

EXHIBIT F

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 SOUTHERN DIVISION

-----X

4 BRYAN PRINGLE, an individual,
5 Plaintiff,

6 - against -

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

Defendants.

11 CASE NO.: SACV 10-1656 JST(RZx)

-----X

12
13 345 Park Avenue
14 New York, New York

15 December 16, 2011
16 10:09 a.m.

17 DEPOSITION of Expert Witness, PAUL
18 GELUSO, before Melissa Gilmore, a Notary Public
19 of the State of New York.

20
21
22
23
24
25

1 A P P E A R A N C E S:

2

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1 ----- I N D E X -----

2	WITNESS	EXAMINATION BY	PAGE
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15	PLAINTIFF'S	DESCRIPTION	FOR I.D.
16	Exhibit 49	Plaintiff's Notice of	6
17		Deposition of Paul Geluso	
18	Exhibit 50	Declaration of Paul	8
19		Geluso, November 14, 2011	
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21		Beatport Presents The	
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23		Contest in Association	
24		With Dipdive	
25			

1 A P P E A R A N C E S: (Cont'd)

2

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4 Attorneys for Defendants William Adams, Jr.,

5 Allan Pineda, Jaime Gomez, Will.I.Am Music, LLC,

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8 and Headphone Junkie Publishing, LLC

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1 ----- E X H I B I T S (Cont'd) -----

2	PLAINTIFF'S	DESCRIPTION	FOR I.D.
3	Exhibit 52	Document Entitled The	106
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5		Feeling Remix Contest	
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11	(EXHIBITS TO BE PRODUCED)		
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1 PAUL GELUSO, called as a witness,
2 having been duly sworn by a Notary Public,
3 was examined and testified as follows:
4 (Plaintiff's Exhibit 49, Plaintiff's
5 Notice of Deposition of Paul Geluso,
6 marked for identification.)

7
8 EXAMINATION BY
9 BY MR. DICKIE:

10 Q. Good morning, sir. Would you please
11 state your full name?

12 A. Sure. Paul Geluso.

13 Q. Where do you live, Mr. Geluso?

14 A. 65 Delaware Avenue, Delhi, New York.
15 Delaware, like Delaware River.

16 Q. Did I also understand you to say
17 Delaware, New York?

18 A. Delhi.

19 Q. Forgive me. I'm a foreigner. So
20 I'm not familiar with Delhi, New York.

21 A. Not many people are.

22 Q. Is that a suburb of Manhattan?

23 A. It's Catskill Mountains.

24 Q. Have you had your deposition taken
25 before, Mr. Geluso?

1 GELUSO
2 break, if you want to make a copy.
3 MR. DICKIE: We can just use it, and
4 make a copy before the end of the day so
5 the reporter would have it.

6 MR. DICKSTEIN: Can we go off the
7 record for a one second?

8 MR. DICKIE: Sure.
9 (Discussion off the record.)

10 MR. DICKIE: I ask the reporter to
11 mark the document that the witness is
12 examining as Plaintiff's Exhibit 50. I
13 already have a 49.

14 (Plaintiff's Exhibit 50, Declaration
15 of Paul Geluso, dated November 14, 2011,
16 marked for identification.)

17 MR. DICKSTEIN: This is the
18 declaration of Paul Geluso, November 14,
19 2011.

20 Q. Let me ask -- Mr. Geluso, let me ask
21 the reporter, and we will come back to
22 Exhibit 50, but let me ask the reporter to hand
23 you Exhibit 49 for identification, which is a
24 notice of deposition for today.

25 Have you seen that document before,

1 GELUSO

2 A. Once.

3 Q. When?

4 A. Last year. Boy, I don't remember
5 the date. About a year ago.

6 Q. Was that in connection with a
7 lawsuit in which you had been retained as an
8 expert?

9 A. Yes.

10 Q. And what lawsuit was that?

11 A. Kernel Records. It's listed in my
12 CV.

13 Q. And when you say your CV, are you
14 talking about one of the attachments to a
15 report or declaration you prepared in this
16 case?

17 A. Yes, Exhibit A.

18 MR. DICKSTEIN: For clarification,
19 the witness is referring to the
20 declaration of Paul Geluso dated --

21 MR. DICKIE: Can we mark that, Tal,
22 since he is looking at it, and make a copy
23 of it?

24 MR. DICKSTEIN: I have no problem
25 with you marking it. We could take a

1 GELUSO

2 sir?

3 A. (Perusing.)

4 MR. DICKSTEIN: I didn't make
5 copies.

6 MR. RIGHETTINI: That's okay.

7 A. Yes, I have.

8 Q. And on the third page and the
9 successive pages after that, there is a list of
10 documents that you were asked to bring to the
11 deposition today.

12 Did you bring any documents with you
13 to the deposition besides Exhibit 50?

14 A. What is Exhibit 50?

15 MR. DICKSTEIN: Object to form.

16 Q. Exhibit 50 is your declaration.

17 A. No.

18 Q. Now, if you would take a look at
19 Exhibit 49 and the appendix, which appears on
20 page three and carries over to page four, there
21 are 14 specific categories of documents you
22 were asked to bring, and I would like -- I
23 understand you didn't bring any of them, but I
24 would like, for the record, to establish
25 whether any of the documents called for that

1 GELUSO
 2 are listed exist, regardless of whether you
 3 brought them or not.
 4 MR. DICKSTEIN: Objection, vague,
 5 ambiguous, calls for a legal conclusion,
 6 compound.
 7 MR. RIGHETTINI: Join.
 8 Q. Take a look at item number one,
 9 Mr. Geluso. Read that to yourself, and tell me
 10 whether or not in your possession you have any
 11 of the materials called for in that paragraph.
 12 A. (Perusing.)
 13 MR. DICKSTEIN: Objection, vague,
 14 ambiguous, calls for a legal conclusion.
 15 A. I do not have each and every
 16 document.
 17 Q. Do you have any of the items called
 18 for in item one?
 19 MR. DICKSTEIN: Same objections.
 20 A. Item one calls for each and every.
 21 So you can ask me specifically. Let
 22 me see. (Perusing.) In my possession right
 23 now?
 24 Q. No, no, no.
 25 A. In general?

1 GELUSO
 2 A. Yes.
 3 MR. DICKSTEIN: Paragraph six.
 4 Q. Six items, six paragraphs, in which
 5 items that were provided to you were
 6 enumerated; isn't that correct?
 7 MR. DICKSTEIN: I believe there's
 8 seven, for clarification.
 9 MR. DICKIE: Seven, you are correct.
 10 I'm sorry.
 11 A. Yes. Although, you know, the
 12 numbers, I guess, are 659-360, you know, I
 13 can't verify those, but I believe I have
 14 everything on this list, yes.
 15 I mean, it may have a different
 16 number on it or something like that, but the
 17 list looks familiar, yes.
 18 Q. Other than the items that are listed
 19 in Exhibit 50 in paragraph six on page three,
 20 were any other materials or data provided to
 21 you in connection with your engagement in this
 22 matter?
 23 MR. DICKSTEIN: Objection, form.
 24 Can I just ask for clarification,
 25 provided by counsel or from anybody?

1 GELUSO
 2 Q. Whether you have them in your
 3 possession, whether they are in this room or
 4 elsewhere.
 5 MR. DICKSTEIN: Vague, ambiguous.
 6 A. (Perusing.) Okay. The first two,
 7 made available for you for review and
 8 investigation by or on behalf of the defendants
 9 in the above captioned action.
 10 So I have in my possession copies of
 11 documents presented to me for this case, yes.
 12 Q. And do you have a list of everything
 13 that was presented to you in connection with
 14 this case?
 15 MR. DICKSTEIN: Vague, ambiguous.
 16 A. I do not have an inventory. I have
 17 not taken an inventory, no. I have inventoried
 18 what I relied on for my expert report, which I
 19 believe I submitted with my report.
 20 Q. Well, that's -- and you referred to,
 21 I think, in that Exhibit 50, at paragraph six
 22 on page three, six items; isn't that correct?
 23 A. Page three?
 24 Q. Yeah, item number six. You were
 25 provided with the following materials?

1 GELUSO
 2 MR. DICKIE: From anybody.
 3 A. This is not a complete list of what
 4 I received. This is a list of what I relied on
 5 for my report, and I haven't taken another
 6 inventory.
 7 Q. Well, can you tell me everything
 8 that was provided to you that is not on this
 9 list on page three?
 10 A. Not at the moment.
 11 Q. What would you need to be able to do
 12 that?
 13 A. Time.
 14 Q. Now, are there materials that were
 15 provided to you that are not on this list that
 16 are encompassed by request number one on
 17 Exhibit 49 that you did not list?
 18 MR. DICKSTEIN: Objection, vague,
 19 ambiguous, calls for a legal conclusion.
 20 A. Well, I have said I don't have a
 21 complete inventory of everything -- everything
 22 given to me.
 23 Q. Did you bring with you your complete
 24 file of all the materials that were provided to
 25 you, whether you relied upon them or not, to

1 GELUSO
 2 the deposition today?
 3 A. I did not bring them.
 4 MR. DICKSTEIN: Objection, form.
 5 Q. Is there a reason you did not bring
 6 them?
 7 A. I don't have access to them today.
 8 Q. And where are they?
 9 A. My house upstate.
 10 MR. DICKSTEIN: Objection, form.
 11 Q. When did you come to New York City?
 12 A. Sunday evening for a funeral. I had
 13 to leave abruptly.
 14 Q. But the complete file of all the
 15 materials that you received, whether you relied
 16 upon them or not, is available at your house in
 17 Delhi, New York?
 18 MR. DICKSTEIN: Objection,
 19 foundation. Just give me a second to
 20 object. Foundation, form.
 21 A. Like I stated before, I haven't done
 22 an inventory, and I haven't kept an inventory
 23 running, so I know I have other materials, but
 24 I cannot say I have every single thing
 25 inventoried.

1 GELUSO
 2 Q. I didn't ask about an inventory.
 3 What I asked about was whether
 4 everything that you received is present in your
 5 house in Delhi, New York.
 6 A. Well, for me to agree to the
 7 language, everything I received, I would need
 8 an inventory, which I do not have, but I know I
 9 do have other materials. Verbatim, I can't say
 10 I have everything.
 11 Q. Did you destroy any documents or
 12 materials that were provided to you?
 13 A. No.
 14 Q. Did you return any of the materials
 15 that were provided to you to their -- the
 16 source of their origination?
 17 MR. DICKSTEIN: Objection to form,
 18 vague, ambiguous.
 19 A. I know of one item I returned to
 20 counsel.
 21 Q. And what was that?
 22 A. It was a factory copy of the
 23 Plugsound Bank. I believe that was on request
 24 from your side, the reason for that.
 25 Q. From whom did you obtain all of the

1 GELUSO
 2 materials --
 3 MR. DICKSTEIN: Objection --
 4 Q. -- that were provided to you in
 5 connection with your engagement in this matter?
 6 MR. DICKSTEIN: Objection, vague,
 7 ambiguous, overbroad.
 8 You can answer if you can.
 9 A. Counsel.
 10 Q. When you say counsel, who?
 11 A. Well, this started a year ago. I
 12 was talking to Kara -- I'm blanking on her
 13 name.
 14 Q. Kara Cengar?
 15 A. That sounds right. Rachel Rosoff,
 16 Mr. Dickstein.
 17 Q. And what is it that you received
 18 from Kara Cengar?
 19 A. I don't know which counsel it came
 20 from originally, but I did receive, for my
 21 first declaration, the files I referred to in
 22 my report.
 23 Q. That first declaration that you
 24 referred to, is that a declaration which you
 25 wrote or which you were provided by Ms. Cengar?

1 GELUSO
 2 MR. DICKSTEIN: Objection, form,
 3 compound.
 4 A. I wrote the declaration, yes.
 5 Q. Was that in November of 2010?
 6 MR. DICKSTEIN: He has got a copy.
 7 Do you want to mark it now?
 8 MR. DICKIE: Just a question about a
 9 date.
 10 A. Sure. (Perusing.) Just making sure
 11 I have the right piece of paper here.
 12 I think this is it I'm holding in my
 13 hands here. January 31, 2011.
 14 Q. And was Ms. Cengar the first person
 15 who contacted you with respect to your
 16 engagement in this matter?
 17 A. It was either her or Ms. Rosoff. I
 18 don't recall.
 19 Q. Did you enter into an engagement
 20 letter with respect to your services in this
 21 matter?
 22 A. I don't recall an engagement letter.
 23 Q. Have you ever signed an engagement
 24 letter setting forth the scope of your work in
 25 this matter?

1 GELUSO

2 A. I don't know what an engagement

3 letter is.

4 Q. An engagement letter is a letter

5 where somebody writes to you and asks you to do

6 something for a specific price and for --

7 A. I see, like a contract.

8 MR. DICKSTEIN: Objection, form.

9 A. I think arrangements -- if I recall

10 correctly, arrangements were made verbally.

11 Q. And the arrangements that were made

12 verbally were made when, initially?

13 MR. DICKSTEIN: Vague, ambiguous.

14 A. I first heard of this case in, I

15 guess it was in January of 2011. I don't

16 remember the exact date, but it was about a

17 year ago.

18 Q. Well, was that -- you signed -- the

19 document that you referenced, you said, said

20 was dated January 3, 2011.

21 A. 31st.

22 MR. DICKSTEIN: For clarification,

23 which date are you referring to?

24 THE WITNESS: This one here? Is

25 that the wrong date?

1 GELUSO

2 MR. RIGHETTINI: Yeah.

3 Q. What is the date by your signature?

4 A. Oh, I'm sorry. Executed this 10th

5 day of January 2011.

6 Q. And you first heard about this

7 matter sometime between January 1 and

8 January 10; is that correct?

9 A. It could have been December, late

10 December.

11 Q. Is there any document that

12 establishes a specific date when you first

13 heard about this matter?

14 A. I believe it was a phone

15 conversation, so. There was a phone

16 conversation, so I don't have a record of that,

17 no.

18 Q. Did you invoice anyone for any

19 services performed by you in this matter?

20 A. Yes.

21 Q. And was the invoice or were the

22 invoices in writing?

23 A. PDF document, I believe.

24 Q. And have you produced any of those

25 invoices today?

1 GELUSO

2 A. No.

3 Q. And did the PDF document detail the

4 services performed and how much time you spent

5 on it?

6 MR. DICKSTEIN: Compound, vague,

7 ambiguous.

8 A. I would have to look at the

9 document. I don't have it here. I mean, you

10 know, there's a dollar amount, obviously, and

11 hours at a minimum.

12 Q. And the invoices that have been

13 sent, to whom were they sent?

14 A. I don't recall the first one. More

15 recent to Loeb & Loeb.

16 Q. Were invoices sent to Kara Cenar or

17 Rachel?

18 A. I would have to see them. I would

19 be guessing right now. I don't remember who

20 paid the first one.

21 Q. Where are the copies, your copies of

22 the invoices for your services in this matter?

23 A. My reference copy?

24 Q. If that's what you call your copy,

25 yes.

1 GELUSO

2 A. I would have to look in my computer

3 and see if I retained one. I don't do

4 QuickBooks. I don't keep careful bookkeeping

5 in that regard. I may have a copy. I may not.

6 I have to look.

7 Q. Well, how do you keep track of

8 whether or not you have been paid?

9 A. My wife and my memory.

10 Q. Well, how much have you been paid to

11 date in connection with this engagement?

12 A. I haven't looked at those numbers.

13 I don't know the exact dollar amount.

14 Q. How much have you billed?

15 A. Oh, I'm sorry. I don't know the

16 exact number.

17 Q. Well, your rate is \$150 an hour; is

18 that correct?

19 A. Correct.

20 Q. How many hours have you spent on

21 this engagement?

22 A. I would have to review my invoices.

23 Sorry.

24 Q. Is there a reason you didn't bring

25 the invoices today?

1 GELUSO

2 A. I don't carry invoices with me any

3 day of the week.

4 Q. Well, the invoices, then, I take it,

5 are maintained in a computer on some -- in some

6 file?

7 MR. DICKSTEIN: Objection, form,

8 vague, ambiguous.

9 A. I believe I answered that earlier.

10 Q. Well, you said that you have a

11 reference copy, maybe, in a computer.

12 A. Maybe, yes. And you are asking me

13 now do I have it? I'm saying I answered that,

14 I think.

15 It would be in a computer if I did

16 have it, yes.

17 Q. Is it your customary practice to

18 delete or destroy copies of invoices sent

19 requesting payment?

20 MR. DICKSTEIN: Argumentative.

21 A. If you must know, I use a template,

22 and I write an invoice, and I make a PDF, and I

23 e-mail it, and I may use that template again.

24 I don't keep incredibly careful records.

25 Q. Do you keep records of how much you

1 GELUSO

2 are entitled to be paid so that you can verify

3 whether you have been paid in full for your

4 work?

5 A. I keep that in my head. My life

6 isn't that complicated. I may very well have a

7 copy, sir. I'm just saying I can't testify now

8 that I have a copy of the invoice sitting on my

9 computer.

10 Q. You said you just keep that in your

11 head.

12 So keeping that in your head, tell

13 me how much you have invoiced for your

14 services.

15 A. I can give you a ballpark.

16 Q. Well, what can you do about

17 something specific as opposed to a ballpark?

18 A. Without my invoices, nothing.

19 Q. So that if you haven't kept all of

20 the invoices, then it would be your testimony

21 that you have no way of knowing whether you

22 have been paid in full or not?

23 MR. DICKSTEIN: Objection,

24 foundation, vague, ambiguous, compound.

25 Go ahead.

1 GELUSO

2 A. I don't believe I have said I do not

3 have a copy. I said I do not know if I have a

4 copy.

5 Q. And before coming to the deposition

6 today, did you look to see whether you had your

7 or copies of invoices in some form for services

8 rendered?

9 A. No, I did not.

10 Q. Do you have any documents, whether

11 stored electronically or in hard copy, which

12 sets forth the terms and conditions under which

13 you were engaged in this matter?

14 MR. DICKSTEIN: Objection, asked and

15 answered, leads to a legal conclusion.

16 A. I believe those arrangements were

17 made over the phone, verbal arrangements.

18 Not --

19 Q. So the answer to my question is

20 there are no documents that contain the terms

21 and conditions outlining the scope of your work

22 in this engagement; is that correct?

23 A. Could you say that again, please?

24 Q. Yes. Am I correct, sir, that there

25 are no documents in your possession or control

1 GELUSO

2 that contain the terms and conditions outlining

3 the scope of your work in this engagement?

4 A. I may have a copy of my invoice

5 which has those conditions, hourly rate, et

6 cetera, on it. The initial arrangements were

7 made, as you referred to as initial contract,

8 were made verbally, I believe.

9 If I do, indeed, have a copy of the

10 invoice, that would have the hours and hourly

11 rate and so on.

12 Q. When you were initially contacted on

13 this matter, either by Ms. Cenar or by Rachel,

14 what was said to you as to the purpose of your

15 involvement?

16 DI MR. DICKSTEIN: Objection,

17 privileged.

18 I'm going to instruct the witness

19 not to answer on the ground it's protected

20 work product.

21 MR. RIGHETTINI: Join in.

22 Q. Now, other than receiving materials

23 from Ms. Cenar and Ms. Rachel -- what is her

24 last name?

25 A. Rosoff, I believe.

1 GELUSO

2 Q. Rosoff.

3 Have you received any materials in

4 connection with your engagement from any other

5 lawyers?

6 A. I'm sorry. You mentioned Rachel and

7 Ms. Cengar?

8 Q. Yes.

9 A. Mr. Dickstein, and perhaps,

10 initially, Barry. My first contact with Loeb &

11 Loeb, I believe, was with Barry --

12 Mr. Slotnick.

13 Q. Slotnick?

14 A. Yes.

15 Q. And when was the first contact that

16 you had with either Mr. Dickstein or

17 Mr. Slotnick at Loeb & Loeb?

18 A. That would be in January of 2011.

19 Q. And that was after your first

20 contact with Ms. Cengar and Ms. Rosoff?

21 MR. DICKSTEIN: Objection,

22 foundation.

23 A. I was contacted by several counsel

24 within -- it was a bit of a rush, I think. I

25 was -- several counsels at one time, so I'm

1 GELUSO

2 Q. And where did you purchase it?

3 A. On eBay.

4 MR. DICKSTEIN: Objection to form.

5 Q. And do you still have that ASR-10?

6 A. Yes, I do.

7 Q. And it's located where?

8 A. Delhi, New York.

9 Q. And when is it that you received it?

10 A. I do not recall the exact date, but

11 I believe it was over the summer.

12 Q. And from whom was the ASR-10 --

13 A. EBay --

14 MR. DICKSTEIN: Let him finish the

15 question.

16 Q. EBay is the vehicle that sold it,

17 but it didn't come from eBay.

18 A. Correct.

19 Q. It came from somebody who had

20 possession of it who sold it on eBay; isn't

21 that right?

22 A. I'm sorry. I didn't finish my

23 sentence. I was going to say an eBay seller.

24 Q. And who was the eBay seller?

25 A. I don't recall the gentleman's name.

1 GELUSO

2 sorry I don't recall the sequence of events,

3 but I believe either Kara or Rachel was the

4 initial contact, and then short after, Barry

5 and Tal.

6 Q. Other than the lawyers you have

7 identified, have you received any materials

8 from any other source?

9 MR. DICKSTEIN: Objection, vague,

10 ambiguous.

11 MR. RIGHETTINI: Join.

12 A. What classifies as a material,

13 please?

14 Q. A document, a file.

15 A. A legal -- a legal document?

16 Q. Anything that is in your possession

17 that you received in connection with this

18 engagement.

19 A. There is a piece of equipment I

20 purchased.

21 Q. And what equipment is that?

22 A. That would be the ASR-10.

23 Q. And when did you purchase it?

24 A. Oh, boy. Over the summer, I

25 believe.

1 GELUSO

2 Q. Do you still have the documentation

3 regarding that purchase?

4 MR. DICKSTEIN: Vague, ambiguous.

5 A. The documentation, most likely,

6 exists on my eBay account, or my wife's eBay

7 account, one of then.

8 Q. Was it purchased and paid for

9 through Pay Pal or some other --

10 A. Something that -- my wife handled

11 it. I'm sorry.

12 MR. DICKSTEIN: Objection to form.

13 Q. So your wife purchased it. You

14 didn't?

15 A. She handled the money end of it.

16 Q. Well, what is it that you did to

17 locate, if anything, this ASR-10?

18 A. I located it on eBay and wrote to

19 the gentleman and made all the arrangements,

20 and when it came time to pay for it, I asked my

21 wife to take care of it.

22 Q. Was it an item that was being bid

23 for or was it an item that was simply being

24 sold?

25 A. Buy now, I believe the terminology

1 GELUSO
 2 is.
 3 Q. And what was the purchase price?
 4 A. I would have to review my invoice to
 5 see.
 6 Q. Well, you are the one who made all
 7 the arrangements, so what did you negotiate as
 8 the purchase price?
 9 MR. DICKSTEIN: Foundation.
 10 A. I don't remember the exact dollar
 11 amount. It was in the neighborhood of \$800, I
 12 believe, but that may not be accurate. In that
 13 price range.
 14 Q. Is that just a guess?
 15 A. It's my recollection. It's a guess
 16 based on what I remember.
 17 Q. Returning to Exhibit 49 for
 18 identification, a list of documents that you
 19 were asked to bring to this deposition.
 20 A. Yes.
 21 Q. We talked a little bit about item
 22 number one. We talked a little bit about item
 23 two.
 24 Now, directing your attention to
 25 item three.

1 GELUSO
 2 A. Version 8, I believe, and CamelPhat
 3 software.
 4 MR. DICKSTEIN: If the witness wants
 5 to refer to his report, I think that would
 6 be fair. He is entitled to do that.
 7 MR. DICKIE: If he needs to. He
 8 hadn't said that he needed to.
 9 MR. DICKSTEIN: It looked like he
 10 was struggling.
 11 Q. Let me ask it this way, Mr. Geluso.
 12 A. Sure.
 13 Q. Other than the ASR-10, CamelPhat
 14 Logic Pro, did you purchase any other equipment
 15 for purposes of this engagement?
 16 A. There was Plugsound as well, yes.
 17 Q. You purchased Plugsound?
 18 A. I initially purchased Plugsound, and
 19 then was -- acquired another version of
 20 Plugsound, because two versions --
 21 Q. That's the one that you returned to
 22 the lawyers?
 23 A. Yes, the second one.
 24 Q. Were they the same versions, same
 25 instrument?

1 GELUSO
 2 A. Are we on page --
 3 MR. DICKSTEIN: He is looking at the
 4 wrong exhibit.
 5 Q. Exhibit 49 is the notice of
 6 deposition with the document rider.
 7 A. Okay.
 8 Q. I was down at item number three,
 9 "All materials from any outside source that you
 10 interviewed or reviewed."
 11 Were there any materials that you
 12 received in connection with your engagement in
 13 this matter that came from or were obtained
 14 from any source other than attorneys
 15 representing the defendants?
 16 MR. DICKSTEIN: Objection, vague,
 17 ambiguous, asked and answered, compound.
 18 A. Is this the same question that I
 19 answered the ASR-10 to, a similar question, I
 20 believe?
 21 Q. It's a similar question, just not
 22 related to the ASR-10.
 23 A. Okay. Yes, there were -- I also
 24 purchased a copy of Logic software.
 25 Q. Logic Pro?

1 GELUSO
 2 MR. DICKSTEIN: Objection, form.
 3 Q. Or were they different?
 4 A. The two Plugsound versions, you
 5 said?
 6 Q. Yes.
 7 A. I said I have two copies of
 8 Plugsound. Yes. One is a new copy and one is
 9 one that is out of date.
 10 Q. And the out of date one, is that the
 11 one you purchased?
 12 A. No, that's not available for
 13 purchase anymore. I tried, but I could not
 14 purchase it.
 15 Q. Well, which one did you receive from
 16 counsel?
 17 MR. RIGHETTINI: Assumes facts not
 18 in evidence.
 19 THE WITNESS: Excuse me?
 20 MR. RIGHETTINI: Assumes facts not
 21 in evidence.
 22 MR. DICKSTEIN: Foundation.
 23 Go ahead.
 24 A. Sure. The first copy -- I believe
 25 both copies were factory sealed, and sent to me

1 GELUSO
 2 via courier, mail -- you know, FedEx or UPS
 3 from counsel.
 4 Q. From which counsel?
 5 A. The first Plugsound came from either
 6 Rachel or -- actually, I'm not sure. Counsel,
 7 in general.
 8 I don't know specifically which
 9 counsel sent me the first one. The second one,
 10 I believe, was from Mr. Dickstein.
 11 Q. Well, so did I understand you to say
 12 that you actually purchased two Plugsound
 13 devices?
 14 A. I didn't --
 15 MR. DICKSTEIN: Objection, form.
 16 A. I didn't pay for either one, but
 17 they were factory sealed when I received them.
 18 Q. When you say they were factory
 19 sealed, what do you mean?
 20 A. Wrapped in shrink wrap, hadn't been
 21 opened, brand new at my request, yes.
 22 Q. Well, did they come with the
 23 manufacturer's warranties and other
 24 documentation?
 25 MR. DICKSTEIN: Objection, form.

1 GELUSO
 2 A. They came as -- from the -- you
 3 know, from the manufacturer, sealed, and
 4 whatever they put in there, I got. I didn't
 5 take an inventory of warranties, and so -- but
 6 I would imagine so.
 7 Q. Did you keep the documentation that
 8 was included with both of these Plugsound
 9 allegedly factory-sealed instruments?
 10 MR. DICKSTEIN: Asked and answered,
 11 argumentative, compound.
 12 MR. RIGHETTINI: Join.
 13 A. The first one was a long time ago,
 14 and I was in Florida at the time. I don't
 15 know. I may or may not have that.
 16 The second version, I believe I
 17 returned it in full to counsel.
 18 Q. Including any documentation that was
 19 with it; is that right?
 20 A. I believe there was minimal
 21 documentation. It's a CD ROM, maybe, with one
 22 card of information or something.
 23 Q. You said the first one was a long
 24 time ago and you were in Florida.
 25 Did you receive it in Florida?

1 GELUSO
 2 A. Yes, I did.
 3 Q. When?
 4 A. January 2011.
 5 Q. And you received it via Federal
 6 Express?
 7 A. Some type of courier.
 8 Q. Do you know the type of courier?
 9 A. I don't recall. It was either FedEx
 10 or UPS, something like that, an overnight
 11 speedy delivery type --
 12 Q. And it was sent to you where?
 13 A. At my in-law's home in West Palm
 14 Beach, Florida.
 15 Q. And the second one -- strike that.
 16 Was the first one then returned or
 17 brought back to New York?
 18 MR. DICKSTEIN: Objection, form.
 19 A. I brought it home with me.
 20 Q. And then it was returned to counsel
 21 when?
 22 A. That's incorrect. No, the first --
 23 MR. DICKSTEIN: Foundation.
 24 A. The first version, I believe, I
 25 still have in my possession.

1 GELUSO
 2 Q. And you received the second version
 3 when?
 4 A. Boy, I don't recall. It must have
 5 been -- I know I was working with it over the
 6 summer, but I don't remember the exact month it
 7 arrived.
 8 Q. And when was it returned?
 9 A. Within the last two or three months.
 10 Q. Now, other than the ASR-10, the
 11 Logic Pro, the CamelPhat, and these two
 12 Plugsound devices, did you purchase anything
 13 else?
 14 MR. DICKSTEIN: Objection, form,
 15 vague, ambiguous.
 16 Q. In connection with this engagement?
 17 MR. DICKSTEIN: Vague, ambiguous.
 18 A. Not that I recall right now.
 19 Q. Now, other than the items that you
 20 purchased, which we identified, and the
 21 materials provided to you by various defense
 22 counsel, did you obtain materials that you used
 23 in connection with this engagement from any
 24 other source?
 25 MR. DICKSTEIN: Asked and answered.

1 GELUSO
 2 A. There is a second computer. I used
 3 an older MAC G4, which was my computer, which I
 4 had given to a friend, and I went and got it
 5 back.
 6 Q. Anything else?
 7 A. Can I take a second to look at my --
 8 Q. Sure.
 9 A. (Perusing.) Yes, the ASR-10 did
 10 come with -- it was a package purchase with the
 11 CD ROM drive.
 12 Yes, I believe that's complete. The
 13 ASR-10 came with a bunch of, you know, came in
 14 a big box with SCSI cables, CD ROM drive,
 15 operational disks, a bunch of samples, a bunch
 16 of stuff.
 17 Q. Now, have we exhausted the sources
 18 of materials used by you or available to you in
 19 connection with this engagement?
 20 MR. DICKSTEIN: Objection, form,
 21 compound, vague, ambiguous.
 22 MR. RIGHETTINI: Join.
 23 A. I think I stated earlier I do not
 24 have an inventory of all files given to me. I
 25 know there are multiple CD ROMs. There was a

1 GELUSO
 2 lot of repetition, things were coming to me.
 3 So, to the best of my recollection
 4 so far, yes, but I believe there are files that
 5 were presented in the case that I would imagine
 6 both sides have that I have in my possession
 7 that I didn't necessarily rely on for my
 8 report, which were not included in my report.
 9 So, since I don't have an inventory
 10 of those right now, I can't say, with absolute
 11 certainty, that I have listed everything.
 12 Q. You said not necessarily relied on.
 13 Are there things that you think you
 14 might have relied upon that you are not sure?
 15 A. No. I'm pretty careful. Everything
 16 I relied upon to write my report I submitted
 17 with my report, to the best of my knowledge.
 18 There was a bit of redundancy in the files, so
 19 I weeded them out and submitted the ones
 20 relevant to my report.
 21 Q. Now, have you ever prepared any
 22 written reports in connection with any other
 23 copyright litigation?
 24 A. Yes, I have.
 25 MR. DICKSTEIN: Objection, form.

1 GELUSO
 2 Q. How many?
 3 A. Well, there's the Kernel Records, I
 4 was officially named as expert witness.
 5 And there have been others that
 6 haven't gone to trial that I have been asked to
 7 informally report on, but only one other
 8 document of this completion.
 9 Q. You see, in item number four of the
 10 documents to be produced today in connection
 11 with Exhibit 49 --
 12 A. Yes.
 13 Q. -- asks for you to bring any
 14 previous reports generated.
 15 Did I understand you correctly to
 16 say that you generated a written report in
 17 connection with the --
 18 A. Kernel Records.
 19 Q. -- Kernel Records?
 20 A. Yes, I did.
 21 Q. Did you bring that report?
 22 A. I don't have it with me, but I
 23 believe counsel has it.
 24 Q. Well, was that report attached to
 25 Exhibit 50, your declaration?

1 GELUSO
 2 MR. DICKSTEIN: Objection, vague,
 3 ambiguous, foundation.
 4 A. You are asking if the Kernel Records
 5 case is attached to this document?
 6 Q. No, the report that you did. We
 7 asked you for the report, not the
 8 identification of the case.
 9 And if I understand it correctly,
 10 you did not bring a copy of that Kernel Records
 11 report that you wrote with you to the
 12 deposition, even though you were asked to do
 13 so; is that correct?
 14 MR. DICKSTEIN: Foundation.
 15 A. No, that's not correct. I wasn't
 16 asked by counsel to bring that report.
 17 Q. Well, if I understand it correctly,
 18 you told me that you have seen Exhibit 49 for
 19 identification before?
 20 A. Counsel presented this document to
 21 me, but --
 22 MR. DICKSTEIN: I'm just going to
 23 caution the witness not to get into
 24 discussions that he may have had with
 25 counsel, and just to listen to the

1 GELUSO
2 question and answer it to the best of his
3 ability.

4 THE WITNESS: Sure, sure.

5 A. Can you ask the question again,
6 please?

7 Q. Sure.

8 Did you bring with you a copy of
9 your Kernel Records expert report?

10 A. No.

11 Q. Did you previously provide a copy of
12 that report to your counsel?

13 A. Yes.

14 Q. And how long in advance of this
15 deposition was it that you provided a copy of
16 the Kernel Records report to your counsel?

17 A. I don't remember the exact date, but
18 it's a matter of weeks.

19 RQ MR. DICKIE: I'd simply ask,

20 Mr. Dickstein, if you have a copy, I don't
21 recall having received it, and I request
22 that we be provided with that because we
23 are entitled to get it.

24 MR. DICKSTEIN: We will look at
25 that.

1 GELUSO

2 A. I don't have an inventory list of
3 those.

4 Q. Were you paid for your time in those
5 instances?

6 A. Yes.

7 Q. And were any of those instances
8 where you have been paid for your time as an
9 expert within the last four years?

10 A. Yes.

11 Q. Can you tell me the names of the
12 cases in which you were contacted and provided
13 informal opinions?

14 MR. DICKSTEIN: I'm just going to
15 caution the witness not to reveal
16 information that may be subject to
17 privilege.

18 MR. RIGHETTINI: Foundation.

19 A. No, I can't.

20 Q. Do you keep a list of all of the
21 cases or potential cases in which you are
22 contacted for purposes of determining whether
23 you have a conflict?

24 MR. DICKSTEIN: Compound.

25 A. I do not have an inventory of them,

1 GELUSO

2 Q. In that Kernel Records case, on
3 behalf of which party did you provide an expert
4 opinion?

5 A. Defendant.

6 Q. On behalf of the party that was
7 accused of copyright infringement; is that
8 correct?

9 A. Yes.

10 Q. And you also testified before that
11 you haven't gone to trial, but you have
12 provided expert opinions in other cases; is
13 that correct?

14 MR. DICKSTEIN: Objection, form.

15 A. Informally. I haven't been retained
16 as expert witness. I have been asked my
17 opinion, but not retained as expert witness in
18 other cases.

19 Q. Were those cases that were actually
20 pending at the time that you were contacted?

21 A. I don't always know. I'm not privy
22 to that all the time.

23 Q. On behalf of -- strike that.

24 On how many such occasions have you
25 been contacted and provided informal opinions?

1 GELUSO

2 no.

3 Q. Well, do you routinely, when
4 contacted with respect to a particular
5 engagement, do a conflicts check to see whether
6 there any conflicts between you and anyone in
7 the case that might disqualify you from
8 participating as part of your normal practice?

9 MR. DICKSTEIN: Vague, ambiguous as
10 to conflicts check.

11 A. Typically, counsel will ask me, and
12 I answer. I don't, as a routine, check that.

13 Q. When you say counsel would ask you,
14 counsel would ask you whether you have a
15 conflict?

16 A. Typically, they ask, have you worked
17 on this particular case, you know, are you
18 familiar with this case at all, something like
19 this.

20 Q. What do you look at to determine
21 whether, in the past, you may have been
22 contacted by one of the other parties in that
23 same case if you don't keep a list?

24 MR. DICKSTEIN: Foundation, vague,
25 ambiguous.

1 GELUSO
 2 A. I use my memory.
 3 Q. So would it be correct to say,
 4 Mr. Geluso, that you have no independent record
 5 of all of the different cases in which you have
 6 been contacted in the past?
 7 MR. DICKSTEIN: Objection,
 8 mischaracterizes testimony.
 9 Q. I don't mean to mischaracterize it.
 10 I jut want to know whether you keep any kind of
 11 objective record about who's contacted you in
 12 the past as a reference for when somebody calls
 13 you in order to make sure that you haven't been
 14 previously contacted by one of the same
 15 parties?
 16 A. Currently, it's in my head. I
 17 haven't done that many cases, so I don't feel a
 18 need to have it on a document or anything.
 19 When it comes to that point, I will
 20 start doing that, but right now, I don't.
 21 Q. Well, when was the first time that
 22 you were ever contacted about providing expert
 23 testimony in connection with a copyright
 24 infringement case?
 25 MR. DICKSTEIN: Foundation.

1 GELUSO
 2 A. I do not recall that date.
 3 Q. Was it within the last ten years?
 4 A. Within the last ten years?
 5 Q. Yes.
 6 A. Yes.
 7 Q. Within the last five years?
 8 A. The first time?
 9 Q. Yes.
 10 A. Yes.
 11 Q. And the first time you were
 12 contacted by anyone in connection with a
 13 copyright infringement case, were you contacted
 14 on behalf of a plaintiff or a defendant?
 15 MR. RIGHETTINI: Assumes facts not
 16 in evidence.
 17 A. I do not always know who I'm working
 18 for, the plaintiff or the defendant.
 19 Q. You mean the lawyers don't tell you
 20 which side they represent when they contact
 21 you?
 22 A. Often, they do not.
 23 MR. DICKSTEIN: When you reach a
 24 good spot, maybe we can take a five-minute
 25 break.

1 GELUSO
 2 MR. DICKIE: Sure.
 3 MR. DICKSTEIN: Is this a good time?
 4 MR. DICKIE: Let me finish up a
 5 couple things.
 6 MR. DICKSTEIN: Sure.
 7 Q. Mr. Geluso, in item five on
 8 Exhibit 49, that request asks for you to
 9 produce all documents relied upon in any matter
 10 in preparation of your declaration or reports
 11 in this case.
 12 Other than the seven items listed in
 13 Exhibit 50 on page three in paragraph number
 14 six, did you rely upon any other materials in
 15 connection with the opinions stated by you in
 16 Exhibit 50?
 17 MR. RIGHETTINI: Objection. The
 18 request says documents, not materials.
 19 MR. DICKSTEIN: Vague, ambiguous,
 20 foundation.
 21 A. I rely on my 20 years of experience
 22 in the music industry, which is expansive as
 23 well. I mean, I listed the -- realistically,
 24 the specific documents that this report relies
 25 on, but, you know, the question is very broad.

1 GELUSO
 2 Q. The question was very narrow. It
 3 asked you whether there were any other
 4 documents or specific materials other than
 5 those listed on -- in paragraph six, page
 6 three, that you relied upon in forming any of
 7 the opinions stated in Exhibit 50.
 8 MR. DICKSTEIN: And I will just
 9 counsel the witness to refer to any other
 10 part of his report that he may find
 11 helpful.
 12 Q. We will get to your experience,
 13 Mr. Geluso. Right now, I'm speaking about
 14 materials and documents.
 15 MR. DICKSTEIN: And by that, I'm
 16 including paragraphs seven and eight,
 17 which I think is in the scope of your
 18 question.
 19 A. (Perusing.) Frankly, I would have
 20 to review my report again in that light. I
 21 think paragraph six says I was provided the
 22 following materials in connection with my
 23 analysis. It doesn't state that this is a
 24 all-inclusive list of materials, and I would
 25 need time to go through to answer you

1 GELUSO
 2 correctly.
 3 Q. But we can agree that the list,
 4 where you say you were provided with the
 5 following materials --
 6 A. Uh-huh.
 7 Q. -- that's not an exhaustive list of
 8 what you were provided. There was
 9 substantially more that's not referenced here;
 10 isn't that correct?
 11 A. That's not correct.
 12 MR. RIGHETTINI: Mischaracterizes
 13 prior testimony.
 14 Q. Are these the only materials that
 15 were provided?
 16 A. I believe I have answered that
 17 question. I said this is a list that -- of
 18 materials that support my report. It's not --
 19 I didn't write this list in thinking it was an
 20 exhaustive list of all materials relied upon.
 21 I would need to go through it again
 22 with a fine-tooth comb to testify to that. I'm
 23 just not prepared to answer the question right
 24 now.
 25 Q. My question was, am I correct, sir,

1 GELUSO
 2 relied on, I will ask him.
 3 Q. The simple question is, am I
 4 correct, Mr. Geluso, that you were provided
 5 with more materials in this engagement than the
 6 seven topics listed in paragraph six?
 7 That's yes or no.
 8 A. That is correct.
 9 MR. DICKIE: Let's take a break.
 10 MR. DICKSTEIN: Sure.
 11 (Recess taken from 11:03 to
 12 11:16 a.m.)
 13 BY MR. DICKIE:
 14 Q. Mr. Geluso, are you all set to
 15 proceed?
 16 A. Yes, I am.
 17 Q. You understand you are still under
 18 oath?
 19 A. Yes, I do.
 20 Q. Now, before the break, we were
 21 looking at Exhibit 49, and I just have a couple
 22 more questions on it.
 23 A. Sure.
 24 Q. Item six of the document, if you
 25 will turn to that, it's the last one on page

1 GELUSO
 2 that you were provided with materials in
 3 connection with this engagement other than
 4 those listed in the seven items that appear on
 5 page three in paragraph six?
 6 MR. RIGHETTINI: Asked and answered.
 7 Q. That's a yes or no question.
 8 MR. RIGHETTINI: Asked and answered.
 9 A. I believe I answered that question
 10 earlier, saying I have been provided -- I would
 11 have to do an inventory to see.
 12 Q. So you are unable to say, as you sit
 13 here, whether the seven items listed in
 14 paragraph six on page three of Exhibit 50 was
 15 all you were provided with; is that correct?
 16 MR. DICKSTEIN: Just objection --
 17 for purposes of clarification, can we
 18 understand whether you're asking for
 19 documents he relied on or that were simply
 20 provided? I think we've lost track.
 21 MR. DICKIE: Counsel, don't try to
 22 help the witness by speaking objections.
 23 The question was very simple, and it
 24 wasn't -- and I didn't use the words
 25 "relied." If I want to know what he

1 GELUSO
 2 three.
 3 Did you, in connection with this
 4 engagement, refer to or rely upon any book,
 5 treatise, periodical, article or pamphlet in
 6 arriving at your opinions?
 7 MR. DICKSTEIN: Objection, vague,
 8 ambiguous.
 9 A. Not that I recall.
 10 Q. Do you recall consulting any such
 11 book, treatise, periodical, et cetera, in
 12 connection with your opinions?
 13 MR. DICKSTEIN: Vague, ambiguous.
 14 A. Some of the documentation with the
 15 software and hardware.
 16 MR. DICKSTEIN: Can we take a
 17 one-second break?
 18 (Recess taken.)
 19 BY MR. DICKIE:
 20 Q. You were talking about the
 21 documentation with the software and hardware.
 22 Do you recall what specific software
 23 and hardware you consulted those manuals?
 24 MR. DICKSTEIN: Form.
 25 A. At a minimum, the ASR-10 manual,

1 GELUSO
 2 which I read online in PDF, and that's all I
 3 recall at this point.
 4 Q. Turning over on Exhibit 49 to item
 5 14, the last one on the page, are all of those
 6 items, Mr. Geluso, located at your home in
 7 Delhi, New York?
 8 A. Yes, they are.
 9 Q. Have there been any changes or
 10 modifications to any of those items that are
 11 listed in item 14 since you used them in
 12 connection with this report?
 13 MR. RIGHETTINI: Vague, ambiguous.
 14 MR. DICKSTEIN: Vague, ambiguous.
 15 A. The ASR-10 has ceased to function.
 16 Q. And when did the ASR-10 cease to
 17 function?
 18 A. It would be, I think, around
 19 September, October, in that area. I don't
 20 recall the exact date, but after I had
 21 already -- I was kind of completed my analysis
 22 using the instrument, and I went to turn it
 23 back on to use it for something else, actually,
 24 and it was not functioning.
 25 Q. In connection with Exhibit 50, the

1 GELUSO
 2 declaration that you did here, when was it that
 3 you first started that project?
 4 A. I'm sorry. Which document am I
 5 looking at?
 6 Q. Exhibit 50. That's your
 7 declaration.
 8 A. Okay.
 9 Q. The one in the spiral binding in
 10 front of you.
 11 A. What page?
 12 Q. Not a page. I asked you, as a point
 13 in time, when was it that you first commenced
 14 work on that declaration?
 15 A. This is the second declaration. It
 16 includes work from the first declaration, so --
 17 Q. If you look at Exhibit 50, can you
 18 tell us what portions of Exhibit 50 are based
 19 upon work that was done in connection with the
 20 January 2011 declaration as opposed to work
 21 that was done in connection with the
 22 November 2011 declaration?
 23 MR. DICKSTEIN: Form, foundation.
 24 A. I would need time to go through each
 25 paragraph to give you an inventory of that.

1 GELUSO
 2 Q. In order to do that, you would have
 3 to go through each paragraph; is that correct?
 4 A. I would need some time to answer
 5 that question.
 6 Q. And in order to answer the question,
 7 other than time, what is it that you would need
 8 in order to answer the question, if anything?
 9 A. Well, it would be a recollection.
 10 At best, I would go through each paragraph, and
 11 I imagine some paragraphs I worked on back in
 12 January and returned to. So it's a very gray
 13 area.
 14 I started working on the first
 15 declaration in January, and then there was a
 16 break, and I started working again, I believe,
 17 in the summer at some point when I got the
 18 ASR-10 and started to use the vintage hardware
 19 involved in the case.
 20 Q. Did you take, for example, in whole,
 21 paragraphs from the January 2011 declaration
 22 and just stick them into Exhibit 50, or did you
 23 modify paragraphs from the first declaration in
 24 order to fit them into Exhibit 50?
 25 MR. DICKSTEIN: Form, vague,

1 GELUSO
 2 ambiguous, compound.
 3 A. I would have to look at both
 4 documents side by side. I mean, conceptually,
 5 the two declarations have things in common that
 6 deal with the first task I was asked to do.
 7 Q. And the first task you were asked to
 8 do was what?
 9 A. Compare the two master sound
 10 recordings.
 11 Q. And you were able to access or you
 12 were provided with the original master sound
 13 recording of I Got a Feeling; is that correct?
 14 A. That is correct. Just to be clear,
 15 the stereo mix version that was released on the
 16 commercial CD. I think, initially, I
 17 downloaded it from iTunes, and later, I
 18 received the actual factory-sealed CD for the
 19 wave, a higher quality file later.
 20 Q. And from whom did you receive that?
 21 A. I believe that was from Ms. Rosoff.
 22 Q. Now, in connection with the -- your
 23 first declaration, did you interview any of the
 24 defendants?
 25 A. In the first declaration?

1 GELUSO

2 Q. Yes.

3 A. No.

4 Q. In connection with the second

5 declaration, that is, the one of November 2011,

6 did you interview any of the defendants?

7 A. I met Mr. Riesterer.

8 Q. And when did you meet Mr. Riesterer?

9 A. I don't recall the exact date.

10 Q. Well, where were you when you met

11 Mr. Riesterer?

12 A. In these offices.

13 Q. Was anyone else present when you

14 interviewed Mr. Riesterer?

15 MR. DICKSTEIN: Objection, form.

16 A. Yes.

17 Q. Who else was present?

18 A. He had -- I don't recall everyone's

19 name in the room, but there were his managers

20 and Mr. Dickstein was there.

21 Q. And how long did you meet with

22 Mr. Riesterer?

23 A. Approximately one hour. Maybe less.

24 Q. And did you ask Mr. Riesterer any

25 questions?

1 GELUSO

2 a number of his managers and Mr. Dickstein and

3 perhaps others, as you sit here today?

4 A. I remember the general gist of the

5 conversation. I don't remember specific

6 questions.

7 Q. Did you make notes of your

8 conversation with Mr. Riesterer?

9 A. No.

10 Q. And the general gist of the

11 conversation that you recall, on a

12 question-by-question basis, was what?

13 MR. DICKSTEIN: Foundation.

14 Q. If you don't remember, just tell me.

15 A. I remember the gist, not question by

16 question.

17 Q. Well, the gist was what?

18 A. How he created the guitar twang

19 sequence.

20 Q. What did Mr. Riesterer say to you

21 was how he created the guitar twang sequence?

22 A. Word for word, I don't know, but I

23 can explain the general process.

24 Q. I'm asking you what he said to you,

25 his words to you.

1 GELUSO

2 A. We had a conversation. You know,

3 there was no transcript or recording of it. I

4 don't recall it word for word. We did talk

5 back and forth directly to each other.

6 Q. Are you fluent in French?

7 A. No.

8 Q. Did you and Mr. Riesterer speak in

9 French or English?

10 A. English.

11 Q. And Mr. Riesterer was capable of

12 understanding English?

13 MR. DICKSTEIN: Objection,

14 speculation.

15 A. I don't know. I mean, occasionally,

16 he would have some help from his friends.

17 Q. Well, did you ask him questions in

18 English to which he responded in English?

19 A. Yes.

20 Q. And what specific question or

21 questions did you ask Mr. Riesterer?

22 A. I don't recall precisely the

23 questions I asked him.

24 Q. Do you recall any question that you

25 asked Mr. Riesterer when you were with him and

1 GELUSO

2 A. I don't recall his words precisely.

3 Q. And the time frame of this meeting

4 was when?

5 A. I don't recall the date. I would

6 have to check my calendar. I don't even know

7 if it's in there, but can we ask counsel?

8 MR. DICKSTEIN: No.

9 Q. No, sir. I'm asking for your

10 recollection.

11 A. I don't recall the date.

12 Q. Well, was it before or after

13 January 10, 2011?

14 A. After.

15 Q. Was it before or after June of 2011?

16 A. After.

17 Q. And was it in close proximity in

18 time to the November date when you signed

19 Exhibit 50?

20 A. No.

21 MR. DICKSTEIN: Objection, form,

22 vague, ambiguous.

23 A. You know, I would like to -- June --

24 I just really don't recall.

25 Can I have a moment to think about

GELUSO

1
2 it?
3 Q. Take whatever time you need,
4 Mr. Geluso.
5 A. Thanks.
6 It most likely was over the summer.
7 Q. What do you consider the summer, May
8 to September?
9 A. Yes.
10 Q. In those several months, which month
11 is your best recollection that you and
12 Mr. Riesterer spent some time, an hour,
13 together with others?
14 A. I apologize. I don't have the -- I
15 can't narrow it down more than that.
16 Q. Did you make any notes or any
17 memorandum at all with respect to the substance
18 of your conversation with Mr. Riesterer
19 regarding how he allegedly created the guitar
20 twang sequence?
21 MR. DICKSTEIN: Argumentative,
22 foundation, asked and answered.
23 MR. RIGHETTINI: Join.
24 A. I did not keep written notes of that
25 conversation.

GELUSO

1
2 Q. Do you have a recollection, as you
3 sit here, as to anything specific that
4 Mr. Riesterer said at the meeting regarding the
5 creation of the guitar twang sequence?
6 A. Yeah, the most memorable thing I
7 came away from the meeting was what version of
8 the Plugsound software he used back when he did
9 create the guitar twang.
10 Q. What did Mr. Riesterer say at that
11 meeting regarding the version of the Plugsound
12 software he used?
13 A. He indicated that the newer version
14 does not have the same sound quality as the
15 older one. If one were to use the newer -- his
16 creation files were done back in 2008 or seven
17 or so, and he indicated that if you use the new
18 version of the software with his old creation
19 files, you would not get the correct sound.
20 And if you used the old sound with the old
21 computer and the old software, that would
22 generate the correct sound.
23 Q. Were those his words or is that your
24 paraphrasing of what you recall him saying?
25 A. Paraphrase.

GELUSO

1
2 Q. What I asked you was what exactly
3 was it that he said on that subject?
4 MR. DICKSTEIN: Asked and answered.
5 A. I don't have a word-for-word
6 recollection of that conversation. That's what
7 I came away from the meeting with.
8 Q. Did you, prior to that meeting, read
9 any declaration previously sworn to by
10 Mr. Riesterer?
11 A. I saw his declaration, but I don't
12 recall the sequence of events, whether it was
13 before or after I met with him, but I do recall
14 seeing his declaration.
15 Q. Did you ask him about his
16 declaration at this summer 2011 discussion?
17 MR. DICKSTEIN: Foundation, assumes
18 facts not in evidence.
19 A. Specifically, I don't recall asking
20 him about his declaration.
21 Q. Have you ever had any conversation
22 with Mr. Riesterer regarding any declaration
23 that he signed in this case?
24 A. No, not to my memory.
25 Q. Did you review with Mr. Riesterer

GELUSO

1
2 any statement you made in Exhibit 50 with
3 respect to Mr. Riesterer or his conduct?
4 MR. RIGHETTINI: Vague, ambiguous.
5 MR. DICKSTEIN: Foundation.
6 A. 50 is the second report?
7 Q. Yes, it's the declaration of
8 November 2011.
9 A. This report didn't exist at the
10 time, so that would have been impossible.
11 Q. That wasn't my question.
12 Did you, at any time, have a
13 conversation with him about anything addressing
14 or dealing with Mr. Riesterer in your report at
15 or before the time you signed it?
16 MR. DICKSTEIN: Vague, ambiguous,
17 compound.
18 A. I'm having trouble answering this
19 question, because this report didn't exist at
20 the time.
21 Q. I understand that, but there is the
22 telephone and there is a way to call and speak
23 with him.
24 So I guess the question is, at any
25 time after this meeting, did you review with

GELUSO

1
 2 Mr. Riesterer anything that you said in your
 3 report?
 4 A. No.
 5 Q. Did you ever meet with David Guetta?
 6 A. No.
 7 Q. Have you ever spoken to David
 8 Guetta?
 9 A. No.
 10 Q. Have you ever met with Joachim
 11 Garraud?
 12 A. No.
 13 Q. Have you ever spoken to Joachim
 14 Garraud?
 15 A. I don't know who he is unless he was
 16 a gentleman in the meeting. I don't believe
 17 so. I know what David Guetta looks like. He
 18 wasn't there.
 19 Q. Now, have you ever spoken to, I
 20 believe, Mr. Alain Etchart, the individual
 21 whose name you use in item seven on paragraph
 22 three of Exhibit 49, the notice of deposition?
 23 MR. DICKSTEIN: You are asking him
 24 about the notice?
 25 Q. I'm asking him -- there's an

GELUSO

1 individual whose name appears in item seven on
 2 Exhibit 49, on page three -- I'm sorry. My
 3 mistake.
 4 In Exhibit 50, page three. That's
 5 your report.
 6 A. 50 is the big one?
 7 Q. Yes. Exhibit 50 is the second
 8 report.
 9 A. Yes, I have it in my hands.
 10 Q. On page three, at the bottom --
 11 A. Okay.
 12 Q. -- there's a reference to Alain
 13 Etchart.
 14 A. Yes.
 15 Q. Did you ever speak to him?
 16 A. No.
 17 Q. Other than the declaration that's
 18 referenced there, have you had any
 19 communication directly with him?
 20 A. I sent an e-mail to Ultimate Sound
 21 Bank, at some point, asking -- their general
 22 info e-mail address at Ultimate Sound Bank with
 23 a question about the two versions, which I
 24 don't know if he was the man who replied to me
 25

GELUSO

1 or not, but they wrote back that the older
 2 version was not for sale anymore. That's my
 3 only communication with Ultimate Sound Bank
 4 directly.
 5 Q. Do you have that e-mail as part of
 6 your files at home?
 7 A. I would have to search my e-mail
 8 folder.
 9 Q. Do you have a recollection of
 10 destroying that e-mail?
 11 A. No. I do delete e-mails from time
 12 to time, but I don't have a recollection of
 13 saving or destroying it.
 14 Q. So, we can agree, then, that other
 15 than the declaration from Mr. Alain Etchart,
 16 which is referenced in item seven, you, so far
 17 as you know, had no other direct contact with
 18 him?
 19 A. Unless he was the gentleman who
 20 wrote back to me. I would have to check that
 21 e-mail.
 22 Q. Other than that possibility, you
 23 have had no direct interaction with him?
 24 A. Correct. That is correct, yeah.
 25

GELUSO

1 Q. Then on item six, there is a
 2 reference to Clark Warner, the vice president
 3 of Beatport, LLC.
 4 Do you see that?
 5 A. We are on page six?
 6 Q. No. We're on page three, item six,
 7 immediately above --
 8 A. Yes, Clark Warner.
 9 Q. Did you ever speak to him?
 10 A. No, I haven't.
 11 Q. Did you ever meet him?
 12 A. No, I haven't.
 13 Q. Did you have any e-mail
 14 communication with him?
 15 A. No, I haven't.
 16 Q. Did Mr. Warner or someone at his
 17 direction provide any information directly to
 18 you that you used in connection with this
 19 report?
 20 MR. DICKSTEIN: Objection to form.
 21 A. Other than the declaration I
 22 reviewed, no.
 23 Q. And Mr. Warner didn't give you that
 24 declaration?
 25

1 GELUSO
 2 A. Correct.
 3 Q. Some lawyer did, correct?
 4 A. Counsel did, yes.
 5 MR. DICKSTEIN: Objection to form,
 6 argumentative.
 7 Q. When was it, as a point in time,
 8 that you received the declaration of Clark
 9 Warner?
 10 A. This one came later than the others.
 11 I'm sorry. I don't have an exact date.
 12 Q. Well, was it received by you before
 13 you signed Exhibit 50?
 14 MR. DICKSTEIN: Let him finish the
 15 question.
 16 A. I'm sorry?
 17 Q. Was it received by you before you
 18 signed Exhibit 50?
 19 A. Yes.
 20 Q. At the time you first saw
 21 Mr. Warner's declaration, was it signed by him?
 22 A. Oh, boy. I don't have a
 23 photographic memory to recall that.
 24 Q. And is that declaration, the one
 25 that you reference on page three of Exhibit 50,

1 GELUSO
 2 Q. And if I understand your testimony
 3 correctly, you never had occasion to speak to
 4 Mr. Riesterer regarding that declaration; is
 5 that correct?
 6 A. That's correct.
 7 Q. Did you speak to any specific
 8 representation of Mr. -- or any individual who
 9 represented Mr. Riesterer regarding the content
 10 of that declaration?
 11 MR. DICKSTEIN: Compound, vague,
 12 ambiguous.
 13 MR. RIGHETTINI: Join.
 14 MR. DICKSTEIN: I would just caution
 15 the witness not to testify as to
 16 conversations with counsel, but as to
 17 anyone else, go ahead.
 18 Q. It was a yes or no question. I
 19 wasn't asking for advice.
 20 A. Can you repeat the question?
 21 Q. Sure.
 22 Did you speak to any individual who
 23 represented Mr. Riesterer regarding the content
 24 of that declaration dated November 9, 2011?
 25 MR. RIGHETTINI: Vague, ambiguous.

1 GELUSO
 2 still in your possession?
 3 A. I would have to search my e-mail and
 4 computer. I believe I have a copy of it
 5 somewhere.
 6 Q. Other than this declaration of Clark
 7 Warner, did you have contact with anyone at
 8 Beatport, LLC, regarding the I Gotta Feeling
 9 remix contest?
 10 A. No.
 11 Q. I notice on page three, also in item
 12 four, you reference the declaration of Frederic
 13 Riesterer, dated November 9, 2011.
 14 Do you see that?
 15 A. Yes.
 16 Q. And did you receive that declaration
 17 from some attorney?
 18 MR. DICKSTEIN: Argumentative.
 19 A. Yes.
 20 Q. And who provided that declaration of
 21 Mr. Riesterer to you?
 22 A. I believe it was Mr. Dickstein.
 23 Q. And when was it that you first
 24 received this declaration?
 25 A. I don't remember.

1 GELUSO
 2 A. Other than counsel?
 3 Q. Anyone. It's a yes or no question.
 4 I'm not asking for the substance of the
 5 conversation. I'm only asking --
 6 A. Did I discuss the declaration with
 7 somebody? Yes.
 8 Q. And did you discuss the Riesterer
 9 declaration with anyone other than an attorney
 10 for Mr. Riesterer?
 11 A. Can I review that declaration?
 12 MR. DICKSTEIN: Sure.
 13 A. I'm sorry. I'm getting confused.
 14 MR. DICKSTEIN: (Handing.) Just
 15 make sure it's the right date. This is
 16 November.
 17 A. (Perusing.) Yes, okay. Can we go
 18 back to the question?
 19 Q. Did you discuss the Riesterer
 20 declaration with anyone other than an attorney
 21 for Mr. Riesterer?
 22 A. Other than an attorney, no.
 23 Q. By the way, have you ever done any
 24 work, whether formal or informal, for any of
 25 the lawyers at Loeb & Loeb prior to this

1 GELUSO
 2 engagement?
 3 A. No.
 4 Q. Did you ever do any work or were you
 5 ever contacted by any attorney at Bryan Cave?
 6 MR. DICKSTEIN: Prior to this
 7 engagement, I assume?
 8 Q. Prior to this engagement or after.
 9 A. Who is Bryan?
 10 Q. Bryan Cave, that's Ms. Cenar's law
 11 firm.
 12 A. No.
 13 Q. Have you ever been contacted or done
 14 any work for Interscope or UMG?
 15 MR. DICKSTEIN: Vague, ambiguous.
 16 MR. RIGHETTINI: Compound.
 17 A. I may have informally.
 18 Q. When you say may have informally,
 19 for Interscope or UMG Recordings?
 20 MR. DICKSTEIN: Compound.
 21 A. As I mentioned before, I get asked
 22 for my informal opinions. I don't always know
 23 the labels involved, so I'm not sure.
 24 Q. Have you ever been contacted before
 25 this engagement by anyone at Shapiro Bernstein?

1 GELUSO
 2 A. I do not recall. No, I don't recall
 3 at this time.
 4 Q. Is there any document or list that
 5 you maintain which indicates or identifies all
 6 of the various law firms or businesses which
 7 have contacted you for purposes of a formal or
 8 informal opinion?
 9 MR. DICKSTEIN: Vague, ambiguous,
 10 asked and answered, compound.
 11 MR. RIGHETTINI: Join.
 12 A. Yeah, I believe I answered that.
 13 No, I do not keep an inventory of those.
 14 Q. Now, directing your attention,
 15 again, to Exhibit 50, and at page three and
 16 item six.
 17 Do you have that?
 18 MR. DICKSTEIN: That's the November
 19 report.
 20 Q. Do you see that -- do you have that
 21 document?
 22 A. Where are we?
 23 Q. Item six.
 24 A. Item six, report 50, yes, Clark
 25 Warner.

1 GELUSO
 2 Q. You see down in the third line at
 3 the end, which says, "Isolated instrumental and
 4 vocal parts of I Gotta Feeling, which the
 5 defendants caused to be posted to the web site,
 6 Beatport.com, in or around August and
 7 September."
 8 When you say the defendant, who
 9 caused there to be instrumental and vocal parts
 10 posted to Beatport.com? You used the word
 11 "defendants." That's plural, and there are a
 12 number of them.
 13 And I'm asking you which one caused
 14 that, or is it your position that they all
 15 caused it to be posted?
 16 MR. DICKSTEIN: Compound, vague,
 17 ambiguous, calls for speculation.
 18 MR. RIGHETTINI: Join.
 19 A. (Perusing.) Yeah, I was being vague
 20 here, because I don't know specifically who,
 21 you know, what entity gave the files to
 22 Beatport.
 23 Q. Did you ask?
 24 A. No.
 25 Q. Then, as you carry on in that same

1 GELUSO
 2 paragraph, and you refer to the months of
 3 August and September of 2009, is it your
 4 opinion that the instrumentals and the vocals
 5 were available for the 61 days that are in
 6 August and September of 2009?
 7 MR. DICKSTEIN: Vague, ambiguous.
 8 MR. RIGHETTINI: Can you please read
 9 that back?
 10 (Record read.)
 11 MR. RIGHETTINI: Foundation and
 12 speculative.
 13 A. This is -- this is based on my
 14 understanding of the facts. I don't have
 15 firsthand knowledge of -- I didn't visit the
 16 Beatport site on those dates. I didn't know
 17 about it back then.
 18 Q. That wasn't my question.
 19 My question was, are you suggesting,
 20 in paragraph six, that the instrumental and
 21 vocal parts of I Gotta Feeling, which were
 22 posted to Beatport.com, were posted and
 23 available for downloading in the months, both
 24 months, August and September of 2009?
 25 Was that what you intended to

1 GELUSO
 2 suggest?
 3 MR. DICKSTEIN: Objection, asked and
 4 answered.
 5 MR. RIGHETTINI: Compound,
 6 speculative.
 7 A. I wouldn't use the word "suggest."
 8 That is my understanding.
 9 Q. And your understanding that the
 10 isolated instrumental and vocal parts of I
 11 Gotta Feeling were available for download in
 12 the months of August and September 2009 comes
 13 specifically from what?
 14 MR. DICKSTEIN: Foundation.
 15 A. My understanding? Where I received
 16 that information from?
 17 Q. You said your understanding, and
 18 that was my question.
 19 A. From counsel.
 20 Q. Do you know, as a matter of fact,
 21 Mr. Geluso, for what period of time the
 22 isolated instrumental and vocal parts of I
 23 Gotta Feeling were available for download at
 24 Beatport.com?
 25 A. I'm relying on the information

1 GELUSO
 2 provided to me from counsel.
 3 Q. That wasn't my question. Perhaps
 4 you misunderstood it. I will ask it again.
 5 Do you know, as a matter of fact --
 6 A. What's a matter of -- can you define
 7 a matter of fact for me?
 8 Q. That you have personal knowledge of
 9 the specific dates on which the isolated
 10 instrumental and vocal parts of I Gotta Feeling
 11 were available for download on Beatport.com?
 12 MR. DICKSTEIN: Foundation,
 13 misstates testimony.
 14 MR. RIGHETTINI: Join.
 15 A. I did not personally check the site
 16 in August and September. If that's firsthand,
 17 matter-of-fact knowledge, I didn't go there
 18 myself on those months and look at it. I
 19 didn't know this existed at that time. I am
 20 relying on information from counsel.
 21 Q. Sitting here today, you would agree
 22 with me that you do not know, factually, on
 23 what days isolated instrumental and vocal parts
 24 of I Gotta Feeling were available for download
 25 on Beatport.com?

1 GELUSO
 2 MR. RIGHETTINI: Asked and answered.
 3 A. I have no reason to doubt what
 4 counsel has said to me as factual.
 5 Q. You have no reason to doubt it, but
 6 that wasn't my question.
 7 My question is do you know --
 8 A. You are playing with language here.
 9 I'm telling you --
 10 Q. I'm not playing with language. I'm
 11 talking about facts, Mr. Geluso.
 12 A. It sounds like a legal term, which
 13 I'm unfamiliar with.
 14 Q. Facts are a legal term?
 15 A. Yeah.
 16 Q. Do you know what the difference
 17 between a fact and speculation is?
 18 A. It sounds like legal terminology to
 19 me. I know my definition of those words, and
 20 the man on the street definition, but I feel
 21 like I have answered the question.
 22 Q. On what specific day in August, or
 23 days in August, were the isolated instrumental
 24 and vocal parts of I Gotta Feeling, which you
 25 referred to in paragraph six of Exhibit 50,

1 GELUSO
 2 were available for download at Beatport.com?
 3 MR. DICKSTEIN: Objection, asked and
 4 answered, vague, ambiguous as to time.
 5 MR. RIGHETTINI: Join.
 6 A. My statement number six on page
 7 three stands as is. I don't have any other
 8 insight into when those were available. That's
 9 information that was given to me by counsel,
 10 and that's all I can say.
 11 Q. When you say the information was
 12 given to you by counsel --
 13 A. I didn't check it independently, no.
 14 That's my source, and I didn't make any other
 15 inroads to find it out some other way.
 16 Q. So we can agree that you have no
 17 independent knowledge of the specific dates in
 18 August or September in which the isolated
 19 instrumental and vocal parts were available for
 20 download at Beatport.com; is that correct?
 21 MR. RIGHETTINI: Asked and answered.
 22 MR. DICKIE: Hardly.
 23 A. Independent, meaning other than from
 24 counsel, no.
 25 Q. Did counsel tell you the specific

1 GELUSO
 2 dates on which the isolated instrumental --
 3 A. Specific dates, like it went up on
 4 January 3 came down on September 29, no. This
 5 is all we spoke about, as it stands, number
 6 six.
 7 Q. Now, did Loeb & Loeb provide you
 8 with a copy of a videotape made by one of the
 9 defendant's experts, Dan Aga, A-G-A, which was
 10 made during the inspection of Mr. Pringle's
 11 Ensoniq ASR-10?
 12 A. I don't recall any video, seeing a
 13 video.
 14 Q. Did anyone tell you that there was a
 15 videotape of Mr. Pringle made on August 8,
 16 2011, operating and playing Take a Dive, the
 17 dance version?
 18 MR. DICKSTEIN: Objection, vague,
 19 ambiguous, form.
 20 Counsel the witness not to disclose
 21 communications with counsel.
 22 Q. Have you ever seen any video of
 23 Mr. Bryan Pringle operating an ASR-10?
 24 A. No, I haven't.
 25 Q. Prior to today, were you aware of

1 GELUSO
 2 the existence of any such video?
 3 A. No.
 4 Q. Now, prior to your completion of
 5 Exhibit 50, Mr. Geluso, did you ever review a
 6 document entitled Direction for Isolating and
 7 Playing the Guitar Twang Sequence by Itself on
 8 the Ensoniq ASR-10 Keyboard, which was written
 9 by Bryan Pringle?
 10 MR. DICKSTEIN: Foundation.
 11 A. I recall a document that was given
 12 to me with directions that I followed when I
 13 acquired the ASR-10 and CD ROM drive.
 14 Q. Is the document you just referred to
 15 in your answer a document that bore the title
 16 that I just read?
 17 A. I would have to see the document to
 18 let you know.
 19 Q. Well, was it your understanding that
 20 that document was a document written and
 21 prepared by Bryan Pringle or it came with the
 22 ASR-10?
 23 MR. DICKSTEIN: Objection,
 24 speculation.
 25 A. I don't recall the author of the

1 GELUSO
 2 document, but I do recall the document.
 3 Q. Did it come with the ASR-10?
 4 A. No.
 5 Q. From whom did you get the document?
 6 A. From counsel.
 7 Q. And did you use that document in
 8 connection with any of your work in this
 9 engagement?
 10 MR. RIGHETTINI: Vague, ambiguous.
 11 A. Yes. I read it and it was helpful
 12 in operating the ASR-10.
 13 Q. Were you provided with all of the
 14 materials that Bryan Pringle provided to the
 15 defendants on August 8, 2011?
 16 MR. DICKSTEIN: Objection,
 17 speculation, foundation.
 18 MR. RIGHETTINI: Join.
 19 A. I don't know what he provided to
 20 them.
 21 Q. Was it your understanding that
 22 materials that you received included any
 23 materials provided by Bryan Pringle to the
 24 defendants in August of 2011?
 25 A. I'm unaware of dates. I know

1 GELUSO
 2 there's the infamous NRG file, which I obtained
 3 a copy of, and I don't know the history of that
 4 CD ROM.
 5 Q. Well, do you know whether, in your
 6 files at home, you have maintained all of the
 7 materials that were provided to the defendants
 8 by Mr. Pringle in August of 2011?
 9 MR. DICKSTEIN: Objection, assumes
 10 facts.
 11 MR. RIGHETTINI: Join.
 12 A. I don't know what Mr. Pringle
 13 provided to them. I do not have an inventory,
 14 but I do have -- I believe I kept the NRG file.
 15 I still have a copy of the NRG file in my
 16 possession.
 17 Q. Other than the NRG file, that's the
 18 file that has on it Take a Dive, dance version,
 19 that you reference in your report; isn't that
 20 right?
 21 MR. DICKSTEIN: Objection, form,
 22 foundation.
 23 A. The NRG file is the disk that the
 24 ASR-10 reads.
 25 Q. How many NRG files did you receive?

1 GELUSO
2 A. One. I may have received it twice,
3 but they were identical.

4 Q. Did you receive any other -- strike
5 that.

6 Did you also receive a copy of the
7 1998 copyrighted CD of Dead Beat Club?

8 MR. DICKSTEIN: Objection,
9 foundation, legal conclusion.

10 A. No.

11 Q. Were you aware that Mr. Pringle had
12 filed a copyright registration in 1998 for a
13 collection of songs on a CD called Dead Beat
14 Club?

15 A. I recall the name Dead Beat Club
16 being discussed with counsel.

17 Q. Did you ever obtain, from any
18 source, a copy of that registered CD that was
19 filed with the copyright office?

20 A. No. In full, no. I received a
21 track from it.

22 Q. Were you aware that counsel for one
23 of the defendants obtained a certified copy of
24 the entire Dead Beat Club CD from the U.S.
25 Copyright Office prior to the time you were

1 GELUSO
2 It's kind of -- informed it for the report.
3 It's, you know, the legal number of the
4 copyright, but I did not, firsthand, get it
5 from the copyright office. I was advised by
6 counsel of that number.

7 Q. When was it that you first learned
8 that Mr. Pringle had filed a deposit copy CD
9 with the copyright office in 1998 titled Dead
10 Beat Club?

11 MR. DICKSTEIN: Objection, vague,
12 ambiguous.

13 A. I did not --

14 MR. DICKSTEIN: Legal conclusion.

15 A. I did not discuss the entire Dead
16 Beat Club CD with counsel. I was just
17 concerned with this one track.

18 So you keep referring to this Dead
19 Beat Club CD. I haven't seen -- I don't have a
20 copy of the entire CD. I don't have knowledge
21 of it. I only have knowledge of this
22 individual track which counsel has told me is
23 filed under this serial number.

24 Q. That wasn't my question. Perhaps
25 you misunderstood it, Mr. Geluso.

1 GELUSO
2 engaged?

3 MR. DICKSTEIN: Foundation.

4 A. I don't recall discussing a
5 complete -- a release, as we call it in the
6 business. You are saying a commercially
7 released CD entitled Dead Beat Club. I'm
8 unaware of such a thing.

9 Q. No. I'm talking about the certified
10 copy of the CD called Dead Beat Club that was
11 registered with the U.S. Copyright Office, did
12 you receive --

13 A. I was aware that the -- something
14 was sent to the copyright office with a
15 copyright number, advised by counsel what those
16 numbers were for my report to reference.

17 But what I received was single
18 tracks, not a compilation.

19 Q. Well, I notice on this list, on page
20 three of Exhibit 50, in item one, you are
21 referencing Take a Dive, dance version, with a
22 registration number.

23 A. Uh-huh, that was --

24 Q. Is that what you were referring to?

25 A. Yeah. Counsel gave me that number.

1 GELUSO

2 A. Okay.

3 Q. My simple question was, when, as a
4 point in time, did you first learn that
5 Mr. Pringle had copyrighted music with a CD
6 called Dead Beat Club in 1998?

7 MR. DICKSTEIN: Objection -- were
8 you finished?

9 MR. DICKIE: Yes.

10 MR. DICKSTEIN: Objection,
11 foundation, vague, ambiguous.

12 I think we are confusing
13 registrations. We know that there were
14 more than one reported deposit copies
15 submitted.

16 A. My understanding is that Mr. Pringle
17 did register Take a Dive, dance version, and
18 this number, SR659-360, was advised to me by
19 counsel. That is the extent of my knowledge.

20 When did I learn about it was very
21 early on in the case, when I was given the two
22 tracks, Take a Dive, dance version, and I Gotta
23 Feeling. At that time, on a conversation, it
24 was revealed to me that, one, Mr. Pringle did
25 have a copyright on -- that he filed for --

1 GELUSO
 2 actually, no, I'm getting confused now. I'm
 3 sorry.
 4 Yeah, I just don't know.
 5 MR. DICKSTEIN: Would you like
 6 counsel to restate his question?
 7 Q. Mr. Geluso, let me see if I can
 8 straighten you out.
 9 A. There was two. I know there was a
 10 1999 release, and there was -- there's two
 11 versions. There's derivative and there's
 12 non-derivative, and they were filed at
 13 different times.
 14 But my area of expertise is not in
 15 copyright and these legal aspects. I'm a sound
 16 engineer, recordist looking at sound files.
 17 I'm sorry. I can't comment on copyrights and
 18 dates.
 19 I haven't been keeping track, other
 20 than what's in my report, about those things.
 21 Q. Mr. Geluso, you just used the words
 22 a derivative and a non-derivative version.
 23 When was it, as a point in time,
 24 that you first learned that there was a
 25 non-derivative version of Take a Dive in

1 GELUSO
 2 existence?
 3 A. I don't recall the exact date, but I
 4 am aware of it, so --
 5 Q. Were you aware of it before you
 6 signed Exhibit 50?
 7 A. Yes.
 8 Q. And your understanding of the
 9 non-derivative version is that it's part of the
 10 Dead Beat Club CD that was copyrighted in 1998?
 11 MR. RIGHETTINI: Assumes facts not
 12 in evidence, foundation.
 13 MR. DICKSTEIN: Foundation.
 14 A. I didn't do much work involving the
 15 non-derivative version. I'm aware that it
 16 existed, but it didn't contain the -- it
 17 exists, that it does not have the guitar twang,
 18 so it wasn't the focus of my work.
 19 Q. How many songs are on the
 20 copyrighted Dead Beat Club --
 21 A. I have never seen the complete Dead
 22 Beat Club CD. I do not know. I don't have
 23 knowledge of that. I was never given a copy of
 24 it, as I explained before.
 25 MR. RIGHETTINI: Just for

1 GELUSO
 2 clarification, when you say copyrighted,
 3 do you mean registered?
 4 MR. DICKIE: Yes.
 5 A. I understand from you now, or I
 6 don't know -- I have never seen a compilation
 7 called Dead Beat Club. I have only seen
 8 tracks, which I don't even know if they came
 9 from that compilation. I know what tracks I
 10 have.
 11 Q. Well, when was it you first heard
 12 the term "Dead Beat Club"?
 13 A. I saw it in -- I don't recall the
 14 exact date. It must have been December,
 15 January. You know, the name rings a bell.
 16 Q. And would it be correct, then, to
 17 say, sir, that in the course of your analysis,
 18 you made no attempt to determine whether any of
 19 the tracks on the Dead Beat Club compilation
 20 have a guitar twang similar to the guitar twang
 21 in Take a Dive, dance version?
 22 MR. DICKSTEIN: Vague, ambiguous.
 23 MR. RIGHETTINI: Join.
 24 A. I don't recall reviewing that
 25 compilation.

1 GELUSO
 2 Q. So my statement would be correct.
 3 The answer is yes; isn't that right?
 4 A. Well, I have heard the derivative
 5 version and non-derivative version.
 6 Q. That wasn't my question, Mr. Geluso.
 7 A. Well, I don't know what was on the
 8 Dead Beat Club -- I'm unfamiliar with the Dead
 9 Beat Club compilation. So whenever you refer
 10 to Dead Beat compilation, I can't answer you,
 11 because I do not know what tracks are on there.
 12 I haven't heard the entire disk. I
 13 don't have a copy of it. I don't have any
 14 knowledge of that collection.
 15 Q. So it would be correct, then, to say
 16 that, in your analysis in this engagement, you
 17 made no attempt to determine whether any of the
 18 tracks, other than Take a Dive on the 1998 Dead
 19 Beat Club CD, contained a guitar twang similar
 20 to what's in Take a Dive, dance version?
 21 MR. DICKSTEIN: Vague, ambiguous.
 22 MR. RIGHETTINI: It's an improper
 23 hypothetical, too.
 24 Q. It's a yes or no question.
 25 A. No. I do not know. I received

1 GELUSO
 2 other mixes from counsel that were not used in
 3 my report that I no longer pursued or whatever.
 4 I would really have to go back and review that.
 5 I'm not comfortable saying --
 6 answering that question.
 7 Q. Mr. Geluso, is it correct that you
 8 never had in your possession a copy, a complete
 9 copy of the Dead Beat Club CD that was
 10 registered with the U.S. Copyright Office in
 11 1998?
 12 MR. DICKSTEIN: Asked and answered.
 13 Q. That's a yes or no question.
 14 A. You mean a CD that says Dead Beat
 15 Club with 12 or 14 tracks on it? I do not have
 16 such a disk.
 17 Q. And you never had it in your
 18 possession during the course of your work in
 19 this engagement; isn't that correct?
 20 A. Unless I was given the tracks,
 21 individually, I was not given a compilation
 22 with that name on it. I did hear other tracks,
 23 though, which I don't recall what they are,
 24 where they came from.
 25 Q. Can you -- I guess you can't

1 GELUSO
 2 identify the tracks --
 3 A. I can't.
 4 Q. -- and you don't know the source?
 5 MR. DICKSTEIN: I'm just going to
 6 counsel the witness not to testify as to
 7 analyses that were not contained in his
 8 report, and not the subject of his
 9 testimony in this case.
 10 A. Yeah, this --
 11 Q. If I understand it correctly, you
 12 never had in your possession the CD that said
 13 Dead Beat Club that came from a certified copy
 14 of that which was with the U.S. Copyright
 15 Office.
 16 A. Correct.
 17 Q. It would be correct, then, to say
 18 that you never sat down and listened, anywhere,
 19 to all of the tracks on that Dead Beat Club CD;
 20 isn't that correct?
 21 A. I do not know -- I don't have a
 22 listing of the tracks. I'd need to hear --
 23 MR. DICKSTEIN: Asked and answered.
 24 MR. RIGHETTINI: I would like to
 25 object to this line of questioning,

1 GELUSO
 2 because your client has testified numerous
 3 times that the guitar twang sequence was
 4 created in 1999. So there's no way it
 5 could exist on a work that was created in
 6 1998.
 7 MR. DICKIE: You are wrong as to
 8 what he has testified to. And whether or
 9 not the precursor in there sounds --
 10 MR. RIGHETTINI: I will pull up the
 11 declaration.
 12 MR. DICKIE: You can pull up
 13 whatever you want, Counsel, but it's not
 14 your deposition. If you want to ask
 15 questions, be good enough to do so. But
 16 don't try to coach the witness with bull.
 17 A. Sir, I do not know what tracks
 18 entitle the Dead Beat Club. I heard other
 19 tracks. I cannot answer if -- I don't have
 20 anything physically labeled Dead Beat Club with
 21 a list of songs.
 22 You are asking me, did you hear the
 23 other songs. Perhaps. I heard other tracks by
 24 Bryan Pringle. I don't know if I heard the
 25 Dead Beat Club in its completion. I never

1 GELUSO
 2 received a CD and sat down and hit play and
 3 listened to the entire compilation.
 4 I can testify to that, but you are
 5 asking me, did I hear other tracks from that
 6 compilation, and I just don't know, because I'm
 7 not familiar with the compilation.
 8 Q. Tell me the identity of a single
 9 other Bryan Pringle track that you heard.
 10 MR. DICKSTEIN: Objection. I'm
 11 going to counsel the witness not to
 12 testify as to analyses he may have
 13 conducted which is not within the scope of
 14 his report and not within the scope of
 15 testimony he's planning to offer in this
 16 case.
 17 MR. DICKIE: I didn't ask about any
 18 analysis. I asked him what he heard. He
 19 just said he heard other Bryan Pringle
 20 tracks. I want him to identify for me, by
 21 name, the track, the other track or tracks
 22 he heard.
 23 A. I do not know, by name, the other
 24 tracks.
 25 MR. RIGHETTINI: This is the

1 GELUSO
 2 declaration of Bryan Pringle that was
 3 filed in support of his motion for
 4 preliminary injunction. At paragraph
 5 four, he states he created the guitar
 6 twang sequence the year after the Dead
 7 Beat Club 1998 CD.

8 MR. DICKIE: So what? That doesn't
 9 mean --

10 MR. RIGHETTINI: So why are you
 11 asking --

12 MR. DICKIE: Because if there are
 13 things in the other music that indicate or
 14 are precursors to the guitar twang, I'm
 15 asking about that as a predicate.

16 MR. RIGHETTINI: So why don't you
 17 ask that question as opposed --

18 MR. DICKIE: I'm asking my question,
 19 Counsel. You can make your objection.

20 MR. RIGHETTINI: -- as opposed to
 21 something that's demonstratively false.

22 MR. DICKIE: It is not
 23 demonstratively false.

24 MR. RIGHETTINI: I just read you the
 25 declaration.

1 GELUSO
 2 MR. DICKIE: That doesn't make it
 3 demonstratively false. If you think it
 4 does, make the argument later. But it
 5 doesn't make it demonstratively false.

6 MR. DICKSTEIN: If Mr. Dickie would
 7 like to waste this witness' time and
 8 counsel's time with questions that are not
 9 relevant and demonstratively false, that's
 10 his prerogative.

11 MR. DICKIE: They are not
 12 demonstratively false. And you can make
 13 that argument anytime you want, and we
 14 will respond to it.

15 MR. RIGHETTINI: Okay. Thank you.

16 MR. DICKIE: Because I don't think
 17 you would know what demonstratively false
 18 means.

19 MR. RIGHETTINI: That's improper.

20 MR. DICKIE: Just like you are
 21 reading something and then objection.
 22 State the objection, but don't engage in
 23 semantics here.

24 MR. RIGHETTINI: Fine. My objection
 25 is to relevance.

1 GELUSO
 2 MR. DICKIE: Good.
 3 Q. Did you make any inquiry of anyone,
 4 Mr. Geluso, as to whether there were any songs
 5 in the past that Bryan Pringle wrote that had,
 6 in whole or in part, any of the elements of
 7 Take a Dive, the dance version?

8 MR. DICKSTEIN: Objection, vague,
 9 ambiguous, compound.

10 MR. RIGHETTINI: Join.

11 A. The first part of the sentence, did
 12 I request or ask about --

13 Q. Did you make any inquiry of
 14 anyone --

15 A. No.

16 Q. -- as to whether there were any
 17 songs in the past by Bryan Pringle that had, in
 18 whole or in part, any precursor to Take a Dive,
 19 dance version?

20 MR. RIGHETTINI: Vague, ambiguous.

21 MR. DICKSTEIN: Same objections.

22 A. I did not inquire about other
 23 tracks.

24 Q. In connection with the Beatport
 25 remix contest, how many phases were there?

1 GELUSO
 2 MR. DICKSTEIN: Objection to form,
 3 vague, ambiguous.

4 MR. RIGHETTINI: Foundation.

5 A. I do know not.

6 Q. Did you ask anyone how many phases
 7 there were?

8 A. No. Phases? I'm sorry. You
 9 mean --

10 Q. Do you know what a phase means?

11 A. I know what -- you're pulling that
 12 word out of the air.

13 Q. I am?

14 MR. DICKSTEIN: Vague, ambiguous.

15 A. What context?

16 Q. On the Beatport, you reference in
 17 your report the Beatport remix contest.

18 Tell us all how that contest worked.

19 MR. RIGHETTINI: Foundation.

20 MR. DICKSTEIN: Speculation.

21 A. I have a general understanding of
 22 how Beatport operates.

23 Q. I'm not asking generally about how
 24 Beatport operates.

25 I'm talking about asking you to

1 GELUSO
 2 complain to us how, exactly, the Beatport remix
 3 contest for I Gotta Feeling worked.
 4 MR. RIGHETTINI: Same objections.
 5 MR. DICKSTEIN: Speculation.
 6 A. I have a general understanding of
 7 how remix contests work, not that specific one.
 8 I wasn't on the site in 2009. I have no
 9 firsthand experience to how Beatport ran its
 10 shop.
 11 Q. Was there a download phase to the I
 12 Gotta Feeling remix contest?
 13 MR. RIGHETTINI: Foundation, calls
 14 for speculation.
 15 MR. DICKSTEIN: Vague, ambiguous.
 16 A. I understand from counsel there was.
 17 Q. Was there an upload phase?
 18 MR. RIGHETTINI: Foundation, calls
 19 for speculation, vague, ambiguous.
 20 MR. DICKSTEIN: Same objections.
 21 A. I don't know.
 22 Q. Was there a voting phase?
 23 MR. RIGHETTINI: Same objections.
 24 A. I don't know.
 25 MR. DICKSTEIN: Same objections.

1 GELUSO
 2 prior to the time you put your name to it, did
 3 you make any attempt to determine what the
 4 specifics were of the Beatport I Gotta Feeling
 5 remix contest?
 6 MR. RIGHETTINI: Asked and answered.
 7 A. I went to Beatport myself, and it
 8 was already finished. So everything I know, I
 9 understand from counsel.
 10 Q. Well, did you --
 11 A. I didn't independently seek out that
 12 information, no.
 13 Q. And were the isolated instrumentals
 14 and vocals of I Gotta Feeling available for
 15 download free?
 16 MR. DICKSTEIN: Objection, asked and
 17 answered.
 18 At this point, I think he has
 19 testified as to the scope of his knowledge
 20 on the subject. I don't think it's fair
 21 to continue, but I will let the witness
 22 answer.
 23 A. My understanding is there was no
 24 cost involved, but I don't have any direct,
 25 firsthand experience with the contest.

1 GELUSO
 2 Q. Do you know the dates on which the
 3 download phase was in effect?
 4 MR. RIGHETTINI: Asked and answered.
 5 MR. DICKSTEIN: Asked and answered.
 6 A. No -- oh, wait. Hold on. Excuse
 7 me.
 8 Is the download phase the dates when
 9 they were available? Is that what you are
 10 saying?
 11 Q. That's the download phase is, isn't
 12 it?
 13 A. It's a new language for me.
 14 Q. I thought you said you knew,
 15 generally, what Beatport did in terms of remix
 16 contests.
 17 MR. DICKSTEIN: Argumentative.
 18 MR. RIGHETTINI: Join.
 19 Q. Was that an incorrect statement?
 20 A. My understanding is they make
 21 isolated tracks available for remixers to
 22 download and remix and then post for others to
 23 hear. That's about the depth of my
 24 understanding of Beatport.
 25 Q. And in connection with your report,

1 GELUSO
 2 Q. Isn't it a fact that, in order to
 3 download the remix parts of the isolated
 4 instrumentals and vocals of I Gotta Feeling,
 5 there was a \$4.99 charge?
 6 MR. RIGHETTINI: Foundation, calls
 7 for speculation.
 8 MR. DICKSTEIN: Same objections.
 9 A. The scope of my work involved
 10 analyzing sound files, and background
 11 information has been provided by counsel. So
 12 the Beatport contest is not an area of my
 13 expertise or knowledge.
 14 You can continue to question me, of
 15 course, but I think I have told you what I
 16 know.
 17 MR. DICKSTEIN: It's his time. Let
 18 him ask the questions.
 19 THE WITNESS: Yes.
 20 MR. DICKIE: It's a quarter after
 21 12. Why don't we break for lunch?
 22 (Luncheon recess taken at
 23 12:18 p.m.)
 24
 25

1 GELUSO
 2 A F T E R N O O N S E S S I O N
 3 (Plaintiff's Exhibit 51, Document
 4 Entitled Beatport Presents The Black Eyed
 5 Peas Remix Contest in Association With
 6 Dipdive, marked for identification.)
 7 (Plaintiff's Exhibit 52, Document
 8 Entitled The Black Eyed Peas, I Gotta
 9 Feeling Remix Contest, marked for
 10 identification.)
 11 (Plaintiff's Exhibit 53, Terms and
 12 Conditions Overview, marked for
 13 identification.)
 14 (Time noted: 1:29 p.m.)
 15 P A U L G E L U S O, resumed and
 16 testified as follows:
 17 MR. DICKSTEIN: I have copies of the
 18 reports that Mr. Geluso referred to
 19 earlier in the other case he was involved
 20 in. I was able to get clearance that we
 21 can provide these to you, which I will do
 22 now.
 23 You will probably see that members
 24 of your team already have copies, but we
 25 are happy to provide you additional

1 GELUSO
 2 copies.
 3 In addition, I believe that
 4 Mr. Geluso may want to clarify one part of
 5 his testimony from this morning as to the
 6 source of his knowledge about the Beatport
 7 competition. So I will let the witness
 8 clarify.
 9 THE WITNESS: I wanted to clarify.
 10 I spoke before and said the information
 11 had come to me via counsel. I meant to
 12 include the declaration of Clark Warner,
 13 which was provided to me via counsel as
 14 well.
 15 CONTINUED EXAMINATION
 16 BY MR. DICKIE:
 17 Q. All set to proceed this afternoon,
 18 Mr. Geluso?
 19 A. Yes.
 20 Q. You understand you're still under
 21 oath?
 22 A. Yes, I do.
 23 Q. In the course of your report, you
 24 talk about something called the Logic session
 25 file or files.

1 GELUSO
 2 Do you recall that?
 3 A. Yes.
 4 Q. To what exactly are you referring?
 5 MR. DICKSTEIN: Objection, vague,
 6 ambiguous.
 7 MR. RIGHETTINI: Join.
 8 Q. Those are your words. You
 9 understand what you're referring to, don't you?
 10 A. What part of the report are you --
 11 Q. Just the general concept of the
 12 Logic session files. You use those words a
 13 number of places in the report.
 14 And I just want to know what you
 15 mean by it.
 16 A. Sure. That is the -- those are the
 17 creation files, I understand, that were created
 18 by Mr. Riesterer.
 19 Q. Well, are they -- when you use the
 20 words "Logic session file or files," are you
 21 referring specifically to the documents that
 22 are contained and referenced in item five on
 23 page three of your report, where it says,
 24 "Creation files for I Gotta Feeling produced by
 25 Frederic Riesterer under Bates Numbers

1 GELUSO
 2 Riesterer 1 through 9, 38"?
 3 Is it your testimony, sir, that when
 4 you use the term "Logic session file or files"
 5 in your report, you are referring just to
 6 Riesterer Bates numbers 1 through 9 and 38, or
 7 does it include other things?
 8 MR. DICKSTEIN: Objection, vague,
 9 ambiguous.
 10 MR. RIGHETTINI: Join.
 11 A. I believe so. I would have to
 12 review the Bates numbers. Those were advised
 13 to me by counsel, those numbers.
 14 Q. Well, do you have those documents in
 15 your possession, and you looked at them, and
 16 they had those Bates numbers on them when you
 17 looked at them?
 18 MR. DICKSTEIN: Compound.
 19 A. I remember disks with numbers on
 20 them, yes, but this particular number was
 21 advised to me by counsel.
 22 Q. Well, in the Logic session file, is
 23 it just these numbers or are there other Bates
 24 numbers?
 25 THE WITNESS: Can I see this disk?

1 GELUSO
 2 MR. DICKSTEIN: I think that's fair.
 3 The witness has asked to refer to other
 4 materials to help answer --
 5 MR. DICKIE: Well, I don't have any
 6 disk called Logic session file, so --
 7 A. No. Bates number 1-9, 38. It is my
 8 understanding that is it.
 9 Q. So that we can, for purposes of
 10 looking at your report, conclude that the Logic
 11 session file reference in your report refers,
 12 basically, to Riesterer Bates numbers 1 through
 13 9 and 38, and nothing else; is that correct?
 14 MR. RIGHETTINI: Vague, ambiguous.
 15 MR. DICKSTEIN: Form.
 16 A. I would need to see that disk, Bates
 17 numbers, registers 1-9, 38. I believe those
 18 are them.
 19 I don't have a photographic memory
 20 for the number on the disk from which I gotta
 21 Feeling, and counsel advised me of those
 22 numbers when we were preparing the report.
 23 Q. Is there any file or disk title that
 24 says Logic session file or is that the words
 25 you created?

1 GELUSO
 2 A. No, I'm referring to -- specifically
 3 to a session which I refer to as --
 4 Mr. Riesterer had labeled David Pop Guitar,
 5 which I believe is on that Bates numbers disk.
 6 Q. Does Logic session file refer to
 7 anything other than David Pop Guitar?
 8 A. No. A session -- just to clarify, a
 9 Logic session is more than one file. It's a
 10 folder with various items in it. That's why I
 11 call it a session.
 12 Q. Well, in the Logic session file, so
 13 is there more --
 14 A. It's not a single file. It's a
 15 collection -- a session is a collection of
 16 files.
 17 Q. Well, how many files or how many
 18 sessions are there in the Logic session group
 19 folder?
 20 MR. DICKSTEIN: Vague, ambiguous.
 21 A. If I could see that disk, I could
 22 answer these questions.
 23 Q. When you are talking about the disk,
 24 you are referring to which specific disk?
 25 A. Bates numbers Riesterer 1-9, 38.

1 GELUSO
 2 Q. Well, you see it doesn't say it's a
 3 disk. It's talking about specific Bates
 4 numbers. And then there's a gap from 9 all the
 5 way to 38.
 6 So I'm trying to figure out in what
 7 form you had Riesterer Bates numbers 1 through
 8 9 and 38. Is that a hard copy?
 9 A. I believe it was a CD ROM. I
 10 received various CD ROMs with numbers that look
 11 like, you know, related to the case, logging
 12 numbers. And I opened them, and within one of
 13 them was a Logic session, I believe, entitled
 14 David Pop Guitar, which is the Logic session I
 15 referred to, as its creation file.
 16 Q. Where it says Bates numbers
 17 Riesterer 1 through 9, is that -- 1 through 9,
 18 those are all different CD ROMs, or is that one
 19 CD ROM within it, folders or documents or
 20 things within it are numbered 1 through 9?
 21 A. I would need to see that item right
 22 now.
 23 MR. DICKSTEIN: Vague, ambiguous.
 24 Maybe, for clarification, I think he
 25 is asking as you received them. That

1 GELUSO
 2 might help.
 3 A. Those numbers don't mean too much to
 4 me. They were advised by counsel that we
 5 talked about what files I used. I explained
 6 what files I used, and we assigned these
 7 numbers to them, but if the disk were produced,
 8 I would be able to identify David Pop Guitar
 9 session.
 10 Q. The disk that you are talking about,
 11 how is the disk titled?
 12 A. I don't have it in front of me. I
 13 don't recall the title. I remember -- what I
 14 remember is the David Pop Guitar title as a
 15 Logic session.
 16 Q. Well, was there more than one David
 17 Pop Guitar session?
 18 A. No, not that I recall. I worked
 19 from one David Pop Guitar session.
 20 Q. Well, in terms of Riesterer 1
 21 through 9 or 38, which of the Bates numbers
 22 applies to the David Pop Guitar session?
 23 A. Okay. Can we take a break?
 24 MR. DICKSTEIN: Sure.
 25 (Recess taken.)

1 GELUSO

2 MR. DICKSTEIN: Professor Geluso, do
3 you want to explain one of your prior
4 answers or elaborate?

5 THE WITNESS: Yes. On the CD ROM,
6 Riesterer 1-9, 38, 1 through 9 refers to
7 folders, and in folders two and three,
8 there is a Logic session by the name of
9 David Pop Guitar.

10 BY MR. DICKIE:

11 Q. And what is on the other folders
12 between 1 and 9?

13 A. We have got to go back and look. I
14 would have to review the disk again to give you
15 that information.

16 MR. DICKSTEIN: Maybe this will
17 help. Did any of those other files, as
18 far as you know, contain the Logic session
19 file that you used as part of your
20 analysis that's reflected in this report?

21 THE WITNESS: Going quickly through
22 the files, it was -- the David Pop Guitar
23 session was in file two and three.

24 Q. Is it your testimony, sir, that on
25 files --

1 GELUSO

2 Mr. Riesterer produce other files that are
3 simply not referenced?

4 MR. RIGHETTINI: Foundation.

5 MR. DICKSTEIN: Compound.

6 A. I would have to make a more careful
7 review of the disk to answer that question.

8 Q. Well, if you look --

9 A. I don't recall any other -- any
10 others, but there's a lot of files on there. I
11 can't recall verbatim. I would have to look at
12 the disk. From memory, I can't say.

13 Q. In footnote three on page six, you
14 tell us what a Logic session file is.

15 Do you see that?

16 A. Uh-huh.

17 Q. Is that your word, or is that a
18 standard term of art in your industry?

19 MR. DICKSTEIN: Foundation.

20 A. Could you ask it again, please?

21 Q. Yeah. Is that word, "Logic session
22 file," your word or is that a standard term of
23 art in the industry?

24 A. I believe it's a standard term.

25 Q. And did you obtain this description

1 GELUSO

2 A. I'm sorry. Folders two and three.

3 Q. On folders one and four through
4 nine, there was nothing on those folders that
5 had to do with David Pop Guitar?

6 MR. RIGHETTINI: Can you read that
7 back?

8 A. I would have to examine the disk
9 more closely. There's-- there appears to be
10 some redundancy in the folders.

11 Q. And by redundancy, you mean some
12 duplication?

13 A. Yes. For example, like two and
14 three both had David Pop Guitar in them.

15 Q. Were they the same version?

16 A. I don't know. I would have to
17 further investigate that. I would need my
18 computer with Logic on it to answer that
19 question.

20 Q. On page six of Exhibit 50, in
21 paragraph 15, the sentence begins, "The
22 creation files produced by Mr. Riesterer."

23 Now, is that reference to -- limited
24 to items -- folders 1 through 9 and 38 as
25 referenced in item five on page three, or did

1 GELUSO

2 from some treatise somewhere or are these your
3 words and what you think it is?

4 MR. DICKSTEIN: Foundation,
5 compound.

6 MR. RIGHETTINI: Join.

7 A. These are my words based on my
8 experience using the software.

9 Q. Had you used Logic Pro, version 8,
10 before?

11 A. I have worked with Logic for over --
12 well, for many years. Yes, I have.

13 Q. And did you prepare or were you
14 furnished with a list of the -- all of the
15 computer files that were associated with the
16 Logic session file?

17 A. In inventory --

18 MR. DICKSTEIN: Were you done with
19 the question?

20 MR. DICKIE: Yes.

21 MR. RIGHETTINI: Vague, ambiguous.

22 A. I don't recall it in inventory.

23 Q. I just want to ask the reporter to
24 hand you what I have marked as Exhibit 51 for
25 identification. I just have a question.

1 GELUSO
 2 Take a look at Exhibit 51, if you
 3 would, Mr. Geluso, and tell me whether you have
 4 ever seen that web site information before.
 5 MR. DICKSTEIN: Can we just take a
 6 quick break and make a copy?
 7 MR. DICKIE: Sure. Why don't you
 8 make a copy of these two?
 9 (Recess taken.)
 10 Q. Mr. Geluso, we have handed you three
 11 exhibits, Exhibit 51, 52 and 53.
 12 I just want you to take a look at
 13 them and tell me whether or not you have ever
 14 seen these or something substantially similar
 15 from the internet.
 16 MR. DICKSTEIN: Vague, ambiguous.
 17 A. (Perusing.) Scanning these
 18 documents, they do not look familiar.
 19 Q. So I take it, from that, you don't
 20 have any recollection of seeing those or
 21 anything substantially the same?
 22 MR. RIGHETTINI: Vague, ambiguous.
 23 MR. DICKSTEIN: Vague, ambiguous.
 24 A. When you say substantially the same,
 25 I haven't seen these documents.

1 GELUSO
 2 Q. You have seen ones that were
 3 somewhat the same or substantially the same,
 4 for example, like the terms and conditions?
 5 A. Terms and conditions, I have read
 6 other terms and conditions.
 7 Q. From Beatport?
 8 A. No.
 9 MR. DICKSTEIN: Foundation.
 10 Q. In your work, do you ever use a web
 11 site called wayback.com?
 12 A. No.
 13 Q. Have you ever heard of it?
 14 A. No.
 15 Q. Did I understand it correctly
 16 earlier this morning that you attempted to find
 17 out information on the internet regarding the
 18 Beatport I Gotta Feeling remix contest?
 19 A. I didn't spend much time. I
 20 initially went there and searched and didn't
 21 find anything relevant, and that was about it.
 22 Q. What did you do as a search?
 23 A. A Google search.
 24 Q. And what did you search?
 25 A. I don't recall precisely what I

1 GELUSO
 2 searched. Most likely, if I were to search for
 3 it today, I would put Beatport and the name of
 4 the Black Eyed Peas track, see what comes up.
 5 I don't remember. It was over a year, about a
 6 year ago. I don't recall my exact search
 7 keywords.
 8 Q. Did the search take place after you
 9 were engaged in this case which involved I
 10 Gotta Feeling and the Black Eyed Peas?
 11 A. Yes.
 12 Q. And did you search or attempt to
 13 search in any way on Google for both the Black
 14 Eyed Peas and the Beatport remix contest?
 15 MR. DICKSTEIN: Vague, ambiguous.
 16 A. I think I said earlier I did do an
 17 initial search to see if it was still an active
 18 contest, and my recollection, I determined it
 19 was to longer active, and that's about the
 20 extent of my recollection.
 21 Q. And to determine whether it was an
 22 active, still an active contest, you went to
 23 Google and put in what search parameters?
 24 A. I don't remember the exact words.
 25 Q. In the course of your report, you

1 GELUSO
 2 use the word "stem."
 3 A. Uh-huh.
 4 Q. What do you mean by that term?
 5 A. A stem is a word known to industry
 6 professionals as an isolated track that makes
 7 up a mix. So with a collection of stems, you
 8 could, in theory, recreate a mix. A mix being
 9 a composite track on stereo -- in stereo.
 10 Q. What do you mean, a composite track
 11 in stereo?
 12 A. Something we call a master a
 13 consumer would listen to.
 14 Q. Now, are you aware of any treatise
 15 or written document within your industry that
 16 defines stem as a -- in the way in which you
 17 have described it, as being an industry term?
 18 A. Not specifically.
 19 Q. Well, do you know of any treatise or
 20 scholarly writing that defines at all the
 21 notion of "stem"?
 22 A. Not specifically.
 23 Q. Are you, as you sit here, familiar
 24 with any other expert in your field that uses
 25 the word "stem" in the same fashion that you

1 GELUSO
 2 use?
 3 A. It's a understood term in my
 4 profession. Any audio engineer -- any
 5 professional audio engineer, if you said to
 6 them, I need a stem or a group of stems, I
 7 believe they would understand what I was
 8 speaking about.
 9 Q. Well, my question wasn't that.
 10 My question was, as you sit here,
 11 are you familiar with any other expert in your
 12 field who uses the word "stem" in the same
 13 fashion as you do? If so, please identify him
 14 for me.
 15 A. You want me to list the name of
 16 every audio engineer I know?
 17 Q. No. An expert in the field who
 18 you're aware that has used the stem in the
 19 expert context, the way in which you used it in
 20 this document.
 21 MR. DICKSTEIN: Vague, ambiguous.
 22 Let him finish before you answer.
 23 THE WITNESS: Sure.
 24 MR. DICKSTEIN: Thanks.
 25 Q. Can you identify any expert in the

1 GELUSO
 2 field who has testified, or any court that's
 3 accepted your version of the word "stem"?
 4 MR. RIGHETTINI: Foundation.
 5 MR. DICKSTEIN: Vague, ambiguous.
 6 A. I do not have a name for you now.
 7 Q. What is the origin of the use of the
 8 word "stem" in the way in which you have used
 9 it in this report?
 10 MR. DICKSTEIN: Vague and ambiguous.
 11 A. The origin of the word? Could you
 12 explain what that means?
 13 Q. Yes. The origin of the use of the
 14 word "stem" in the fashion that you have
 15 described for purposes of your report here.
 16 MR. DICKSTEIN: Same objection.
 17 MR. RIGHETTINI: Foundation as well.
 18 A. It's such a common word. It would
 19 be like asking a shoe store salesman, tell me
 20 the origin of the word "shoe." It's such a
 21 common terminology.
 22 Q. Well --
 23 A. It's not an unusual word. It's not
 24 something that I would recollect the first time
 25 I heard it in the case. It's a very, very

1 GELUSO
 2 common term.
 3 Q. Well, can you tell me any written
 4 work that audio engineers use in which the word
 5 "stem" --
 6 A. I would have to research that. Not
 7 verbatim, no. I'm sure I could find one, but I
 8 don't have one committed to memory.
 9 Q. Can you tell us, as a matter of
 10 fact, what specific stem, in the context you
 11 have used that term, Bryan Pringle sampled in
 12 order to copy I Gotta Feeling?
 13 A. One of the stems from the collection
 14 of files from Beatport contain the guitar twang
 15 sequence isolated.
 16 Q. Tell me, as a matter of fact, the
 17 specific stem Bryan Pringle copied.
 18 MR. DICKSTEIN: Vague, ambiguous.
 19 A. The stem with the guitar isolated.
 20 Q. What is the name of that stem, sir?
 21 A. It came to me with --
 22 MR. RIGHETTINI: Assumes facts not
 23 in evidence, foundation.
 24 A. Let me see here. (Perusing.)
 25 I submitted the file as audio file

1 GELUSO
 2 number ten entitled I Gotta Feeling Guitar One,
 3 Original Part From Audio Exhibit to Declaration
 4 of Clark Warner.
 5 Q. What is the specific --
 6 A. That's the file I used.
 7 Q. What's the specific stem?
 8 A. That's it.
 9 MR. DICKSTEIN: Asked and answered,
 10 vague, ambiguous.
 11 A. It's the title of the stem. It
 12 contains the isolated guitar.
 13 Q. Well, if you look at Exhibit 52, you
 14 see where it lists the remix pack track list,
 15 some 22 items?
 16 A. Uh-huh.
 17 Q. Which specific remix pack track list
 18 from 1 to 22, is the one Bryan Pringle copied?
 19 MR. DICKSTEIN: Vague and ambiguous,
 20 foundation.
 21 We don't know where this document
 22 came from.
 23 MR. RIGHETTINI: Join.
 24 A. I would have to listen to these
 25 files, because one can name a file anything

1 GELUSO
 2 they wish. It's irrelevant.
 3 What's relevant is what is in the
 4 sound recording. And I don't -- you would have
 5 to furnish me with 11 through 22 so I could
 6 hear them.
 7 Q. Didn't you --
 8 A. Some could be labeled sequence one,
 9 and be the drum part. I do not know -- how can
 10 I tell, from reading a list on a piece of
 11 paper, what file I'm looking at? There is no
 12 way for me to know.
 13 Q. As part of your analysis, did you
 14 not look at all of these tracks in order to
 15 determine which one was an isolated guitar
 16 track?
 17 A. As part of my analysis, I used I
 18 Gotta Feeling-guitar one-original part,
 19 quotation from -- that came from the audio
 20 exhibit to declaration of Clark Warner. That
 21 is the file I used.
 22 Q. How many files are on Clark Warner's
 23 declaration?
 24 MR. DICKSTEIN: Foundation.
 25 A. I would have to review that disk. I

1 GELUSO
 2 don't know, from memory, how many files there
 3 are.
 4 Q. In Exhibit 52, it references remix
 5 pack ten, I Gotta Feeling guitar, original
 6 part, four minutes and 51 seconds?
 7 A. Where are you?
 8 Q. On the first page of Exhibit 52.
 9 A. Okay.
 10 Q. See the one on the bottom? It says
 11 guitar?
 12 A. Uh-huh.
 13 Q. Is that the one you contend --
 14 A. I have no idea. This is a printout
 15 on a piece of paper. I need an audio file to
 16 identify a sound file.
 17 Q. Well, let's try this again.
 18 What was the date on which Bryan
 19 Pringle copied this audio file that you've told
 20 us about?
 21 A. I don't know the date. I don't know
 22 if he copied it from Beatport. That, I do not
 23 know.
 24 Q. Well, did you see any document that
 25 indicates that Bryan Pringle, between

1 GELUSO
 2 August 21, 2009 and September 8, 2009, accessed
 3 Beatport.com in any way?
 4 A. A document?
 5 MR. DICKSTEIN: Foundation.
 6 Q. Yes.
 7 A. No.
 8 MR. DICKSTEIN: Vague, ambiguous.
 9 MR. RIGHETTINI: Join.
 10 Q. Did you have a conversation with
 11 anyone at Beatport.com in which they informed
 12 you that Bryan Pringle accessed Beatport.com
 13 and downloaded any one of the 22 remix pack
 14 tracks?
 15 MR. DICKSTEIN: Asked and answered.
 16 MR. RIGHETTINI: Compound.
 17 A. I have never spoken to anyone from
 18 Beatport.com.
 19 Q. Now, on page 15 of your report, in
 20 footnote eight, you state, "I understand that
 21 Mr. Pringle has acknowledged that he downloaded
 22 certain remixes of I Gotta Feeling."
 23 Do you see that?
 24 A. Uh-huh.
 25 Q. From whom did you derive that

1 GELUSO
 2 understanding?
 3 A. From a transcript of his deposition.
 4 Q. And is that transcript referred to
 5 by page and line anywhere in this report?
 6 A. On what page?
 7 Q. Any page in your report, do you
 8 identify the page and line where Mr. Pringle
 9 testified as you have just said here today?
 10 A. It's not included in my report.
 11 Q. And when you say he downloaded
 12 certain remixes, would you be specific and tell
 13 us exactly what remixes Mr. Pringle supposedly
 14 downloaded?
 15 A. If I had his hard drive, I could
 16 analyze that and determine that, but without
 17 his hard drive, I have no way of knowing.
 18 Q. His hard drive from when?
 19 A. From before the Beatport remixes
 20 started.
 21 Q. Oh, you mean before August of 2009?
 22 A. Let me check my dates. (Perusing.)
 23 That would be logical, August or
 24 September of 2009, before the stems were made
 25 available.

1 GELUSO
 2 Q. Before the stems were made
 3 available, you mean the isolated tracks that
 4 were on and available for downloading?
 5 A. The remix contest.
 6 Q. Were those stems available on
 7 Beatport prior to August 21, 2009?
 8 A. My only knowledge of their
 9 availability is as I have declared in paragraph
 10 six on page three.
 11 Q. Do you have any understanding that
 12 the isolated instruments and vocals from I
 13 Gotta Feeling were available for downloading at
 14 Beatport.com prior to August 21, 2009?
 15 A. My only knowledge is as I have
 16 declared on six on page three.
 17 Q. Is there a problem answering my
 18 question, Mr. Geluso? Perhaps -- let me just
 19 give it to you again.
 20 A. Yeah.
 21 Q. Do you have any understanding that
 22 the isolated instruments and vocals from I
 23 Gotta Feeling were available for downloading at
 24 Beatport.com prior to August 21, 2009?
 25 A. Prior to what date?

1 GELUSO
 2 can both read, and that's what I read there. I
 3 have -- I testified earlier this is the first
 4 time I'm seeing this document. If you're
 5 asking me, can I read, yes, I can read,
 6 August 21.
 7 Q. No, I didn't ask you whether you
 8 could read, Mr. Geluso.
 9 I asked you a simple question, which
 10 was, do you have any reason to believe,
 11 factually, that the download phase for the
 12 Beatport I Gotta Feeling remix contest was on
 13 any dates other than August 21 through
 14 September 8 of 2009?
 15 MR. RIGHETTINI: Foundation, calls
 16 for speculation.
 17 Q. You may or may not, but I'm --
 18 A. Okay. I understand. Excuse me.
 19 (Perusing.)
 20 This seems to be consistent with
 21 Clark Warner's declaration, so I have no reason
 22 to believe it's not true.
 23 Q. Are you aware of any internet URL
 24 from which an individual could download an
 25 isolated individual track or a vocal track from

1 GELUSO
 2 Q. August 21, 2009.
 3 A. I don't have a specific date. I
 4 just have in or around August and September.
 5 Q. Well, if you take a look at
 6 Exhibit 51, you have that in front of you, sir,
 7 don't you, sir?
 8 A. Yeah.
 9 Q. And you turn to the second page, you
 10 see where it says, "The stages, August 21
 11 through September 8, download phase."
 12 Do you see that?
 13 A. Yes.
 14 Q. Do you have any reason, factually,
 15 to believe that those aren't the dates when one
 16 could download an instrumental or vocal of I
 17 Gotta Feeling for purposes of the remix
 18 contest?
 19 MR. RIGHETTINI: Foundation, calls
 20 for speculation.
 21 MR. DICKSTEIN: Vague and ambiguous.
 22 A. This is the first time I have read
 23 this document. I'm taking it on face value. I
 24 don't know the origin of this document.
 25 I'm reading August 21. I mean, we

1 GELUSO
 2 the composition, I Gotta Feeling, other than
 3 through Beatport.com at any time prior to
 4 August 2009?
 5 A. No.
 6 Q. And is it your understanding, sir,
 7 that there was a point in time, in connection
 8 with the Beatport.com remix contest for I Gotta
 9 Feeling, that individuals could no longer
 10 download instrumentals and vocals from I Gotta
 11 Feeling?
 12 MR. DICKSTEIN: Objection, vague and
 13 ambiguous.
 14 From the Beatport web site?
 15 MR. DICKIE: Yes.
 16 MR. RIGHETTINI: Join.
 17 A. My firsthand experience was I went
 18 there and tried to download myself in January
 19 of 2011, and I could not.
 20 Q. How many remix versions were placed
 21 on the internet after August 8, 2009?
 22 A. I do not know.
 23 MR. RIGHETTINI: Foundation, calls
 24 for speculation.
 25 Q. Do you have any understanding as to

1 GELUSO
 2 whether there were just a few or whether there
 3 were a great number?
 4 MR. DICKSTEIN: Vague, ambiguous.
 5 A. I do not know.
 6 MR. RIGHETTINI: Did you mean
 7 August 8 -- September 8? You said
 8 August 8.
 9 MR. DICKIE: September 8. I'm
 10 sorry.
 11 Q. Do you have any facts, Mr. Geluso,
 12 as you sit here today, which establishes that
 13 Bryan Pringle, between August 21, 2009 and
 14 September 8, 2009, ever accessed Beatport.com's
 15 web site?
 16 MR. RIGHETTINI: Vague and
 17 ambiguous.
 18 A. I have evidence that he obtained
 19 sound files that trace back, but I do not have
 20 any date or knowledge of a specific download.
 21 Q. Well, the evidence that you say he
 22 obtained sound files that trace back --
 23 A. Uh-huh.
 24 Q. -- that wasn't my question.
 25 My question was to a specific point

1 GELUSO
 2 in time, between August 21, 2009 and
 3 September 8, 2009, do you have any evidence
 4 that Bryan Pringle accessed Beatport.com?
 5 A. No, no specific date.
 6 Q. Well, do you have any evidence that
 7 Bryan Pringle, at any time, accessed
 8 Beatport.com?
 9 A. Other than what's contained in his
 10 deposition, no.
 11 Q. Was it possible to obtain remixes of
 12 I Gotta Feeling that had been placed on the
 13 internet from web sites other than
 14 Beatport.com?
 15 MR. RIGHETTINI: Foundation, calls
 16 for speculation.
 17 MR. DICKSTEIN: Speculation.
 18 A. Are you asking is it conceivable
 19 that remixes exist on other web sites? That is
 20 conceivable.
 21 Q. Did you see any actual evidence of a
 22 access by Bryan Pringle to any Beatport.com web
 23 site?
 24 A. One more time. Did I see?
 25 Q. Did you see any evidence of any

1 GELUSO
 2 access by Bryan Pringle to the Beatport.com web
 3 site?
 4 A. Evidence that he navigated there on
 5 his computer, no.
 6 Q. Or in his testimony, did --
 7 A. I would have to review his testimony
 8 again.
 9 Q. As you sit here, do you recall
 10 whether Mr. Bryan Pringle testified under oath
 11 that he ever accessed Beatport.com?
 12 A. I would have to review his
 13 testimony. I remember the gist was he had
 14 heard remixes, had access to remixes, but I
 15 don't know if he went there himself.
 16 Q. And you would agree --
 17 A. I would have to review.
 18 Q. Accessed remixes could have been
 19 from any number of other sites; isn't that
 20 right?
 21 A. Absolutely.
 22 Q. And am I correct, sir, that you have
 23 not determined, as a matter of fact, whether or
 24 which other site Mr. Pringle accessed; isn't
 25 that correct?

1 GELUSO
 2 MR. RIGHETTINI: Vague and
 3 ambiguous, compound.
 4 A. My work deals with the sound
 5 recordings themselves, not the sources of them.
 6 Q. What's the answer to my question,
 7 sir?
 8 A. Could you ask it again?
 9 Q. Sure.
 10 Am I correct, you have not
 11 determined, as a matter of fact, which web site
 12 Mr. Pringle accessed with respect to any I
 13 Gotta Feeling remix; isn't that correct?
 14 A. That's correct.
 15 Q. Let me just ask a few general
 16 questions.
 17 Do you know Lawrence Ferrara?
 18 A. Yes, I do.
 19 Q. When did you meet him?
 20 A. 18 years ago.
 21 Q. And how do you know him?
 22 A. We worked together at New York
 23 University. I was a student of his, initially,
 24 and then a colleague.
 25 Q. And how long did you work together

1 GELUSO
 2 with Mr. Ferrara?
 3 A. Since 1991 or two.
 4 Q. Are you still working with him?
 5 A. He is on faculty, yes.
 6 Q. Well, do you still work with him?
 7 A. I see him at staff meeting, but we
 8 don't work -- we are in different areas of the
 9 department. We teach under the same -- in the
 10 same department.
 11 Q. And what department is that?
 12 A. The department of music and
 13 performing arts.
 14 Q. At what institution?
 15 A. New York University, Steinhardt
 16 School.
 17 Q. And you said that you worked
 18 together with Mr. Ferrara in the past; is that
 19 correct?
 20 A. Yes.
 21 Q. Can you sort of tell us the kinds of
 22 things the two of you worked on together?
 23 MR. DICKSTEIN: Vague and ambiguous.
 24 A. We recently built a \$6 million
 25 recording facility at NYU. I was in contact

1 GELUSO
 2 Q. It was generated by Mr. Riesterer,
 3 right?
 4 A. I believe they were his creation
 5 files, I understand. Also, it's not an audio
 6 CD that could play back on a computer, you
 7 know, you need Logic 8 to run it.
 8 Q. You need what?
 9 A. You would need the appropriate
 10 software in order to run it. My audio examples
 11 are ones that will play back on headphones if
 12 someone were to play them on a Windows Media
 13 Player or iTunes, et cetera.
 14 It's a different format. It doesn't
 15 belong with the other files.
 16 Q. What do you mean, it's a different
 17 format?
 18 A. It's a Logic session file. You need
 19 Logic. You need CamelPhat. You need
 20 Plugsound. You need a bunch of stuff to run
 21 it.
 22 My exhibit for the report, goes with
 23 my report, is something standard. Someone
 24 could read the report, listen to the audio
 25 files. That was the intent of those audio

1 GELUSO
 2 with him during that phase of construction and
 3 so on. And he was also an expert witness on
 4 the Kernel Records case.
 5 Q. Did he bring you into the case?
 6 A. Yes, he did. He recommended me to
 7 Ms. Stetson.
 8 Q. Is he the one that brought you into
 9 this case, too?
 10 MR. DICKSTEIN: Vague, ambiguous.
 11 MR. RIGHETTINI: Join.
 12 A. Yes, I was referred to him.
 13 Q. By the way, there's some audio
 14 exhibits that are attached or were made part of
 15 your declaration; is that correct?
 16 A. Yes.
 17 Q. Is the entire Logic session file
 18 that we talked about earlier part of those
 19 audio exhibits?
 20 A. No, it isn't.
 21 Q. Why didn't you put it in there?
 22 MR. DICKSTEIN: Argumentative.
 23 A. Because I felt both sides had access
 24 to that. It wasn't -- it wasn't something I
 25 generated myself.

1 GELUSO
 2 examples, were to help someone understand my
 3 report, and I felt the other files were
 4 accessible by all parties involved.
 5 Q. So, if I understand it correctly,
 6 you can't just take the Logic session file and
 7 make it play without a number of peripheral
 8 things?
 9 A. Correct. It's all software based,
 10 not hardware, but, yes.
 11 Q. Have you discussed your work in this
 12 case with Mr. Ferrara?
 13 A. Only in general terms.
 14 Q. Did you discuss your report with
 15 him?
 16 A. No.
 17 Q. Did you draft all the words in the
 18 report, Exhibit 50?
 19 MR. DICKSTEIN: Vague, ambiguous.
 20 A. Say that again.
 21 Q. Did you draft the entirety of
 22 Exhibit 50? In other words, all the words that
 23 appear in that report, do they come from you
 24 alone?
 25 MR. DICKSTEIN: Same objection.

1 GELUSO
 2 MR. RIGHETTINI: Join.
 3 A. I worked on the report with counsel.
 4 Q. That wasn't my question.
 5 My question, did all the words come
 6 from you alone, or did counsel provide words to
 7 be put into the report as well?
 8 A. Counsel recommended some language.
 9 Q. Can you go into Exhibit 50 and tell
 10 me the portions of the report where counsel
 11 recommended language?
 12 A. No, I don't recall specifically.
 13 Q. Now, you also talk about, in the
 14 report, that Mr. Riesterer didn't save the
 15 exact sound processing setting effects; isn't
 16 that correct?
 17 A. That's my understanding.
 18 MR. DICKSTEIN: Foundation, vague,
 19 ambiguous.
 20 Q. What's the significance of
 21 Mr. Riesterer not having saved the specific
 22 sound processing settings?
 23 A. It means that when I went through
 24 the process of collecting the vintage computer
 25 software needed to recreate his session, it

1 GELUSO
 2 didn't open up as he -- most likely, as he last
 3 accessed it.
 4 Q. Well, let me ask you this. When you
 5 were sitting around talking to Mr. Riesterer in
 6 that meeting you told us about, did you ask him
 7 for the specific settings?
 8 MR. DICKSTEIN: Mischaracterizes the
 9 testimony.
 10 A. Specifically, no.
 11 Q. Did he provide a statement to you
 12 that contained the specific settings?
 13 A. A written statement or in
 14 conversation?
 15 Q. Written. I just asked you about
 16 whether you and he talked about it, and you
 17 said he didn't.
 18 Did you give you a list --
 19 A. No. I didn't say that. You asked,
 20 did I ask him. I didn't say we didn't talk
 21 about it.
 22 Q. So did he give you the specific
 23 settings?
 24 A. Specific, no. He mentioned what
 25 software he was using. I had to -- in the

1 GELUSO
 2 course of my report, as I state in my report, I
 3 had to make certain adjustments to approximate
 4 the sound that resulted in the final
 5 production.
 6 Q. I understand that, but I'm asking
 7 you about what is it that Mr. Riesterer, the
 8 individual who supposedly created David Pop
 9 Guitar, what specific sound effect settings did
 10 he provided to you that were the ones he used?
 11 A. I understand. Yes.
 12 MR. RIGHETTINI: Argumentative.
 13 A. When you open Logic, when a Logic
 14 session is reopened after many years, it
 15 remembers the last settings that were saved.
 16 So I imagine those were his settings, but I had
 17 to change those settings in order to recreate
 18 the sound that he produced.
 19 Q. Because his settings didn't work; is
 20 that right?
 21 A. Not that they didn't work.
 22 Q. They didn't produce the sound that
 23 you were desiring to basically replicate?
 24 MR. RIGHETTINI: Vague and
 25 ambiguous.

1 GELUSO
 2 Q. Isn't that right?
 3 MR. DICKSTEIN: Mischaracterizes the
 4 testimony.
 5 Q. I don't mean to mischaracterize it,
 6 but that's what I understood you to say.
 7 You said, when you open up the
 8 Logic, it remembers the last settings that were
 9 saved. So I imagine that those were his
 10 settings, but I had to change those in order to
 11 recreate the sound that he produced, and that's
 12 because the last settings that you thought were
 13 his didn't reproduce that sound; isn't that
 14 correct?
 15 A. When I opened the Logic session and
 16 hit play, the sound was very close, but it
 17 required adjustment.
 18 Q. What's the answer to my question?
 19 Did they or did they not replicate
 20 the sound that you were trying to replicate?
 21 A. I would say 95 percent, yes. I
 22 don't want to mischaracterize it as it wasn't
 23 there at all. It was very, very close. Just
 24 required minor adjustment.
 25 The sound was very recognizable as

1 GELUSO
 2 the guitar twang as it opened without any
 3 labor.
 4 Q. Well, then, why is it that you
 5 manually manipulated those files?
 6 A. Because the Plugsound plug-in, when
 7 it opens, it doesn't remember certain settings,
 8 and one particular setting, to be precise, was
 9 the reverb setting had to be adjusted. Other
 10 than that, it was all there.
 11 MR. DICKSTEIN: Do you want to take
 12 a five-minute break?
 13 (Recess taken from 2:35 to
 14 2.49 p.m.)
 15 MR. DICKSTEIN: Before we continue,
 16 I think Professor Geluso wanted to clarify
 17 one answer he gave earlier about the date
 18 of Mr. Pringle's hard drives that may be
 19 relevant to his analysis.
 20 THE WITNESS: Oh, yes. I mentioned
 21 before, the hard drives before the date.
 22 I meant before until now, not before,
 23 looking backward.
 24 BY MR. DICKIE:
 25 Q. Did you discuss that correction with

1 GELUSO
 2 your counsel during the break, Mr. Geluso?
 3 A. Yes, I did.
 4 Q. Does the guitar twang sequence in
 5 Take a Dive, the dance version, contain only
 6 three wave samples?
 7 A. One more time?
 8 Q. Does the guitar twang sequence in
 9 Take a Dive, dance version, contain only three
 10 wave samples?
 11 A. Yes.
 12 Q. And how did you determine that?
 13 A. On my inspection of the NRG file
 14 with the ASR-10 in conjunction with the
 15 directions, it appeared to me that the guitar
 16 twang was mapped across three keys on the
 17 keyboard, each key triggering a wave sample.
 18 Q. And what is it that you specifically
 19 found that allowed you to determine there were
 20 only three wave samples in Take a Dive, the
 21 dance version?
 22 MR. DICKSTEIN: Asked and answered.
 23 A. Using the directions given to me and
 24 the NRG file, the way the files were loaded,
 25 everything indicated to me that there were

1 GELUSO
 2 three used. There may be others existing in
 3 there. I don't know.
 4 In that particular composition, I
 5 found there are only three.
 6 Q. And the directions given to you, the
 7 directions that you referred to there, came
 8 from whom?
 9 A. Via counsel. I don't know who the
 10 author is of the document, but it came to me
 11 with the -- with the NRG file via e-mail, I
 12 believe, as a PDF or a Word document. I don't
 13 recall exactly.
 14 Q. Describe the appearance of the
 15 directions given to you.
 16 MR. RIGHETTINI: Vague and
 17 ambiguous.
 18 A. A set of directions written by
 19 someone who was clearly familiar with the
 20 operation of the instrument and the
 21 composition.
 22 Q. Was it all in one type?
 23 A. Actually, it was a little chaotic,
 24 if I remember correctly. I would have to see
 25 it again. I'm sorry. I don't remember.

1 GELUSO
 2 Q. And that would be part of the files
 3 that you didn't bring today, right?
 4 A. It wasn't a -- back to the other
 5 question. It wasn't a legal document like
 6 this, nicely laid out and formatted. It was --
 7 looked like the handiwork of a composer.
 8 Q. Was it a typed document?
 9 A. It was typed, yes.
 10 Q. Were there complete sentences on it?
 11 A. Yes.
 12 Q. Was there any indication who the
 13 author was?
 14 A. I don't recall. I don't recall an
 15 author's name. I would have to go back and
 16 look at it.
 17 Q. Did you follow the directions, each
 18 and every one of them?
 19 A. I believe I was thorough and
 20 successful. Yeah, to my recollection, yes, I
 21 followed all the instructions given to me to
 22 reproduce the Take a Dive derivative, using the
 23 ASR-10 in conjunction with the NRG file CD ROM.
 24 Q. Did you load all of the files from
 25 the NRG file into the ASR-10?

1 GELUSO

2 A. I loaded the specific ones given to
3 me on the directions. There were more -- there
4 was more -- there was more information on that
5 disk than just -- I saw a directory with other
6 things. I didn't look in the other files, no.

7 Q. So is the answer to my question, no,
8 you did not load all of the files from the NRG
9 file into the ASR-10?

10 A. I don't know enough about the
11 ASR-10, that it loads everything, or just what
12 you ask. I would have to go and review the
13 directions.

14 I only played back Take a Dive
15 derivative. I didn't check out the other
16 directories.

17 It's a functional thing. When you
18 hit load -- I think one of the commands was
19 load. I would have to go back and review them.
20 I'm sorry. I don't know if it loaded the
21 entirety or just that one track. I don't know.

22 Q. Do you know whether all of the NRG
23 files that were provided to the defendants by
24 Mr. Pringle were given to you?

25 A. I just know what I received, the one

1 GELUSO

2 you who selected the files from the NRG file to
3 actually load into the ASR-10?

4 MR. RIGHETTINI: Vague and
5 ambiguous.

6 A. No, it wasn't me. It was the author
7 of the document that suggested what files to
8 load in. It wasn't an arbitrary selection of
9 mine.

10 Q. Did you load into the ASR-10 every
11 file mentioned or you were directed to load
12 into by the author of that document?

13 A. My best recollection is I followed
14 the directions. I would have to review the
15 directions.

16 I don't remember the directions
17 verbatim, if they called for loading everything
18 in, and just playing that or not. I would have
19 to review it.

20 Q. By the way, does the guitar twang
21 sequence heard in I Gotta Feeling contain eight
22 notes and not just four notes?

23 MR. DICKSTEIN: Foundation,
24 compound.

25 MR. RIGHETTINI: Join.

1 GELUSO

2 CD ROM that said NRG.

3 Q. So is the answer to my question, no,
4 you don't know whether they were given to you,
5 all of them?

6 I asked you a simple question, which
7 is, do you know whether all of the files that
8 were provided to the defendants by Mr. Pringle
9 were actually given to you.

10 A. I do not work at the law office. I
11 don't know if he gave them other things.

12 MR. DICKSTEIN: Argumentative,
13 speculation.

14 A. It's not a simple question.

15 Q. It is a simple question.

16 MR. DICKSTEIN: Argumentative.

17 A. How would I know --

18 Q. Would you agree with me, then, you,
19 Paul Geluso, selected what files to load into
20 the ASR-10 from the NRG file?

21 MR. RIGHETTINI: Can you please read
22 that back?

23 A. Sure.

24 Q. I will rephrase it.

25 Would you agree with me that it was

1 GELUSO

2 A. Say that again, please.

3 Q. Is it your opinion that the guitar
4 twang sequence heard in I Gotta Feeling
5 contains a total of eight notes, not four?

6 MR. RIGHETTINI: Do you mean --

7 MR. DICKSTEIN: Vague and ambiguous.

8 MR. DICKIE: That's my question.

9 MR. RIGHETTINI: Four discrete notes
10 for an eight-measure figure?

11 MR. DICKIE: That's my question,
12 sir. Do you have an objection?

13 If you want to object to the form,
14 fine.

15 MR. DICKSTEIN: Vague and ambiguous.

16 MR. DICKIE: Fine.

17 A. The question is a bit unclear,
18 because there are chords, and each chord
19 contains two notes, and there may be an octave
20 in there or something. I can't determine the
21 precise number of notes. I didn't do a musical
22 analysis of the piece.

23 Q. Does the guitar twang sequence in I
24 Gotta Feeling contain an additional layer of
25 guitars called the Guitar Brut Cycle?

1 GELUSO
 2 MR. RIGHETTINI: Foundation, calls
 3 for speculation.
 4 A. It's a complex mix that changes
 5 throughout the piece, and I didn't take an
 6 inventory.
 7 Q. Well, is there a guitar layer called
 8 Guitar Brut Cycle in I Gotta Feeling?
 9 MR. RIGHETTINI: Foundation.
 10 Q. You are the one that analyzed the
 11 song.
 12 Does it have it or doesn't it?
 13 MR. RIGHETTINI: How does he know
 14 what it's called?
 15 A. What do I know what the Guitar Brut
 16 Cycle is.
 17 Q. So you have never heard that or seen
 18 that?
 19 A. I saw that word somewhere.
 20 Q. And that word isn't mentioned in
 21 your report. Is that your testimony, sir?
 22 MR. RIGHETTINI: Mischaracterizes.
 23 A. I don't believe so.
 24 Q. Let me have you take a look at
 25 Exhibit 52 just for a moment, and have you turn

1 GELUSO
 2 A. I would need to hear the sound file
 3 you're referring to. I can't tell you one way
 4 or the other. I don't know what it is.
 5 Q. Well, the I Gotta Feeling song that
 6 was posted to Beatport.com, does it or does it
 7 not have a layer of guitars called the Guitar
 8 Brut Cycle?
 9 MR. RIGHETTINI: Foundation, calls
 10 for speculation.
 11 MR. DICKSTEIN: Foundation.
 12 A. I don't know.
 13 Q. Does --
 14 A. I don't know what file that is. I
 15 need to hear it.
 16 Q. Do you -- as you sit here, can you
 17 tell me whether Mr. Pringle's Take a Dive,
 18 dance version, contains a Guitar Brut Cycle
 19 layer?
 20 A. Guitar Brut Cycle --
 21 MR. RIGHETTINI: Foundation, calls
 22 for speculation.
 23 MR. DICKSTEIN: Same objections.
 24 A. I don't know what the Guitar Brut
 25 Cycle is. There were -- in the stems, there

1 GELUSO
 2 to the second page, where there's a reference
 3 to I Gotta Feeling Guitar Brut Cycle Original
 4 Part.
 5 A. Uh-huh.
 6 MR. DICKSTEIN: Is there a question?
 7 A. Yeah, I would have to --
 8 MR. DICKSTEIN: I don't think there
 9 is a question pending.
 10 A. I'm sorry. I'm sorry I cut you off.
 11 Q. Are you familiar with that segment
 12 of the song?
 13 MR. RIGHETTINI: Foundation.
 14 MR. DICKSTEIN: Speculation.
 15 A. I'm looking at a list on a piece of
 16 paper of files I have never seen before.
 17 Q. You have never heard of the Guitar
 18 Brut Cycle before?
 19 A. I've heard that term, but it's not
 20 a -- I can't conjure it up in my mind what it
 21 is.
 22 Q. Is there or is there not a Guitar
 23 Brut Cycle layer on I Gotta Feeling?
 24 MR. RIGHETTINI: Foundation, calls
 25 for speculation.

1 GELUSO
 2 were multiple versions of what we call the
 3 guitar twang sequence.
 4 I have been referring to the
 5 sequence of guitar chords at issue, the guitar
 6 twang sequence as identified on an audio file.
 7 That, I can speak to.
 8 But Guitar Brut Cycle may be another
 9 word for that. I don't know. I really need to
 10 hear the file you are talking about. I'm not
 11 saying it's there or it isn't there. I just
 12 don't know what you are talking about,
 13 specifically, because there were multiple
 14 instances of that guitar sequence.
 15 Q. Multiple instances of that guitar
 16 sequence from where?
 17 A. Used in production, sometimes with
 18 the bass notes, sometimes without.
 19 Q. What did you look at to determine
 20 that there were these multiple instances of
 21 guitar sequence? Can you identify for me all
 22 of things that you looked at?
 23 MR. DICKSTEIN: Let him finish the
 24 questions.
 25 THE WITNESS: I'm sorry.

1 GELUSO
 2 Q. Describe for me all of the things
 3 that indicated that there were these multiple
 4 guitar sequence versions that you looked at.
 5 MR. RIGHETTINI: Calls for a
 6 narrative.
 7 A. My only knowledge, I did not see the
 8 final master session the Black Eyed Peas used
 9 premix down. I would have to analyze that file
 10 to know -- to inventory all the instances of
 11 that guitar.
 12 But I recall, in the Beatport stems,
 13 there was, at a minimum, two instances of
 14 the -- what we are calling the guitar twang
 15 sequence, a less processed one and a more
 16 processed one.
 17 Q. When you talk about the Beatport
 18 stems, what specific Beatport stem or stems are
 19 you referring to?
 20 A. I would have to listen to them to
 21 let you know.
 22 Q. Well, what are you listening to in
 23 order to identify which Beatport stems it was
 24 that you were talking about?
 25 A. The stems.

1 GELUSO
 2 Q. Well, are the stems part of your
 3 audio file in this report?
 4 A. I included the one stem that I
 5 analyzed.
 6 Q. Well, but you listened to a number
 7 of other stems; isn't that correct?
 8 A. Yes.
 9 Q. Did you include, in your audio
 10 attachment to your Exhibit 50, all of the I
 11 Gotta Feeling stems which you listened to as
 12 part of your work?
 13 MR. DICKSTEIN: Vague and ambiguous.
 14 MR. RIGHETTINI: Join.
 15 A. I included the stems that I referred
 16 to in my report.
 17 Q. That wasn't my question.
 18 Did you include --
 19 A. Yes, it is.
 20 Q. -- in your audio attachment, all of
 21 the stems you listened to as part of this
 22 engagement?
 23 A. It's a two-part question. I did not
 24 include all the stems I listened to. I did
 25 include the ones I used to come to my

1 GELUSO
 2 conclusions.
 3 Q. Can you identify for us which
 4 specific stems you listened to but did not
 5 include?
 6 A. I could identify them if they were
 7 played for me. I believe they are the -- hold
 8 on one sec please. (Perusing.)
 9 I believe I did listen to all of the
 10 stems attached to the Clark Warner declaration
 11 I referred to as number six on page three of my
 12 report.
 13 Q. Are you aware that all of the stems
 14 that were available for download are not
 15 attached to and included in Mr. Warner's
 16 report?
 17 MR. DICKSTEIN: Foundation,
 18 speculation.
 19 MR. RIGHETTINI: Join.
 20 A. This is my only knowledge of the
 21 stems that were available on Beatport as part
 22 of his declaration. I have no -- I don't know
 23 of any other stems, no.
 24 Q. Of those that were on Mr. Warner's
 25 or in Mr. Warner's declaration, can you tell us

1 GELUSO
 2 which were the ones that you included in your
 3 report and which are the ones that you didn't?
 4 Can you identify each of those for us?
 5 A. I know the one I did include is
 6 listed as audio example ten on page 22 and
 7 number 11. My report contains a waveform
 8 analysis of those two files.
 9 Q. So, other than number ten and number
 10 11 from Mr. Warner's declaration, you listened
 11 to those, but didn't use them for purposes of
 12 this report, correct?
 13 MR. DICKSTEIN: Foundation,
 14 misstates testimony.
 15 MR. RIGHETTINI: Join.
 16 A. I did listen to those other stems.
 17 These two files are the ones that are -- are in
 18 the report, because I referenced their -- I
 19 included them because I reference waveform
 20 analysis of those two pieces. That's why I
 21 included them.
 22 Q. How many stems did Mr. Warner
 23 identify? Was it 21?
 24 A. I don't recall the total.
 25 Q. Are all they listed there in his

1 GELUSO
 2 report, or have you listed them all in his
 3 report?
 4 A. They are not listed in my report.
 5 MR. DICKSTEIN: Vague and ambiguous,
 6 compound.
 7 Q. What document is there that
 8 establishes that you listened to all of those
 9 attached to his declaration? Is there
 10 anything?
 11 MR. DICKSTEIN: Foundation.
 12 A. A document that established that I
 13 have listened to those?
 14 MR. RIGHETTINI: Assumes facts not
 15 in evidence.
 16 Q. Right. Did you have a checklist
 17 that you listened to them, any kind of notes of
 18 each of the songs or stems that you listened
 19 to, any record of what it is you did with
 20 respect to the Warner declaration?
 21 A. I recall listening to all the stems
 22 and identifying the ones that were relevant to
 23 my analysis.
 24 Q. And what made a stem relevant to
 25 your analysis?

1 GELUSO
 2 A. I'm aware of the keyboard. I have
 3 seen it at sessions. I have never owned one or
 4 profess to be an expert in its operation, but I
 5 am very -- I have owned other samplers. I have
 6 used similar equipment, but not that -- I have
 7 been around that one, but I have never owned it
 8 and used it extensively.
 9 Q. What specific equipment have you
 10 used that's similar to the Ensoniq ASR-10?
 11 A. Roland samplers, EMU samplers,
 12 E-M-U, Akai samplers, Kurzweil samplers, a
 13 number of other samplers.
 14 And I have used that one before,
 15 too. I've just never owned that particular
 16 one.
 17 Q. Tell us how you adjust the envelope
 18 of the wave sample with an Ensoniq ASR-10?
 19 A. I would get out the manual and
 20 figure it out.
 21 Q. And how do you adjust, in loop, of a
 22 wave sample with an Ensoniq ASR-10?
 23 A. The same goes. I would need the
 24 manual and some time.
 25 MR. DICKSTEIN: Objection to form.

1 GELUSO
 2 A. For example, if there was a drum
 3 pattern not relevant, the baseline not
 4 relevant, guitar twang with the proper sound
 5 processing relevant, the vocal part was
 6 relevant in my analysis of one of the sound
 7 recordings I was asked to analyze.
 8 Q. You say with the proper sound
 9 processing.
 10 What makes something the proper
 11 sound processing?
 12 A. Tanbur that matches what I hear in
 13 the final version.
 14 Q. Is there some standard or is it just
 15 basically ad hoc by you by listening?
 16 MR. DICKSTEIN: Compound,
 17 argumentative.
 18 MR. RIGHETTINI: Join.
 19 A. I would say comparison of two sounds
 20 in which is my area of expertise through
 21 listening.
 22 Q. Now, can you describe for us your
 23 experience, prior to November of 2011, with the
 24 Ensoniq ASR-10?
 25 MR. DICKSTEIN: Vague and ambiguous.

1 GELUSO
 2 Q. Prior to November of 2011, did you
 3 ever have occasion to personally adjust an
 4 envelope of a wave sample with an Ensoniq
 5 ASR-10?
 6 A. No.
 7 Q. Did you, prior to November of 2011,
 8 ever have to adjust the loop of a wave sample
 9 using an Ensoniq ASR-10?
 10 A. No.
 11 Q. How do you record the panning of a
 12 song track with an Ensoniq ASR-10?
 13 MR. DICKSTEIN: Objection to form.
 14 A. Could you ask that again?
 15 Q. Sure. How do you record the panning
 16 of a sound track with an ASR-10?
 17 A. Panning of a song track?
 18 Q. Yeah. Do you know what that is?
 19 A. Yeah. That's its location in the
 20 stereo field. I imagine there is a menu that
 21 you access and change its location.
 22 Q. Can you take my through the steps as
 23 to how you do that?
 24 A. I would need the manual.
 25 MR. DICKSTEIN: Objection, form.

1 GELUSO
 2 Q. And would you also need the manual
 3 to tell us how to internally resample through
 4 the on-board processing effects?
 5 A. Yes.
 6 Q. You would have to do that with
 7 respect to a MIDI sequence of notes as well?
 8 A. What was that last bit?
 9 Q. How do you internally resample a
 10 MIDI sequence of notes on an Ensoniq ASR-10?
 11 A. Are you referring to the resampling
 12 the MIDI or the sound the MIDI creates?
 13 Q. Resampling the sound a MIDI creates.
 14 A. I know it has that capability. I
 15 would need the manual to perform that for you.
 16 Q. How many total sequences can be
 17 created with a song file on an Ensoniq ASR-10?
 18 A. Again, I would have to default to
 19 the manual.
 20 Q. Can an individual wave sample in an
 21 instrument created on the Ensoniq ASR-10 be
 22 assigned a specific name?
 23 MR. DICKSTEIN: Vague and ambiguous.
 24 A. I would refer to the manual.
 25 Q. Now, are you familiar with the

1 GELUSO
 2 concept of random access memory?
 3 A. Yes.
 4 Q. RAM, right?
 5 A. Yes.
 6 Q. How much random access memory was
 7 available after you loaded all of the files
 8 needed to play the entirety of Take a Dive,
 9 dance version, from the NRG file?
 10 A. I did not check.
 11 Q. Well, what was the total random
 12 access memory available on the Ensoniq ASR-10
 13 that you purchased and used in this exercise?
 14 A. I would have to check it also.
 15 MR. RIGHETTINI: I have to object to
 16 this line of questioning. Professor
 17 Geluso is not engaged as an expert on a
 18 particular piece of equipment. So I don't
 19 understand why you are quizzing him on the
 20 particulars of a piece of equipment.
 21 You are quizzing him on a manual,
 22 essentially.
 23 MR. DICKIE: I would file your
 24 understanding under it's not my problem.
 25 It will be part of his credibility.

1 GELUSO
 2 MR. RIGHETTINI: We are going to
 3 continue to object on relevance. This is
 4 beyond the scope of his engagement.
 5 MR. DICKIE: Gee, I don't think so.
 6 MR. DICKSTEIN: Is there a question?
 7 MR. DICKIE: No, not yet.
 8 Q. Tell us the date on which the Take a
 9 Dive, dance version, was first created.
 10 MR. RIGHETTINI: Foundation, calls
 11 for speculation.
 12 A. I do not know.
 13 Q. Did you, as part of your work in
 14 this case, establish a specific date on which
 15 the Take a Dive, dance version, was created?
 16 A. One more time, please.
 17 Q. Did you, as part of your work in
 18 this case, establish a specific date on which
 19 Take a Dive, dance version, was created?
 20 A. No.
 21 Q. By the way, does the Logic session
 22 file that you referred to, that Mr. Riesterer
 23 gave you, contain the final version of the
 24 guitar twang sequence as it's heard on the
 25 album or on the song I Gotta Feeling?

1 GELUSO
 2 MR. DICKSTEIN: Foundation,
 3 misstates testimony.
 4 MR. RIGHETTINI: Join.
 5 A. One more time.
 6 Q. Does the logic session file that you
 7 referred to that Mr. Riesterer gave you contain
 8 the final version of the guitar twang sequence
 9 as it's heard on the song, on the album, The
 10 E.N.D., I Gotta Feeling?
 11 MR. DICKSTEIN: Compound.
 12 A. What do you mean by final version?
 13 Q. You know what the word "final"
 14 means. That's the last, the one that actually
 15 is the one that appears in public.
 16 A. I believe it went through -- you
 17 know, he was the original songwriter and
 18 creator of that, and it went through some other
 19 steps before it ended up in the final.
 20 Q. So the answer to my question is, no,
 21 it is not the final version; is that right?
 22 A. Well, version could mean musical
 23 version or audio waveform version. It's not
 24 clear.
 25 Musical version, I didn't do a

1 GELUSO
 2 musical analysis of it, but I believe it's the
 3 final sequence used, but as far as the final
 4 audio version, I know that it went through some
 5 other steps before it was mastered.
 6 I wasn't looking at the final mixed
 7 version of it. So I'm referring to the actual
 8 audio file when I say version, or the final
 9 composition. It's not -- it doesn't play like
 10 the song from start to finish.
 11 Q. Now, other than -- you told us there
 12 was some -- you read some portions of
 13 Mr. Pringle's deposition testimony.
 14 Did I understand you correctly?
 15 A. I read some portions, yes.
 16 Q. Did you read his entire deposition?
 17 A. No.
 18 Q. Were you provided with his entire
 19 deposition?
 20 A. Yes.
 21 Q. Were you aware, at the time you did
 22 your report, that Mr. Pringle had testified
 23 that he provided samples of his version of Take
 24 a Dive, dance version, to some of the
 25 defendants, including David Guetta?

1 GELUSO
 2 MR. RIGHETTINI: Assumes facts not
 3 in evidence.
 4 MR. DICKSTEIN: Foundation, outside
 5 the scope.
 6 A. I don't recall.
 7 Q. Did you review any answers to
 8 interrogatories filed in this case by
 9 Mr. Pringle?
 10 A. Say that again, please.
 11 Q. Did you review, as part of your
 12 work, any answers to interrogatories?
 13 A. I don't know what interrogatory is.
 14 Q. In connection with your work, did
 15 you review any documents, other than the
 16 deposition excerpts you told us about, that
 17 were from Mr. Pringle or his counsel --
 18 MR. DICKSTEIN: Objection,
 19 speculation.
 20 Q. -- regarding what he had done in the
 21 past with respect to his song.
 22 MR. RIGHETTINI: Now compound.
 23 MR. DICKSTEIN: Vague and ambiguous.
 24 A. I do not know who the author of the
 25 NRG file directions was. It might have been

1 GELUSO
 2 him. I don't know. That's the only document
 3 that I recall were his words, but I may have
 4 read -- you know, I had other -- you know, the
 5 instruction documents were not -- I don't think
 6 they were signed by anybody.
 7 Q. Well, so is it your testimony, sir,
 8 that you do the know what interrogatories are?
 9 A. I'm not familiar with that term.
 10 Q. Did you ever read any document where
 11 Mr. Pringle was asked questions and provided
 12 answers?
 13 MR. DICKSTEIN: Vague and ambiguous,
 14 asked and answered.
 15 Q. Other than the deposition?
 16 A. Other than the deposition, no.
 17 Q. Now, in the song, Take a Dive, the
 18 dance version, is the guitar twang sequence on
 19 the NRG file a fused-together stereo wave
 20 sample?
 21 MR. DICKSTEIN: Vague and ambiguous.
 22 A. The sequence is made up of multiple
 23 instances of the three wave samples.
 24 Q. Is it a fused-together stereo wave
 25 sample?

1 GELUSO
 2 MR. DICKSTEIN: Vague and ambiguous.
 3 A. As a whole or in piecemeal?
 4 Q. Is the guitar twang sequence?
 5 A. Your question is illogical regarding
 6 how the ASR-10 works.
 7 Q. Oh, really?
 8 Could you explain that, please?
 9 A. Sure. There are --
 10 Q. Do you need a manual, by the way, to
 11 explain that?
 12 MR. DICKSTEIN: Argumentative.
 13 MR. RIGHETTINI: Argumentative.
 14 A. No.
 15 MR. DICKSTEIN: Do you want the
 16 question read back? Was that your answer?
 17 THE WITNESS: What's that?
 18 A. Do I need a manual to explain that?
 19 No, I don't need a manual.
 20 Q. Would you now explain how the ASR-10
 21 works in the context of whether there is or is
 22 not a fused-together stereo wave sample in the
 23 NRG file?
 24 A. There are fused-together wave
 25 samples, three of them, and there's

1 GELUSO
 2 instructions within them to play them back in a
 3 sequence that we would recognize as the guitar
 4 twang sequence.
 5 There is no stereo master of the
 6 sequence in its entirety. Just in slices, if
 7 you will.
 8 Q. Does the Take a Dive, dance version,
 9 found on the NRG file, contain a sequence of
 10 guitar chords on one piano key?
 11 MR. DICKSTEIN: Foundation, assumes
 12 facts not in evidence.
 13 A. One more time, please.
 14 Q. Does the Take a Dive, dance version,
 15 which is on the NRG file, contain a sequence of
 16 guitar chords on one piano key or is the guitar
 17 twang sequence a MIDI sequence which plays
 18 three individual chords?
 19 MR. DICKSTEIN: Foundation.
 20 MR. RIGHETTINI: It's nonsensical.
 21 MR. DICKSTEIN: Vague and ambiguous.
 22 A. It is -- the terminology is mapped.
 23 It's mapped across three keys, if you will.
 24 Q. And what do you mean by it's mapped
 25 across three keys?

1 GELUSO
 2 A. A wave sample is assigned a key on
 3 the keyboard, and if you were to play it
 4 manually, it would require three, the use of
 5 three keys.
 6 Q. Now, on the -- did I understand you
 7 correctly to say that, on the ASR-10 you used
 8 to load up the guitar twang sequence of Take a
 9 Dive, the dance version, you did not know how
 10 much random access memory was available?
 11 A. I knew at the time of purchase. I
 12 believe it's either 16 or 32.
 13 Q. 16 or 32 what?
 14 A. Megabytes.
 15 Q. And what's the difference between 16
 16 or 32 megabytes?
 17 A. 16.
 18 Q. Does that affect how much can be --
 19 A. Absolutely.
 20 Q. How much can be put onto it?
 21 A. How much can be loaded, yes, it
 22 does.
 23 Q. And I take it that if you have 32,
 24 it's twice as much as if you had 16?
 25 A. Correct.

1 GELUSO
 2 Q. Now, do you know, after you loaded
 3 all of the files to play the entirety of the
 4 Take a Dive, dance version, into the ASR-10
 5 from the NRG file, how many memory blocks were
 6 still available on the ASR-10?
 7 A. I did not check.
 8 Q. Now, have you ever used an ASR-10 to
 9 construct an entire song?
 10 A. No.
 11 Q. Do you know what the sampling rates
 12 are available to sample audio with an ASR-10?
 13 A. I could take a guess, but, again, I
 14 would defer to the manual. I know there's
 15 multiple ones.
 16 Q. Do you know the amount, the maximum
 17 amount of RAM to which an Ensoniq ASR-10 can be
 18 expanded?
 19 A. I believe 32 was the max, but it's
 20 going from memory.
 21 Q. How many separate voices can be
 22 played on an ASR-10 sequencer?
 23 A. I would need to refer to the manual.
 24 MR. RIGHETTINI: Are we really going
 25 to go down this path again?

1 GELUSO
 2 I object on relevance.
 3 Q. How many SCSI devices can be
 4 attached to an ASR-10 at one time?
 5 A. I believe that's a limitation of
 6 SCSI, is an old format I haven't worked with in
 7 a long time. I don't know. I don't recall.
 8 There is a limit. I attached one device and it
 9 worked fine.
 10 Q. Can you have an external hard drive
 11 attached through a SCSI cable to an ASR-10 with
 12 a SCSI ID of number three?
 13 MR. DICKSTEIN: Vague and ambiguous,
 14 outside the scope.
 15 MR. RIGHETTINI: Join.
 16 A. I need to reference the manual.
 17 Q. How many sound processing effects
 18 are there in an ASR-10?
 19 A. I would need to reference the
 20 manual.
 21 Q. Now, are all of the processing sound
 22 effects that Mr. Riesterer indicated he used to
 23 create the guitar twang sequence heard in I
 24 Gotta Feeling also available on the ASR-10?
 25 A. Are the effects Mr. Riesterer used

1 GELUSO
 2 available on the ASR-10?
 3 MR. DICKSTEIN: Vague and ambiguous.
 4 A. In a broad sense or a specific?
 5 Q. Just answer my question. I didn't
 6 ask it broad or --
 7 MR. RIGHETTINI: Vague and
 8 ambiguous.
 9 A. Well, you can talk about is there
 10 reverb, yes. Is there CamelPhat reverb, no.
 11 It's a very broad question. There are effects
 12 available on both platforms.
 13 Q. Well, does the Ensoniq ASR-10
 14 contain a sound processing reverberation
 15 effect?
 16 A. I believe it has reverb.
 17 Q. Does it have a distortion effect?
 18 A. I would have to check the manual.
 19 Q. Does it have a sound processing
 20 equalization effect?
 21 A. Yes.
 22 Q. Does it have a sound processing
 23 compression effect?
 24 A. From recollection, yes.
 25 Q. Does it also have a sound processing

1 GELUSO
 2 effect of a wide stereo spreader?
 3 A. I do not recall that one.
 4 Q. Would you need to consult the manual
 5 in order to answer it?
 6 A. Yes, or have the keyboard in front
 7 of me.
 8 Q. Are you familiar with the Fender
 9 Stratocaster guitar?
 10 A. Yes.
 11 Q. Was it available in 1999?
 12 A. Yes.
 13 MR. RIGHETTINI: Is that pre-CBS?
 14 Q. How about a Fender amplifier, was it
 15 available in 1999?
 16 A. Yes.
 17 MR. RIGHETTINI: Vague and ambiguous
 18 as to amplifier.
 19 Q. Just for reference purposes, the
 20 reference to the David Pop Guitar, that was the
 21 original or initial name for the
 22 instrumentation of I Gotta Feeling; isn't that
 23 right?
 24 A. There may have been one before that.
 25 I don't know if it's the original.

1 GELUSO
 2 Q. What is your understanding that
 3 David Pop Guitar refers to?
 4 A. David Pop Guitar refers to the file
 5 that was produced by Fred Riesterer in this
 6 case. That's my understanding.
 7 Q. You see on your report, Exhibit 50,
 8 on page six, in item 15, you tell us that it
 9 was your understanding that the session file,
 10 David Pop Guitar, was the initial name.
 11 A. What page are you referring to?
 12 Q. Page six.
 13 A. (Perusing.)
 14 Q. You see page six, sir?
 15 A. Yeah. I'm not finding what you are
 16 talking about.
 17 Q. If you look at the third line in
 18 item number 15.
 19 A. Page six --
 20 Q. Number 15, under part five, in the
 21 third line of that paragraph, you see entitled
 22 "David Pop Guitar" which I understand was the
 23 initial name.
 24 That's initial name. Isn't that
 25 what you understood?

1 GELUSO
 2 A. Yes.
 3 Q. There wasn't any other name of which
 4 you are aware for anything --
 5 A. Not that I'm aware, no.
 6 Q. Then, within David Pop Guitar, as
 7 you continue on in that same paragraph, over to
 8 the next page, there is a reference to a MIDI
 9 file representation of the guitar sequence.
 10 Do you see that?
 11 A. Yes.
 12 MR. DICKSTEIN: Misquotes document.
 13 THE WITNESS: I'm sorry?
 14 MR. DICKSTEIN: I just objected that
 15 he was misquoting the document, but I
 16 think you answered.
 17 MR. DICKIE: A MIDI file
 18 representation of the guitar twang
 19 sequence.
 20 MR. DICKSTEIN: There is a part
 21 before that, but go ahead.
 22 MR. DICKIE: There exists a MIDI
 23 file representation.
 24 MR. DICKSTEIN: I don't believe that
 25 was part of the question.

1 GELUSO
2 A. I see it there, yes.
3 Q. And this MIDI file, was that part of
4 that representation, where it says that the
5 instructions for playing each individual note,
6 was that found in the Riesterer file or folder
7 two and three?

8 MR. DICKSTEIN: Compound.

9 A. I believe so.

10 Q. Am I correct, sir, that in order to
11 confirm whether Mr. Riesterer's David Pop
12 Guitar Logic session contained the original
13 creation files for the guitar twang sequence
14 that's heard in I Gotta Feeling, you had to
15 recreate that guitar twang sequence?

16 MR. DICKSTEIN: Vague and ambiguous.

17 A. No, I didn't have to recreate the
18 guitar twang sequence. I recreated -- I
19 basically set up the file as he had back when,
20 and listened to the guitar twang sequence right
21 from the Logic session.

22 Q. Didn't you have to recreate the
23 guitar twang sequence from scratch?

24 MR. RIGHETTINI: Vague and
25 ambiguous.

1 GELUSO
2 A. Yes. I think we are talking about
3 the words "from scratch." I think it's clear
4 what I did.

5 Can I clarify what I did?

6 Q. I'm sure your counsel will ask you
7 questions. I just wanted an answer, yes or no,
8 to my question, sir.

9 MR. DICKSTEIN: If you feel you need
10 to explain in order to more fully --

11 A. Yeah. I need to explain. I mean,
12 from scratch could be misunderstood as
13 rewriting the parts. I used the MIDI file.
14 That contains the composition. And I reopened
15 a session, and I did my best to recreate what
16 he did when he was working in that session.

17 That's what I mean from scratch,
18 create the sound in real time.

19 Q. Now, looking, again, at your report
20 and continuing, there are some waveform screen
21 shots, aren't there?

22 A. My report contains wave field
23 analysis -- waveform analysis. Sorry.

24 Q. And there's waveform analysis on
25 page 11, page 15 and page 17, correct?

1 GELUSO
2 MR. DICKSTEIN: Vague and ambiguous.

3 A. I meant the audio from scratch, not
4 the notes itself.

5 I think I go on to say, on line five
6 on page seven, to create the unique twang
7 sound. I think I clarify that.

8 Q. Mr. Geluso, using Mr. Riesterer's
9 MIDI file, as well as the Plugsound Fretted
10 Instrument Sound Bank, computer hardware and
11 sound processing software from the same era
12 that Mr. Riesterer used, did you recreate the
13 guitar twang from scratch?

14 A. Are you referring -- are we talking
15 about the word "scratch"?

16 Q. I just asked you a question, sir.
17 Would you like my to repeat it? I'm more than
18 happy to do it.

19 A. Sure.

20 Q. Mr. Geluso, using Mr. Riesterer's
21 MIDI file, as well as the Plugsound Fretted
22 Instrument Sound Bank, computer hardware and
23 sound processing software from the same era
24 that Mr. Riesterer used, did you recreate the
25 guitar twang from scratch?

1 GELUSO

2 A. Uh-huh.

3 Q. Now, if we look on page 11, at
4 figure six, the time frame, 12 milliseconds,
5 right?

6 A. Uh-huh.

7 Q. How long a time is that?

8 A. It's 12 milliseconds.

9 Q. Is that like one twelve thousandths
10 of a second?

11 A. It's twelve thousandths of a second,
12 yes.

13 Q. And did you perform any of these
14 stereo waveforms for any other period of 12
15 milliseconds, other than the one that's on page
16 11?

17 MR. RIGHETTINI: Vague and
18 ambiguous.

19 MR. DICKSTEIN: Same objection.

20 A. You mean, did I do waveform analysis
21 on other areas?

22 Q. Yes.

23 A. Yes, I did.

24 Q. Did you do a waveform analysis on
25 the entire guitar twang sequence?

1 GELUSO
 2 A. I did spot sections.
 3 Q. And those waveform graphics that
 4 appear on figure six, do you have all those for
 5 the other waveform analyses that you performed?
 6 A. I could produce those, but it would
 7 be a sheet that would run around the block,
 8 perhaps.
 9 MR. RIGHETTINI: Vague, ambiguous.
 10 A. It wasn't realistic to include the
 11 entire waveform analysis in a report of this
 12 size.
 13 Q. And you selected this twelve
 14 thousandths of a second waveform analysis,
 15 right?
 16 A. Yes, I did. I chose to take it from
 17 the onset. I didn't pick a random place within
 18 it. I figured just get the beginning, so
 19 everybody could line it up easily, see what I'm
 20 talking about.
 21 Q. And they wouldn't be able to do that
 22 if you used some other portion; is that right?
 23 MR. DICKIE: Speculation.
 24 A. If I picked a random spot, it would
 25 be very difficult for another expert to analyze

1 GELUSO
 2 my work. So I chose a spot that was easy to
 3 locate.
 4 Q. By the way, did you run any waveform
 5 analyses on David Pop Guitar, which did not
 6 have the impact of your manual manipulation?
 7 MR. RIGHETTINI: Vague and
 8 ambiguous.
 9 MR. DICKSTEIN: Vague, ambiguous.
 10 A. No. My process was I matched it by
 11 year, and then converted to digital sound file,
 12 then performed waveform analysis.
 13 Q. So that we are all clear, on page
 14 11, figure six, those screen shots are the
 15 waveform analysis which appear. The top one is
 16 I Gotta Feeling, and the bottom one is the
 17 David Pop manually manipulated waveform from
 18 what you did; isn't that correct?
 19 MR. DICKSTEIN: Vague and ambiguous,
 20 misstates testimony.
 21 MR. RIGHETTINI: Join.
 22 Q. I don't want to misstate anything.
 23 I just want to make sure we are correct.
 24 The David Pop, that's your manually
 25 manipulate result; isn't that right?

1 GELUSO
 2 MR. DICKSTEIN: Object to the
 3 characterization.
 4 You can answer if you understand.
 5 A. The bottom is the one I created, and
 6 the top is the one from the release of Black
 7 Eyed Peas.
 8 Q. And in order to create the bottom
 9 one, you had to manipulate, manually, certain
 10 sounds effect processing effects; isn't that
 11 right?
 12 MR. RIGHETTINI: Vague and
 13 ambiguous.
 14 MR. DICKSTEIN: Vague, ambiguous.
 15 A. Yeah. I state in my report what I
 16 did, yes. I opened his Logic session. I made
 17 minor adjustments, and matched it to my ear and
 18 then output it.
 19 Q. Did you record in writing, in any
 20 way, the specific minor adjustments that you
 21 made?
 22 A. Yes, I did.
 23 Q. And where is that?
 24 A. It's contained -- I felt the most
 25 accurate way was to do it through screen shots,

1 GELUSO
 2 and they are contained in figure two, figure
 3 three, four and five.
 4 Q. And did you create screen shots of
 5 David Pop Guitar as it was before you
 6 manipulated it?
 7 A. No, because if you open David Pop
 8 Guitar, they are there. I didn't feel it was
 9 necessary for the report.
 10 Q. Once you opened it and manipulated,
 11 am I correct that the original settings that
 12 were there are gone?
 13 MR. DICKSTEIN: Vague, ambiguous.
 14 MR. RIGHETTINI: Vague and
 15 ambiguous.
 16 A. No, that's incorrect.
 17 Q. They are still there? If you opened
 18 it up, what you would see would be exactly what
 19 was there before you manipulated that file?
 20 MR. DICKSTEIN: Vague, ambiguous.
 21 MR. RIGHETTINI: Join.
 22 A. I didn't manipulate or change much.
 23 Q. That wasn't my question.
 24 A. Well --
 25 Q. My question was --

1 GELUSO
 2 A. Because you said settings, and all
 3 this, you know, 95 percent of the settings are
 4 changed, I -- it did remember a lot when I
 5 opened it. I did very minor change. In fact,
 6 I can explain what I did.
 7 Q. Mr. Geluso, if you opened it up
 8 today, the settings that you would find are the
 9 ones that you manipulated to create the
 10 waveform analysis; isn't that right?
 11 MR. DICKSTEIN: Objection, form,
 12 vague, ambiguous as to open it.
 13 MR. RIGHETTINI: Join.
 14 A. I don't know. I would have to open
 15 it and see.
 16 Q. Well, I thought you said that when
 17 you opened up a file like this, the last
 18 settings are the settings that would appear
 19 when you opened it up.
 20 A. I don't believe I said that. It
 21 depends on the way the plug-in works. For
 22 example, this Plugsound Fretted Instrument,
 23 this manufacturer may not -- may or may not
 24 save its settings when you hit save.
 25 I don't know. I haven't tested

1 GELUSO
 2 that. I just don't know.
 3 Q. Didn't you tell me earlier today
 4 that when you first opened up David Pop Guitar,
 5 the settings that existed there were the last
 6 settings that were used?
 7 A. I don't know what the last settings
 8 were used. I was not with Mr. Riesterer when
 9 he last accessed that file.
 10 He could have changed something, and
 11 not hit save, or he might have hit save and
 12 the -- one of the plug-ins didn't retain its
 13 settings.
 14 Q. Did you save anywhere the settings
 15 that were in place on David Pop Guitar when you
 16 first opened it before you made any adjustments
 17 or manually manipulated anything to arrive at
 18 the guitar twang sound?
 19 MR. DICKSTEIN: Vague, ambiguous,
 20 compound.
 21 A. Did I take screen shots?
 22 Q. Did you take a screen shot, did you
 23 write them down, did you save the settings that
 24 first appeared when you opened it?
 25 A. I do not have a record of that.

1 GELUSO
 2 Q. So the answer to my question is no?
 3 A. Well, it's -- I do have a record of
 4 it in a way, because if we were to open David
 5 Pop Guitar session today, it would open up as I
 6 opened it up. If someone to take the file from
 7 the court document, and do what I did, they
 8 will see exactly what I saw when I opened it
 9 up. They are there.
 10 I made record of the changes I made,
 11 which were minor.
 12 Q. But you didn't make a record of
 13 exactly what you first saw?
 14 A. I have -- there is a record of that.
 15 Q. Where is it?
 16 MR. RIGHETTINI: Asked and answered.
 17 A. It's called David Pop Guitar Logic
 18 session. That's the record of it.
 19 Q. And is the David Pop Logic session
 20 part of the audio file attached to your report?
 21 A. It's not an audio file.
 22 MR. RIGHETTINI: Asked and answered.
 23 Q. Is it part of any document attached
 24 to your report?
 25 A. It's listed in the -- it's listed

1 GELUSO
 2 as -- let's see. (Perusing.)
 3 It's listed as number five on page
 4 three.
 5 Q. And the items that are there, 1
 6 through 9 and 38, it's your testimony that
 7 those specific files, which have not been or
 8 are not the files or showing what you did, but
 9 are the original materials that you got from
 10 Mr. Riesterer before you manipulated anything?
 11 A. Correct.
 12 Q. Now, let's turn to paragraph 33 of
 13 your report on page 17.
 14 A. Page --
 15 Q. Paragraph 33 on page 17.
 16 A. Okay.
 17 Q. Do you see the first lead-in
 18 sentence, the vocal tracks that Mr. Pringle
 19 sampled in "Take a Dive vs I Gotta Feeling,"
 20 what is Take a Dive versus I Gotta Feeling?
 21 MR. DICKSTEIN: Feel free to refer
 22 to earlier sections of the report.
 23 THE WITNESS: Yeah.
 24 A. I clarify that in my report, on page
 25 four, paragraph seven, I was referred to a

1 GELUSO
 2 Broadjam.com web site, from which I downloaded
 3 the song titled Take a Dive vs I Gotta Feeling.
 4 Q. And what is that? Is that a
 5 comparison of some kind?
 6 A. The track?
 7 Q. Yeah.
 8 A. It's a stereo audio file within I
 9 hear Take a Dive, and mixed in are parts from
 10 the Black Eyed Peas' I Gotta Feeling.
 11 Q. So does this song have Mr. Pringle's
 12 instrumentation with the Black Eyed Peas'
 13 vocals being heard?
 14 MR. DICKSTEIN: Foundation,
 15 speculation.
 16 Q. You have heard it, haven't you?
 17 A. Yes.
 18 Q. Isn't that what it is?
 19 MR. DICKSTEIN: Foundation.
 20 Q. Well, if it isn't that, tell me what
 21 it is.
 22 A. It contains those elements, correct.
 23 Q. And when was it that this Take a
 24 Dive versus I Gotta Feeling song was created?
 25 MR. RIGHETTINI: Foundation, calls

1 GELUSO
 2 for speculation.
 3 A. I do not know.
 4 Q. Did you undertake any effort to
 5 determine when it was that it was made?
 6 A. No.
 7 Q. Do you know why it was made?
 8 A. No.
 9 Q. Do you understand what the purpose
 10 of it was?
 11 A. I don't know his motivation for
 12 creating this piece.
 13 Q. Well, do you know whether it was, in
 14 fact, Bryan Pringle that created this
 15 comparison?
 16 A. It is credited to him on the web
 17 site.
 18 Q. That wasn't what I asked you.
 19 I asked you whether you knew whether
 20 it was, in fact, Bryan Pringle that created
 21 this song.
 22 A. I was going by the credit to him on
 23 the web site. It's credited to him. It says
 24 by his a/k/a, which I don't recall, but it's
 25 the name he goes by.

1 GELUSO
 2 Q. What name?
 3 A. I don't recall it.
 4 Q. Was it D.J. Spanky?
 5 A. Sounds familiar.
 6 Q. And do you know when this song first
 7 appeared on Broadjam?
 8 A. No, I don't.
 9 Q. Have you seen any documentation
 10 as -- indicating when it was that it first
 11 appeared on Broadjam?
 12 MR. DICKSTEIN: Asked and answered.
 13 A. No.
 14 Q. Have you discussed with anyone when
 15 it first appeared on Broadjam?
 16 A. No, I haven't.
 17 Q. Now, still on page 17, let me direct
 18 your attention to the last full sentence before
 19 the first waveform analysis screen shot.
 20 A. Uh-huh.
 21 Q. You say, based upon your listening
 22 analysis and waveform analysis, I determined
 23 that the vocal track sampled in Pringle's Take
 24 a Dive versus I Gotta Feeling is a copy of the
 25 lead Black Eyed Peas vocal track that was

1 GELUSO
 2 available on Beatport.com.
 3 Do you know what specific number
 4 this lead Black Eyed Peas vocal track was
 5 listed as on Beatport.com?
 6 MR. RIGHETTINI: Foundation, vague
 7 and ambiguous?
 8 MR. DICKSTEIN: Vague, ambiguous.
 9 A. I don't know how it appeared on
 10 Beatport.com. I referred to it as, on page 22,
 11 as I Gotta Feeling-lead a cappella, original
 12 part, from the declaration of Mr. Warner.
 13 That's how I know the track.
 14 Q. Now, was this track available for
 15 download at Beatport.com after September 8,
 16 2009?
 17 MR. RIGHETTINI: Asked and answered,
 18 vague and ambiguous, foundation, calls for
 19 speculation.
 20 MR. DICKSTEIN: Same objections.
 21 A. After what was the date you gave?
 22 Q. September 8, 2009.
 23 A. I do not know. All I can go by is
 24 the declaration of Mr. Warner, who said it was
 25 posted. I don't know when it came down.

1 GELUSO
 2 Q. Well, was there an ability, to your
 3 knowledge, for anyone to download any one of
 4 the 22 individual tracks that were part of the
 5 Beatport.com remix contest after September 8,
 6 2009?
 7 A. I have no direct knowledge of that.
 8 Q. And any date that you would suggest
 9 would be merely speculation, would it not?
 10 MR. DICKSTEIN: Form, vague and
 11 ambiguous.
 12 A. My extent of the knowledge is
 13 Mr. Warner's declaration.
 14 Q. Does Mr. Warner say anything in his
 15 declaration regarding the dates on which one
 16 could download Black Eyed Peas' tracks from
 17 Beatport.com?
 18 A. I would have to review his document
 19 right now.
 20 Q. Well, certainly, if he had said
 21 that, you wouldn't have said in or around
 22 August, September 2009, would you? In your
 23 report, you would have used an actual date?
 24 MR. DICKSTEIN: Speculation.
 25 A. I have to go back and look at his

1 GELUSO
 2 declaration.
 3 Q. Now, in looking at paragraph 36 on
 4 page 18, Mr. Geluso, is it your opinion, and,
 5 therefore, it's your testimony that
 6 Mr. Pringle's access to the lead vocal stem
 7 that you referred to was on Beatport.com as
 8 opposed to some other place?
 9 A. I'm sorry. What paragraph are you
 10 looking at?
 11 Q. 36.
 12 A. (Perusing.)
 13 MR. RIGHETTINI: Could we please
 14 have that read back?
 15 (Record read.)
 16 MR. RIGHETTINI: Vague and
 17 ambiguous, foundation.
 18 A. I have no direct knowledge of where
 19 he may have gotten the -- specifically where he
 20 downloaded from.
 21 Q. And am I correct that you have no
 22 specific knowledge as to when that took place
 23 either?
 24 A. Correct.
 25 Q. Now, the individual tracks, the

1 GELUSO
 2 instrumentals and the vocals that were on
 3 Beatport.com, in what format were they able to
 4 be downloaded?
 5 A. I didn't visit the site. I don't
 6 know what format they were there.
 7 Q. Well, do you know whether it was --
 8 they were in an MP3 format?
 9 A. I do not know. All I know is the
 10 declaration of Mr. Warner and the files I was
 11 asked to analyze.
 12 Q. Do you know what the bit rate of the
 13 Black Eyed Peas isolated guitar twang sequence
 14 MP3 that was available on Beatport.com was?
 15 A. I don't know -- I don't have direct
 16 knowledge of what was available, the actual
 17 format of the file on Beatport. All I have is
 18 the files from Mr. Warner in his declaration.
 19 Q. Do you have any knowledge as to
 20 whether any of the Black Eyed Peas tracks that
 21 were available to be downloaded from
 22 Beatport.com were in a format other than an
 23 MP3?
 24 MR. DICKSTEIN: Asked and answered.
 25 A. I don't have knowledge of the format

1 GELUSO
 2 of the files and the bit rate, et cetera, as
 3 they were posted for those to download.
 4 Q. As part of your analysis, did you
 5 ask anyone in what format they were
 6 downloadable?
 7 A. I did ask for an exact copy of what
 8 was downloadable, and what I received was this
 9 declaration of Mr. Warner, but I have no
 10 document saying these are the absolutely exact
 11 files that were -- they are the same sound
 12 recordings, but physical files, you know, they
 13 could be copies. I'm not sure.
 14 Q. Well, what was the format that you
 15 received from Mr. Warner?
 16 MR. DICKSTEIN: Asked and answered.
 17 Q. Are those MP3 files?
 18 A. I believe -- I would have to go back
 19 and check.
 20 Q. But your regular --
 21 A. Either wave or MP3. I don't recall
 22 at the moment.
 23 Q. Can you tell us how one would load a
 24 file, which has 48 megabytes, into an Ensoniq
 25 ASR-10?

1 GELUSO
 2 A. A 48-megabyte file?
 3 MR. DICKSTEIN: Speculation,
 4 foundation, relevance.
 5 MR. RIGHETTINI: Join.
 6 A. I don't think you have an
 7 understanding of the keyboard to ask such a
 8 question, because the keyboard can only take
 9 small instances of audio, limited to 16 or 32.
 10 Q. Well, could you load 48 megabytes
 11 into an ASR-10? Since you said 16 or 32, and
 12 since it's more, I assume not, but I wanted to
 13 know from you.
 14 A. Yeah, I would assume not, also,
 15 unless it was modified or there's more memory
 16 available. I don't know.
 17 Q. Now, is it possible to read the NRG
 18 file from Mr. Pringle on a Windows-based or
 19 MacIntosh-based operating system computer?
 20 A. I was able to --
 21 MR. DICKSTEIN: Compound.
 22 A. -- able to read -- do you mean
 23 access or just -- you mean what happens when
 24 you put it in a computer? Is that what you're
 25 asking?

1 GELUSO
 2 Q. If you take an NRG file in a CD
 3 format, do you just stick it into the -- your
 4 Windows-based computer, your MacIntosh-based
 5 computer?
 6 A. Yeah.
 7 Q. And it reads it?
 8 A. Actually, mine mounted it as an
 9 audio file.
 10 Q. And it played the music?
 11 A. You could actually hear the samples
 12 in the wrong pitch. You could actually hear
 13 some things, but not recognizable as what would
 14 come out of the ASR-10, but the audio actually
 15 is audible in a distorted way.
 16 Q. Not something you would want to
 17 listen to?
 18 A. It's not so bad. Depends on who's
 19 listening.
 20 Q. So you would get a substantially
 21 different sound, I take it?
 22 A. Yes.
 23 MR. DICKSTEIN: Let him finish the
 24 question.
 25 Q. Is that right?

1 GELUSO
 2 A. It's not -- it's designed for the
 3 ASR-10 instructions and everything. It's a
 4 very specific format.
 5 When you say read, I mean, the drive
 6 can see it. It sees there's something there,
 7 but it doesn't make sense to the Mac or PC
 8 operating system.
 9 In this case, I think an NRG is a
 10 very general term. I mean, it's not to say any
 11 NRG file will not work on a PC.
 12 Q. Well, what is an NRG image file,
 13 exactly?
 14 A. I believe it's a backup file that
 15 appears as a hard drive to the operating
 16 system.
 17 Q. Are you familiar with a company
 18 called Giebler Enterprises?
 19 A. No.
 20 Q. Are you familiar with a piece of
 21 equipment called an Ensoniq disk manager?
 22 A. No.
 23 Q. Have you ever used the Ensoniq --
 24 have you ever used an Ensoniq disk manager
 25 created by a company called Giebler

1 GELUSO
 2 Enterprises?
 3 A. No.
 4 Q. Have you ever created an NRG file
 5 from an Ensoniq proprietary-based hard disk?
 6 A. No.
 7 Q. Can an Ensoniq proprietary disk be
 8 converted into a Nero NRG image file by any
 9 Windows or MacIntosh-based operating system
 10 with Nero CD burning software?
 11 MR. RIGHETTINI: Compound.
 12 A. I do not know. Outside of my area.
 13 Q. Are you aware of what programs can
 14 create a Nero proprietary NRG image file?
 15 A. No.
 16 MR. DICKIE: Would you mark this the
 17 next exhibit?
 18 (Plaintiff's Exhibit 54, Clark
 19 Warner Declaration, marked for
 20 identification.)
 21 (Recess taken.)
 22 BY MR. DICKIE:
 23 Q. Mr. Geluso, I've handed you what was
 24 marked as Exhibit 54. It's a document that
 25 has -- it's one page, but it has typing on the

1 GELUSO
 2 front and the back.
 3 MR. DICKSTEIN: For clarification,
 4 the witness' copy is just on the front of
 5 each two pages.
 6 Q. And this -- it says it's the
 7 declaration of Clark Warner, and it was
 8 executed on the 6th day of October 2011.
 9 Is this the text of the declaration
 10 of Mr. Warner to which you have been referring
 11 during this deposition?
 12 A. (Perusing.) Yes.
 13 Q. Now, looking on the second page,
 14 where Mr. Warner says, in the last full
 15 sentence of the third paragraph, "These music
 16 stems and vocal tracks were then bundled
 17 together and made available for download on
 18 Beatport.com."
 19 When he says they were bundled
 20 together, do you understand what that means?
 21 A. I don't know, technically, what he
 22 is referring to. I just take it on face value.
 23 Q. When you take it on face value, what
 24 do you think he means?
 25 A. Collection of files in one location

1 GELUSO
 2 on Beatport.
 3 Q. And does looking at paragraph four
 4 refresh your recollection as to the approximate
 5 number of remix versions that were submitted as
 6 part of this competition?
 7 A. You know, I've read this. I didn't
 8 recall that number earlier. I see it now.
 9 Q. Does it refresh your recollection as
 10 to having read that before?
 11 A. Earlier today, I didn't remember
 12 there were 1,200 remixes.
 13 Q. Does it refresh your recollection?
 14 A. I didn't have a recollection of four
 15 earlier today. I mean, it doesn't look
 16 familiar. The document looks familiar, but
 17 1,200 didn't stick in my head.
 18 You are saying, did it refresh my
 19 recollection?
 20 Q. Yeah, that's what I asked you.
 21 MR. DICKSTEIN: You may not have had
 22 a recollection.
 23 A. Yeah, I didn't have a recollection
 24 of the numbers.
 25 Q. Do you have any reason to believe

1 GELUSO
 2 that that number is incorrect?
 3 A. I have no reason to believe that
 4 number is incorrect.
 5 Q. And do you know on how many
 6 different internet sites any of these 1,200
 7 remix versions were played or available?
 8 MR. RIGHETTINI: Foundation.
 9 MR. DICKSTEIN: Compound.
 10 A. I don't have the number of sites,
 11 no.
 12 MR. DICKIE: Thank you, Mr. Geluso.
 13 I have no further questions subject to
 14 working with your counsel with respect to
 15 exhibits that were not produced, which we
 16 will deal with in due course.
 17 Thank you for your time.
 18 MR. DICKSTEIN: We are not done yet.
 19 Can we just take a break? I want to
 20 confer with counsel for co-defendants and
 21 we will be right back.
 22 (Recess taken.)
 23 EXAMINATION BY
 24 MR. DICKSTEIN:
 25 Q. Professor Geluso, I have just a

1 GELUSO
 2 couple questions for you.
 3 Please describe what you used the
 4 ASR-10 for in conducting your analysis for this
 5 case.
 6 A. I requested the ASR-10 to load the
 7 NRG file back into it, and to get insight on
 8 how the guitar twang exists within the ASR-10.
 9 Q. And you were able to do that?
 10 A. Yes. I followed the instructions.
 11 It loaded up, and I spent some time playing it
 12 manually, listening to the different notes of
 13 the guitar twang from the three keys and so on,
 14 just verifying -- just basically verifying how
 15 it works.
 16 Q. Is there anything you did not know
 17 about the ASR-10's operation that would have
 18 been important to your analysis?
 19 MR. DICKIE: Objection, calls for
 20 speculation. He already said he is not an
 21 expert.
 22 A. I was satisfied with what I had
 23 learned about the ASR-10, and with it in my
 24 possession, I was ale to use it to my
 25 satisfaction, and gain the knowledge from it I

1 GELUSO
 2 needed to write my report.
 3 Q. Do you remember earlier today
 4 Mr. Dickie asked you questions about who
 5 drafted your November 2011 report? Do you
 6 recall that series of questions?
 7 A. Yes.
 8 Q. And do you recall testifying that
 9 counsel suggested language for certain parts of
 10 the report?
 11 Do you recall that?
 12 A. Yes.
 13 Q. And the language that counsel
 14 suggested, did that change in any way the
 15 substance of the report?
 16 MR. DICKIE: Objection, leading.
 17 A. No. The report is absolutely my
 18 words, just with some language edits, just some
 19 editing to the language and format.
 20 MR. DICKSTEIN: I have no other
 21 questions. We will reserve signature.
 22 MR. DICKIE: I just have one
 23 follow-up question.
 24 FURTHER EXAMINATION
 25 BY MR. DICKIE:

1 GELUSO
 2 Q. Did you discuss these questions,
 3 Mr. Geluso, with your counsel and
 4 Mr. Righettini before coming back in here after
 5 the break?
 6 A. No. They went into the office
 7 alone. I waited in the hall.
 8 MR. DICKIE: Thank you. Signature.
 9 We will just follow the federal rules.
 10 MR. DICKSTEIN: We reserve
 11 signature.
 12 (Time noted: 4:31 p.m.)
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1 A C K N O W L E D G M E N T
 2
 3 STATE OF)
 4 :ss
 5 COUNTY OF)
 6
 7 I, PAUL GELUSO, hereby certify that
 8 I have read the transcript of my testimony
 9 taken under oath in my deposition of December
 10 16, 2011; that the transcript is a true,
 11 complete and correct record of my testimony,
 12 and that the answers on the record as given by
 13 me are true and correct.
 14
 15
 16 _____
 17 PAUL GELUSO
 18
 19 Signed and subscribed to before me
 20 this _____ day of _____, 20__.
 21
 22 _____
 23 Notary Public, State of _____
 24
 25

1 C E R T I F I C A T E
 2
 3 STATE OF NEW YORK)
 4 :ss
 5 COUNTY OF RICHMOND)
 6
 7 I, MELISSA GILMORE, a Notary Public
 8 within and for the State of New York, do hereby
 9 certify:
 10 That PAUL GELUSO, the witness whose
 11 deposition is hereinbefore set forth, was duly
 12 sworn by me and that such deposition is a true
 13 record of the testimony given by such witness.
 14 I further certify that I am not
 15 related to any of the parties to this action by
 16 blood or marriage; and that I am in no way
 17 interested in the outcome of this matter.
 18 IN WITNESS WHEREOF, I have hereunto
 19 set my hand this 17th day of December, 2011.
 20
 21
 22
 23 _____
 24 MELISSA GILMORE
 25