being
 7 discussed on the first page of Mr. Aga's e-mail,
 8 those are serial numbers on what?
 9 A. Those are serial numbers off of the
 10 CDs that we examined.
 11 Q. And which CDs are those,
 12 specifically?
 13 A. The first one is 9E24F221861. And the
 14 second one is 130-H.912072346D, as in David, 10.
 15 Q. And what files did those CDs hold?
 16 A. They hold the files that were provided
 17 by Pringle.
 18 Q. All right. And the second page?
 19 A. The second page is an e-mail from
 20 webmaster@ritekusa.com to Danny Aga, and it is an
 21 acknowledgment of a form that he filled out online
 22 in which he's asking for information of how the
 23 origin -- the manufacturing date of the CDs.
 24 Q. Same CDs?
 25 A. Same CDs -- well, only one of them,

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1 actually. The 13 -- the CD that begins with 130.
 2 Q. And the next document on the next
 3 page?
 4 A. The second document -- the third
 5 document. Excuse me.
 6 MR. MILLER: Let's give a little more
 7 of a description. You guys are looking at two
 8 different ones. My third document has a little box
 9 in it that says MYS -- excuse me -- MYCE.
 10 MR. HOLLEY: That's correct.
 11 THE DEPONENT: The third document is a
 12 seven-page --
 13 MR. HOLLEY: Thanks.
 14 THE DEPONENT: -- printout of an
 15 online chat thread of some sort which has a logo at
 16 the top, which is represented by a black button -- or
 17 black box with some colors -- orange, green, and
 18 blue -- and it says "MYCE Beta."
 19 And the document --
 20 BY MR. HOLLEY:
 21 Q. You know what? Before we go on, I
 22 think we're going to get messed up if we don't do
 23 some marking here. So let's do this.
 24 MR. MILLER: A, B, C?
 25 MR. HOLLEY: Yeah.

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1 BY MR. HOLLEY:
 2 Q. So the first page we talked about
 3 is "A."
 4 A. Okay.
 5 Q. That has the actual Exhibit 48 stamp
 6 on it.
 7 MR. MILLER: Do you mind if he marks
 8 on these?
 9 DEPOSITION OFFICER: If you guys
 10 don't.
 11 MR. PINK: Do you want to just tear it
 12 off and make it individually 48 and 49?
 13 MR. MILLER: I think it's just faster
 14 if we do A, B, and C.
 15 MR. PINK: That's fine.
 16 MR. MILLER: Let's make sure we're all
 17 on the same page when we're marking them.
 18 BY MR. HOLLEY:
 19 Q. Why don't you do "dash, A" for that
 20 one?
 21 And then you have the second page
 22 where you discussed this 48-B.
 23 A. Is that "PLTS"?
 24 Q. That's fine.
 25 A. 48-B.

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1 Q. It's an apostrophe "s," but --
 2 A. Okay.
 3 Q. 48-B. Okay.
 4 And then the one you just -- you just
 5 described that one.
 6 A. Sorry.
 7 Q. So the one you've just described,
 8 let's make it 48-C.
 9 MR. MILLER: And for the record,
 10 that's MYCE, but it's 1 of 7 in the top right-hand
 11 corner.
 12 MR. HOLLEY: Correct.
 13 Okay. 48-C.
 14 DEPOSITION OFFICER: Here. I'm going
 15 to ask you to mark them in red pen if you're going to
 16 continue to mark them. I thought you were putting on
 17 stickies.
 18 THE DEPONENT: The second MYCE.
 19 BY MR. HOLLEY:
 20 Q. Okay. How many MYCE are there? Just
 21 two?
 22 So the second one, which is an
 23 eight-page document, will be 48-D; right?
 24 A. Yes.
 25 Q. Okay.

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1 And then the document that has "Virgin
 2 America" in a red box at the top, we will call that
 3 48-E.
 4 A. Yes.
 5 Q. The e-mail from Carrie Ng, N-g, 48-F.
 6 A. Uh-huh.
 7 Q. And then the document with "Kindle
 8 Touch" at the top, 48-G.
 9 Everybody squared away on that?
 10 A. Yes.
 11 Q. Okay.
 12 A. Thank you.
 13 Q. So now let's -- the document we just
 14 discussed is 48-C.
 15 Could you tell me again what that is?
 16 A. This is a seven-page document that has
 17 a black logo at the top left-hand corner with the
 18 words "MYCE Beta."
 19 It appears to be a printout of a
 20 conversation which took place online on this website
 21 between Danny Aga and others.
 22 And the purpose of the conversation is
 23 to ascertain the manufacturing date of the CDs that I
 24 previously mentioned.
 25 The first one starting with 130-H, and

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1 the second one starting with 9E2.
 2 Q. How do you know from this document
 3 that Mr. Aga was involved in these communications?
 4 A. Because the first posting is the --
 5 the moniker for the first posting is "dagardc," and
 6 it's a new member, and that would stand for
 7 Danny Aga, Renew Data Corporation.
 8 Q. Okay.
 9 A. The fourth document, PLT'S 48-D, is an
 10 eight-page document which has a black square box on
 11 the top left-hand side also with the logo entitled
 12 "MYCE Beta."
 13 This document is also a printout of
 14 postings and communication on this website between
 15 Danny Aga and others, and is in some respects
 16 duplicate of the document known as 48-C.
 17 Q. And just for the record, when you
 18 identified the document, you were not identifying a
 19 Bates number when you said "PLT'S." It is DEPOSITION
 20 EXHIBIT 48; correct?
 21 A. Yes.
 22 Q. Dash, D?
 23 A. Yes.
 24 Q. Okay.
 25 A. The fifth document is a seven-page

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1 printout from a --
 2 Q. This is 48-E; right?
 3 A. I'm sorry.
 4 This is 48-E.
 5 Q. Okay.
 6 A. This is from a website known as
 7 www.digitalFAQ.com, and they have a forum on there
 8 which deals with CD and DVD questions.
 9 And the printouts represent posts and
 10 communications by Danny Aga starting on
 11 September 20th, 2011, in an attempt to identify the
 12 manufacturing date of the two CDs.
 13 Q. Okay.
 14 A. The sixth document, known as 48-F, is
 15 a printout of an e-mail from Carrie Ng from
 16 ritekusa.com to Danny Aga from October 7th, 2011,
 17 in which they have a conversation about trying to
 18 identify the manufacturing origin of the two CDs
 19 which have serial numbers which I've previously
 20 provided.
 21 Q. Okay.
 22 A. The seventh document, known as 48-G,
 23 is an eight-page document from Digital FAQ as well --
 24 Digital F-A-Q.
 25 And this is a communication thread

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1 also initiated by Danny Aga on 9/20/11, and actually
 2 appears to be somewhat duplicative of 48-E.
 3 There's an additional page, so it's
 4 probably an additional -- there is probably an
 5 additional page of communication in here.
 6 And it also is communication related
 7 to the attempt by our firm to authenticate -- excuse
 8 me -- to identify the manufacturing date of the two
 9 CDs that were represented by the serial numbers that
 10 I previously provided.
 11 Q. Did any or all of these documents
 12 allow you to determine the manufacturing date of the
 13 CDs?
 14 A. These documents did assist us in the
 15 attempt -- in determining manufacturing dates of at
 16 least one of them and perhaps the second one.
 17 Q. What did you conclude?
 18 A. Well, we concluded that the CD with
 19 the serial number of --
 20 Q. 98-G might help you the most.
 21 MR. MILLER: 48-G.
 22 MR. HOLLEY: Thank you.
 23 THE DEPONENT: We determined that
 24 the -- or at least we determined that the individual
 25 who responded on this thread, who lives in Slovakia

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1 and who seems to have a rather deep knowledge of the
 2 manufacturing specifications of historic DVDs and
 3 CDs, feels 100 percent confident that the CD-R made
 4 by Ritek, which is the CD with the serial number
 5 starting with 130-H, was a CD that was made in 1999,
 6 based on the specifications of the serial number
 7 which actually has encoded in it references to dates.
 8 BY MR. HOLLEY:
 9 Q. Did you reach any conclusion as to the
 10 manufacturing date of the other CD?
 11 A. There was some response that we
 12 received here on these threads, as well as responses
 13 that we received by telephone from other individuals
 14 that we --
 15 DEPOSITION OFFICER: Hang on a second.
 16 I'm sorry. I need to close this down.
 17 Off the record.
 18 (WHEREUPON, A RECESS WAS HELD
 19 FROM 3:05 P.M. TO 3:59 P.M.)
 20 DEPOSITION OFFICER: Do you know where
 21 you left off, Counsel?
 22 MR. HOLLEY: I think you might have
 23 to read for Mr. Laykin his answer up until when he
 24 stops, so he can continue it. Maybe you can start
 25 with --

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1 (THE RECORD WAS READ AS FOLLOWS:
 2 Q. Did you reach any conclusion
 3 as to the manufacturing date on
 4 the other CD?
 5 A. There was some response that
 6 we received here on these threads,
 7 as well as responses that we
 8 received by telephone from other
 9 individuals that we --)
 10 THE DEPONENT: Are we on the record?
 11 DEPOSITION OFFICER: Yes, we are.
 12 THE DEPONENT: -- took into account,
 13 including one from DigiX on October 30th of 2011, in
 14 which he indicates that the Verbatim CD-R disc, which
 15 is the disc that has a serial number beginning with
 16 9E2 was more than likely, based on his research,
 17 manufactured in Taiwan on February 24th of 1999.
 18 While I have no reason to disagree
 19 with any of the opinions posted on this user group, I
 20 also have to preface it by saying they are not
 21 representatives of the companies, either Ritek or
 22 Verbatim, so we are not working off of factual
 23 information.
 24 We're working off of theory based on
 25 the observations of individuals who follow the world

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1 of CDs and DVDs.
 2 BY MR. HOLLEY:
 3 Q. Do you have any evidence -- or have
 4 you seen any evidence indicating that either of these
 5 CDs was manufactured prior to -- or after 1999 -- let
 6 me start that over since I changed too many words in
 7 it.
 8 Are you aware of any evidence showing
 9 that either of these CDs was made after 1999?
 10 A. No.
 11 MR. HOLLEY: I have no further
 12 questions.
 13 THE DEPONENT: Thank you.
 14 MR. PINK: Okay. I have some
 15 questions.
 16
 17 EXAMINATION
 18 BY MR. PINK:
 19 Q. Mr. Laykin, just to follow up on some
 20 questions that Mr. Holley asked.
 21 First, do you recall that Mr. Holley
 22 asked whether you were aware of any evidence showing
 23 that Mr. Pringle had backdated the date of the NRG
 24 file?
 25 Do you recall that question?

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1 A. Yes.
 2 Q. And do you recall that your answer to
 3 that question was "No"?
 4 A. I do recall.
 5 Q. If there was evidence of backdating,
 6 where would you expect that to be?
 7 A. I would expect it to be located on the
 8 computer or a representation of the computer that
 9 burned the CD in the first place.
 10 Q. So is it fair to say that the reason
 11 that you are not aware of any evidence showing that
 12 Mr. Pringle backdated the date of the NRG file is
 13 due, at least in part, to the fact that you have been
 14 unable to look at the computer that burned the CD in
 15 the first place?
 16 MR. HOLLEY: Objection; calls for
 17 speculation.
 18 THE DEPONENT: Yes.
 19 BY MR. PINK:
 20 Q. And to your knowledge, the reason you
 21 have not been able to view that computer is
 22 because -- your understanding is that Mr. Pringle
 23 destroyed it; correct?
 24 MR. HOLLEY: Objection; leading.
 25 THE DEPONENT: Yes.

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1 BY MR. PINK:
 2 Q. Based on your expertise in the field
 3 of computer forensics, what do you believe that a
 4 trier of fact would need to authenticate the date of
 5 the NRG files at issue here?
 6 MR. HOLLEY: Objection to the extent
 7 it calls for a legal conclusion, vague as to the term
 8 "authenticate."
 9 THE DEPONENT: Ultimately, without the
 10 original equipment or a copy of the original
 11 equipment that was used to burn the file to CD or
 12 DVD, one will not be able to conclusively say whether
 13 or not the file was burned on the date that it says
 14 it was burned or if it was burned at a later date.
 15 BY MR. PINK:
 16 Q. You were asked by Mr. Holley whether
 17 you were aware of Mr. Pringle having downloaded any
 18 of The Black Eyed Peas' music to his computer.
 19 Do you recall that questioning?
 20 A. I do.
 21 Q. And you indicated in your response
 22 that you were not aware of any such conduct by
 23 Mr. Pringle.
 24 Do you recall that?
 25 A. I do.

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1 Q. I want to show you just some testimony
 2 from Mr. Pringle's deposition, and just ask you if
 3 this refreshes your recollection.
 4 I'm going to just ask you to look at
 5 page 22 of Mr. Pringle's deposition, beginning on
 6 line 10, and let us say all the way through page 23,
 7 line 13.
 8 And just tell me if looking at that
 9 refreshes your recollection as to whether you're
 10 aware of any evidence that Mr. Pringle indeed
 11 downloaded music of The Black Eyed Peas from the
 12 Internet.
 13 MR. HOLLEY: Objection; vague as to
 14 time.
 15 (DOCUMENT REVIEWED BY THE DEPONENT.)
 16 THE DEPONENT: I've read the passage
 17 but I don't recall your question.
 18 BY MR. PINK:
 19 Q. So my question is: Does that refresh
 20 your recollection as to whether you're aware of any
 21 evidence that Mr. Pringle downloaded music of The
 22 Black Eyed Peas onto his computer?
 23 A. Yes, it does.
 24 And I did read this deposition
 25 transcript, so I should --

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1 DEPOSITION OFFICER: "So I..."?
 2 THE DEPONENT: Yes, it does. And I
 3 did read this deposition transcript previously, so I
 4 should have remembered that.
 5 BY MR. PINK:
 6 Q. And based on Mr. Pringle's testimony
 7 that you have just read, does that refresh your
 8 recollection as to when Mr. Pringle claims to have
 9 downloaded that music?
 10 A. Yes.
 11 Q. And based on that testimony, do you
 12 have any opinion as to -- well, strike that; okay.
 13 Mr. Holley also asked you whether
 14 you had any -- you were aware of any evidence that
 15 Mr. Pringle had access to old CDs -- old CDs from
 16 late 1991.
 17 Do you recall that?
 18 A. Yes.
 19 Q. Okay. And your response to that was
 20 "No."
 21 Do you recall that?
 22 A. I do.
 23 Q. I'm going to ask you to look at
 24 paragraph 28, I believe it is --
 25 MR. MILLER: In Exhibit 45?

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1 MR. PINK: In Exhibit 45.
 2 BY MR. PINK:
 3 Q. -- your declaration filed in support
 4 of the motion for summary judgment.
 5 If you would just look at paragraph 28
 6 and tell me whether reading that refreshes your
 7 recollection as to whether you're aware of any
 8 evidence that Mr. Pringle had access to such CDs.
 9 A. Yes, it does.
 10 Q. And based on the statement you made in
 11 your declaration, is it your belief that Mr. Pringle
 12 did, in fact, have access to old CDs from the late
 13 1990s?
 14 MR. HOLLEY: Objection; misstates the
 15 declaration.
 16 THE DEPONENT: My declaration states
 17 that it's likely that he had access to old CDs from
 18 the late 1990s being that he sent out -- testified
 19 that he had sent out repeatedly large numbers of CDs
 20 over many years, sometimes in batches of 200 or more.
 21 I don't have any direct evidence that
 22 he retained any of those CDs, but it seems to be
 23 reasonable and likely -- and that's why I used the
 24 word "likely" in my declaration -- that he more than
 25 likely would have had access to some of those old

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1 CDs.
 2 It's not uncommon at all to have a few
 3 old CDs lying around. I know I could testify for
 4 myself that I have old CDs and old media in various
 5 places around my home, in my office, and in my
 6 storage that I haven't used that I come across from
 7 time to time.
 8 BY MR. PINK:
 9 Q. And Mr. Holley also asked you whether
 10 there was a potential legitimate reason for
 11 Mr. Pringle turning the hard drives in to the
 12 manufacturer.
 13 Do you recall that question?
 14 A. Yes.
 15 Q. And you said -- you gave some further
 16 explanation, but you said "Yes, there was a potential
 17 legitimate reason."
 18 Do you recall that answer?
 19 A. Yes.
 20 Q. So my question to you, sir, is: Do
 21 you believe that it is reasonable to send the hard
 22 drive into a manufacturer during the course of a
 23 litigation where those very hard drives have been
 24 requested by the opposing party?
 25 A. No, not at all; in fact, my answer

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1 needs to be parsed out a bit.
 2 My initial answer that I gave to
 3 Mr. Holley, in my mind, was referencing the
 4 legitimate reason for sending a hard drive to a
 5 manufacturer, in the abstract, as a stand-alone
 6 event.
 7 When you take the sending of the hard
 8 drive to the manufacturer in the context of the fact
 9 that the hard drive was subject to litigation, no,
 10 there is no legitimate reason to send the hard drive
 11 to the manufacturer.
 12 MR. PINK: Okay. Give us one minute.
 13 I want to confer with Mr. Miller for one second.
 14 DEPOSITION OFFICER: Off the record.
 15 (WHEREUPON, A RECESS WAS HELD
 16 FROM 4:10 P.M. TO 4:13 P.M.)
 17 DEPOSITION OFFICER: Back on the
 18 record.
 19 MR. PINK: Thank you.
 20 BY MR. PINK:
 21 Q. Okay. So just one last question for
 22 you.
 23 And that is: Earlier in your
 24 deposition Mr. Holley asked you about your
 25 understanding as to when you understood Mr. Pringle

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1 had discarded -- or I believe that you testified
 2 "destroyed" his hard drives, and I believe you gave
 3 the time frame as 2009, 2010.
 4 Do you recall that?
 5 A. Yes.
 6 Q. Okay. I'm going to just ask you to
 7 look at paragraph 17 of Exhibit 45 and see if that
 8 refreshes your recollection as to the dates that
 9 Mr. Pringle claims to have discarded or destroyed his
 10 hard drives.
 11 A. Yes, it does.
 12 Q. And when do you believe that date to
 13 be?
 14 A. December or January -- December of
 15 2010 or January of 2011, and another in the summer of
 16 2011.
 17 MR. PINK: Thank you.
 18 I have no further questions.
 19 THE DEPONENT: Okay.
 20 MR. HOLLEY: Just a couple of
 21 follow-up questions.
 22 THE DEPONENT: Sure.
 23 ///
 24 ///
 25 ///

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1 EXAMINATION
 2 BY MR. HOLLEY:
 3 Q. If you could turn to --
 4 DEPOSITION OFFICER: Say that again.
 5 "Turn to..."?
 6 MR. HOLLEY: -- paragraph 32 of
 7 Exhibit 45.
 8 DEPOSITION OFFICER: Thank you.
 9 BY MR. HOLLEY:
 10 Q. Mr. Pink just asked you a question
 11 relating to Mr. Pringle's downloading of The Black
 12 Eyed Peas' music.
 13 Do you remember that question?
 14 A. Yes.
 15 Q. The second sentence of paragraph 32
 16 says:
 17 "This activity could show that
 18 the music files in question were
 19 actually downloaded from the
 20 Internet in 2009 or 2010, after
 21 the release of "I Gotta Feeling,"
 22 and subsequently backdated and/or
 23 modified to appear as though they
 24 had been created in 1999."
 25 Have you seen any evidence that

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1 Mr. Pringle downloaded The Black Eyed Peas' music
 2 from the Internet in 2009 or 2010 and subsequently
 3 backdated or modified it to appear as though it had
 4 been created in 1999?
 5 MR. PINK: Objection; compound.
 6 THE DEPONENT: No.
 7 BY MR. HOLLEY:
 8 Q. Turn back a page to paragraph 28.
 9 Do you have, or have you seen, any
 10 evidence that Mr. Pringle had in his possession in
 11 2009 or 2010 old CDs from the late 1990s?
 12 A. Yes.
 13 Q. And what evidence is that?
 14 A. The CDs that were produced in this
 15 matter.
 16 Q. Other than those CDs?
 17 A. No.
 18 Q. Okay. Do you have any evidence that
 19 Mr. Pringle in 2009 or 2010, burned any music onto
 20 CDs that were manufactured in the late 1990s?
 21 A. No.
 22 MR. HOLLEY: I have no further
 23 questions.
 24 MR. PINK: I have no further
 25 questions.

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1 MR. HOLLEY: Do we have a standard
 2 stipulation?
 3 MR. PINK: Yeah. I mean, we're always
 4 the easy ones. It's Dean who always wants the sort
 5 of funky ones.
 6 MR. HOLLEY: Well, is there a --
 7 MR. PINK: We have not done a
 8 consistent one, but I think Dean likes to follow the
 9 Federal rules.
 10 MR. HOLLEY: Okay.
 11 MR. PINK: If you want to just do
 12 that, that's fine. That's what he always does.
 13 MR. HOLLEY: Is that right?
 14 THE DEPONENT: Okay. It looks like I
 15 have a typo.
 16 MR. PINK: What's that?
 17 THE DEPONENT: I have a typo.
 18 MR. PINK: You have a typo?
 19 THE DEPONENT: Right.
 20 2009, 2010, versus 2010, 2011.
 21 MR. MILLER: We cleared it up, so
 22 that's fine.
 23 MR. PINK: So we're going off the
 24 record, and we're going to adhere to the Federal
 25 rules in terms of the stipulation.

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1 And so --
 2 DEPOSITION OFFICER: Are you
 3 requesting a review? Otherwise, you are not going to
 4 get a review.
 5 MR. PINK: Request a review.
 6 DEPOSITION OFFICER: You want to
 7 review it?
 8 MR. PINK: Thank you.
 9 DEPOSITION OFFICER: Off the record?
 10 MR. PINK: No. Wait.
 11 DEPOSITION OFFICER: Go ahead.
 12 MR. PINK: And we'll reserve
 13 signature.
 14 DEPOSITION OFFICER: Perfect.
 15 Do you want a copy as well?
 16 MR. PINK: Yes, please.
 17 DEPOSITION OFFICER: Copy, Counsel?
 18 MR. MILLER: Whatever Tal typically
 19 does.
 20 DEPOSITION OFFICER: Thank you.
 21 We are off the record.
 22 * * *
 23 (WHEREUPON, AT 4:18 P.M., THE
 24 DEPOSITION PROCEEDINGS WERE CONCLUDED.)
 25 ---o0o---

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1 DEPONENT'S SIGNATURE
 2
 3 Please be advised I, _____,
 4 have read the foregoing deposition pages _____
 5 through _____, inclusive. I hereby state
 6 there are:
 7
 8 (CHECK ONE):
 9 _____ NO CORRECTIONS.
 10 _____ CORRECTIONS PER ATTACHED.
 11
 12
 13 _____
 14 (SIGNATURE OF THE DEPONENT)
 15
 16 ---o0o---

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1 DEPONENT'S CHANGES OR CORRECTIONS
 2 NOTE: If you are adding to your testimony, print the
 exact words you want to add. If you are deleting
 3 from your testimony, print the exact words you want
 to delete. Specify with "Add" or "Delete" and sign
 4 this form.
 5 DEPOSITION OF: ERIK LAYKIN
 CASE TITLE: PRINGLE VS. ADAMS
 6 DATE OF DEPOSITION: WEDNESDAY, DECEMBER 7, 2011
 7 I, _____,
 have the following corrections to make to my
 8 deposition:
 9 PAGE: LINE: CHANGE/ADD/DELETE:
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
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 19 _____
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 23 _____
 24 _____
 25 _____

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1 STATE OF CALIFORNIA)
)SS
 2 COUNTY OF LOS ANGELES)
 3
 4 I, TRACY M. FOX, CERTIFIED SHORTHAND
 5 REPORTER, CERTIFICATE NUMBER 10449, FOR THE
 6 STATE OF CALIFORNIA, HEREBY CERTIFY:
 7 THE FORGOING PROCEEDINGS WERE TAKEN
 8 BEFORE ME AT THE TIME AND PLACE THEREIN
 9 SET FORTH, AT WHICH TIME THE DEPONENT WAS PLACED
 10 UNDER OATH BY ME;
 11 THE TESTIMONY OF THE DEPONENT AND ALL
 12 OBJECTIONS MADE AT THE TIME OF THE EXAMINATION
 13 WERE RECORDED STENOGRAPHICALLY BY ME AND WERE
 14 THEREAFTER TRANSCRIBED;
 15 THE FOREGOING TRANSCRIPT IS A TRUE AND
 16 CORRECT TRANSCRIPT OF MY SHORTHAND NOTES SO TAKEN;
 17 I FURTHER CERTIFY THAT I AM NEITHER COUNSEL
 18 FOR NOR RELATED TO ANY PARTY TO SAID ACTION,
 19 NOR IN ANY WAY INTERESTED IN THE OUTCOME THEREOF.
 20 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
 21 MY NAME THIS 13TH DAY OF DECEMBER, 2011.
 22
 23
 24 _____
 TRACY M. FOX, C.S.R. No. 10449
 CERTIFIED SHORTHAND REPORTER
 25

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1 ERRATA SHEET (CONTINUED:)
 2
 3
 4 PAGE: LINE: CHANGE/ADD/DELETE:
 5
 6 _____
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