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11 Attorneys for Plaintiff  
 BRYAN PRINGLE

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

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

Case No. SACV 10-1656 JST(RZx)  
**DECLARATION OF BRYAN PRINGLE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**  
 DATE: January 30, 2012  
 TIME: 10:00 AM  
 CTRM: 10A

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1 Bryan Pringle, having been duly sworn, deposes and declares that he has personal  
2 knowledge of the facts set forth below and if called as a witness, could competently testify  
3 thereto.

4 **I. Preliminary Statement**

5 1. I have read the Defendants' Motion for Summary Judgment together with the  
6 various exhibits and statement of allegedly uncontested facts. I have also read the  
7 Declarations filed by various individuals in support of Defendants Shapiro, Bernstein and  
8 Co., Inc., Frederic Riesterer ("Riesterer") and David Guetta's ("Guetta") Motion For  
9 Summary Judgment. These Declarations are referred to by the Court's Document number  
10 and pertinent page. Based upon my review of those materials, numerous controverted facts  
11 exist regarding: (a) the origin of "I Gotta Feeling"; (b) whether I composed "Take A Dive"  
12 and "Take A Dive" (Dance Version) in 1999, as alleged in the First Amended Complaint;  
13 and (c) whether the striking similarity of the "guitar twang sequence" in the parties'  
14 respective two songs constitutes copyright infringement by the Defendants. I have also  
15 reviewed the prior Declarations of Riesterer and Guetta from November 2010 and certain  
16 portions of the deposition testimony of the Defendants.

17 2. In addition to reading the pertinent documents submitted by the Defendants,  
18 I did my own factual investigation pertaining to some of the statements contained in those  
19 documents, and obtained other relevant documents otherwise available from public sources  
20 which are attached to this Declaration.

21 3. Paul Geluso ("Geluso"), an audio expert proffered by the Defendants, opines  
22 in his Declaration that I copied the Black Eyed Peas song "I Gotta Feeling." He is dead  
23 wrong as I independently created and copyrighted the song "Take A Dive" as part of a  
24 collection of works which I wrote, recorded and registered with the United States  
25 Copyright office in 1998, under the name of "Dead Beat Club." (See Certified copy of  
26 original Dead Beat Club registration, Exhibit M to Declaration of Dean A. Dickie ("Dickie  
27 Decl.") filed contemporaneously herewith.) Sometime prior to September 1, 1999, I wrote  
28

1 and recorded the dance version of “Take A Dive.” (See Exhibit M, 1998 Copyright  
2 Registration; Deposition of Bryan Pringle, Exhibit A to Dickie Decl. (“Pringle Dep.”), and  
3 Expert Report of David Gallant, Exhibit 1 hereto.)

4         4.       I did not sample the isolated guitar twang in the Black Eyed Peas song “I  
5 Gotta Feeling” from the Beatport.com website between August 21, 2009 and September 8,  
6 2009 as Geluso speculates. Moreover, I never copied any music of the Black Eyed Peas in  
7 order to assert this copyright infringement claim; I have never back dated any CD  
8 containing NRG files of my music, including the NRG files that contains “Take A Dive”  
9 (Dance Version); I have never stockpiled or saved 1999 blank CDs from Verbatim in  
10 anticipation of being able to download the music of the Black Eyed Peas and manipulate it  
11 to make a copyright infringement claim over “I Gotta Feeling.”

12         5.       As appears hereinafter in greater detail, many years before “I Gotta Feeling”  
13 was created independently by the Defendants, I provided copies and samples of my  
14 copyrighted music, including the derivative dance version of “Take A Dive” and isolated  
15 versions to Messrs. Joachim Garraud (“Garraud”) and Guetta in France, sometime around  
16 March 1999. In addition, sometime around January 1, 2001 and December 31, 2003, Gum  
17 Productions LLC (“Gum Productions”), a Guetta entity, wrote to me acknowledging  
18 receipt of the samples of my music, including “Take A Dive” (Dance Version).  
19 Subsequent to my receipt of that communication, at its request, I provided additional  
20 samples of my music to Gum Productions and Guetta. Once Gum Productions advised me  
21 that it was not interested in publishing my music or negotiating any recording agreement, I  
22 did not take any special care to preserve or save that 8 year old correspondence and most  
23 probably discarded it as I did not anticipate any further need for it. I continue, however, to  
24 search various locations for additional documentation “Take A Dive.”

25         6.       Geluso has no personal knowledge of what I did to compose the original  
26 “Take A Dive” or any of the several derivative versions of that song, which I composed,  
27 recorded, self published and played prior to August 1999.

28

1 **II. Musical Background And Qualifications Of Bryan Pringle**

2 7. For the last 25 years I have been an active songwriter. In that time period, I  
3 have written all kinds of contemporary popular music. My songwriting career began  
4 around 1986 and over those 25 years, I have acquired substantial knowledge about and  
5 experience in producing, writing, arranging and recording all kinds of music. I studied  
6 drums at Mann Middle School in Abilene, Texas and took piano lessons as a young boy.

7 8. I have also acquired substantial knowledge of and experience with computer-  
8 based musical composition including, without limitation, computer software, building and  
9 repairing of computers, analog and digital sound recording systems and signal processing,  
10 music production, sound mixing, and specialized computer-based music software; which  
11 includes musical instrumentation software, sound processing software and virtual sound  
12 production studios.

13 9. In the last 10 to 15 years, I have acquired a particular expertise in loading,  
14 using and operating the Ensoniq-ASR-10 instrument and as a consequence, am quite  
15 conversant with its functions, capabilities and availability.

16 10. I attended Austin Community College and took classes regarding sound  
17 recording, songwriting, the physics of sound, studio productions and fundamentals of  
18 music. Besides formal instruction, I acquired substantial knowledge and skill in connection  
19 with producing, writing, arranging and recording music through self instruction and the  
20 kind of experience which comes from hands-on involvement and performance. I have  
21 written hundreds, if not thousands of songs, in a wide variety of musical genres including,  
22 but not limited to, rock, dance, heavy metal, romantic ballads, experimental electronic and  
23 techno dance.

24 11. Based on this experience and training, I am able to analyze any musical  
25 composition with which I have been involved, regardless of whether I wrote, arranged,  
26 performed, recorded or mixed the beats or lyrics. I can also comment upon and offer  
27 opinions related to the fact statements offered by Geluso in his Declaration, as well as  
28

1 respond to various other declarations used to support the Defendants' Motion for Summary  
2 Judgment.

3       12.     Although I registered with BMI around 1996, I have never been active with  
4 BMI and never registered "Take a Dive" (Dance Version) with BMI because I did not  
5 understand that I needed to do so in order to collect any performance royalties. I did not  
6 anticipate in 1999 that "Take a Dive" (Dance Version) would get much commercial airplay  
7 and did not see any benefit to registering the song. I have also never registered any music  
8 with SACEM, which I understand is a French organization that collects royalties for  
9 songwriters who primarily live in France and the rest of Europe.

10 **III.   The Purpose And Scope Of This Declaration**

11       13.     Given my personal involvement in the creation of "Take A Dive" and "Take  
12 A Dive" (Dance Version) plus my extensive personal musical experience over the last 25  
13 years, I have been asked to review, analyze, comment upon and to the extent appropriate  
14 rebut the factual statements and opinions of Geluso, Riesterer, Guetta, Garraud, and others  
15 using such information of which I am aware and information obtained through discovery  
16 in this case.

17       14.     Important to this analysis is the fact that numerous materials were not made  
18 available to me or otherwise provided with inappropriate "attorneys eyes only"  
19 designations to my attorneys, which impact directly on my ability to address completely  
20 the Geluso, Riesterer, Guetta and Erik Laykin declarations and the arguments of counsel  
21 for the Defendants. For example, I was not provided with the discontinued "authorized and  
22 unlocked" instrumentation called: "Plugsound Box" with the "Plugsound: Fretted  
23 Instruments." This specific instrumentation was provided to and relied upon by Geluso.  
24 The failure to provide such "authorized and unlocked" instrumentation to us is significant  
25 since it is this discontinued instrumentation which allegedly contains the "Strat With SM57  
26 Stereo Spread" preset on which the Defendants rely.

27       15.     The "Strat With SM57 Stereo Spread" is the specific instrumental preset that  
28 Geluso and Defendants Riesterer and Guetta now contend was allegedly used to create the

1 “guitar twang sequence” at issue here. What is significant about the failure of the  
2 Defendants to provide access to this discontinued instrumentation is that it was nonetheless  
3 available for use by Geluso. Why wasn’t it available to me or my counsel for a similar  
4 purpose? The withholding of such instrumentation creates serious factual questions as to  
5 what one skilled in the use of such discontinued instrumentation, like myself, would  
6 uncover if the equipment had been turned over for inspection and analysis. This is  
7 particularly so given the situation discussed below regarding the original “David Pop  
8 Guitar” original files.

9 16. Finally, I was also not provided with all of the original “David Pop Guitar”  
10 midi files, instrument files, sound effect plug-ins, instrumental plug-ins, wave samples, or  
11 any of the files that were directly related to the creation of the “guitar twang sequence” as  
12 it is heard in “I Gotta Feeling.” With an opportunity to inspect, investigate and analyze  
13 those specific files, I would be able to demonstrate further how and why the Geluso  
14 opinion is inaccurate, intentionally misleading and not credible. Furthermore, Geluso  
15 admits that he has no personal knowledge that I downloaded anything from Beatport.com  
16 Re-Mix Contest and then back-dated any files from that Contest as part of a scheme to  
17 create a claim of copyright infringement against the Black Eyed Peas. I reiterate that at no  
18 time did I sample or copy “I Gotta Feeling” in order to create the dance version of “Take A  
19 Dive” and then manipulate that sampled version manually so that I could assert that I  
20 composed “Take a Dive” (Dance Version) in 1999. (*See* Deposition of Paul Geluso,  
21 Exhibit F to Dickie Decl. (“Geluso Dep.”), pp. 134-137).

22 **IV. The Facts and Opinions set out in the Motion for Summary Judgment and**  
23 **Declarations Are Disputed and Can Only Be Resolved By The Jury**

24 **A. Whether the Defendants engaged in Copyright Infringement is not resolved by**  
25 **the Geluso Declaration**

26 (1) **It is not common practice to fail to save sound effect settings.**

27 17. Geluso opines that it is common for songwriters and musicians not to save  
28 all the precise sound settings used when creating the “final” musical sequence. (Dckt.

1 #162, fn. 7, p. 8). He uses this statement to support his conclusion that the music creation  
2 files produced by Riesterer show that Riesterer created the final guitar “twang” sound and  
3 composed the chords that make up the “guitar twang sequence” in the song “I Gotta  
4 Feeling.” (Dckt. #162, pp. 4, 8). Geluso’s conclusion is incorrect. As a musician with 25  
5 years of writing and recording songs electronically through equipment like an Ensoniq  
6 ASR-10, I can state that Geluso’s opinion is not only incorrect factually, it is unsupported  
7 by the objective evidence and contrary to established practices by musicians, songwriters  
8 and audio engineers..

9       18.     It is not common for legitimate music composers to fail to save the precise  
10 sound effect settings used when creating the final musical sequences. Failing to save such  
11 settings makes it very difficult to replicate the identical musical sound effects used in the  
12 creation of the original music later.

13       19.     If Riesterer failed to save the precise sound settings he used in creating the  
14 “guitar twang sequence” of “I Gotta Feeling,” the conclusion Geluso reaches in his  
15 Declaration is merely one of several other equally speculative conclusions that could be  
16 drawn. As such, it has no substantive value, is factually unsupported and entirely  
17 speculative.

18       20.     Absent the original musical settings used for the “guitar twang sequence,”  
19 the Geluso analysis does not resolve any disputed material fact at issue here.

20               (2)     **Manual manipulation of the musical sound effects settings is**  
21                       **tantamount to tampering with evidence.**

22       21.     That Geluso is speculating here as to what Riesterer did appears from two  
23 points: (a) his concession that Riesterer did not save the sound effect settings he used and  
24 (b) he had to manipulate the sound effects settings manually to create the sound he heard  
25 on “I Gotta Feeling” from scratch. (See Dckt. #162, p. 5). The need to manipulate the  
26 sound effects settings manually to create the “guitar twang sequence” does not eliminate or  
27 foreclose factual inquiry into what Riesterer actually did do, if anything, to “create” the  
28 allegedly infringing music.

1           22.     Only through the manual manipulation of the Logic Session Song File he  
2 received from Riesterer was Geluso able to reproduce the sound of the “guitar twang  
3 sequence” which is heard in both “Take A Dive” (Dance Version) and “I Gotta Feeling.”  
4 That file in its original, unaltered state has never been provided so it is impossible to  
5 determine what one might have discovered from its examination. Geluso’s representation  
6 that Riesterer files bates Nos. 1-9, 38 are the “I Gotta Feeling” original creation files is  
7 false. (*See* and compare, Dckt. #162, p. 3, #5 with Exhibits 2, 3, 4, 5, 6, 7, 8 and 9.)

8           23.     Significantly, Geluso does not state how, when, and with what precise sound  
9 effect settings Riesterer composed the original “guitar twang sequence.” How Geluso did  
10 the manipulation likewise is unstated and the need to do so is important in light of  
11 Riesterer’s failure to save any of the precise sound effects settings he used to create the  
12 “guitar twang sequence” heard in “I Gotta Feeling.” The conclusion that Riesterer created  
13 the final “guitar twang sequence” is made without the benefit of any real factual support  
14 and as such, is entitled to little weight.

15           24.     It stands to reason that since Geluso was able to adjust the sound effects  
16 settings manually to replicate the “guitar twang sequence” found in “I Gotta Feeling,” that  
17 if any of the Defendants were previously provided with a sample or CD containing a  
18 version of “Take A Dive” (Dance Version) containing the “guitar twang sequence” with or  
19 without vocals, any one of them could have done exactly what Geluso did – namely,  
20 manipulate the sample or song from the CD, to produce a “guitar twang sequence”  
21 strikingly similar to mine.

22           25.     Certainly the manual manipulation of a music file to achieve a strikingly  
23 similar sound is evidence that the Defendants themselves could have done the same thing  
24 with (i) the samples and instrumentation of “Take A Dive” (Dance Version) that I provided  
25 to Garraud, Guetta, and Gum Productions around 1999-2003 or (ii) from instrumentation  
26 and samples I provided to other DJs, publishing companies, record companies, radio  
27 stations and other artists, from the 1990’s to around 2008.

28



1           26.     The fact that Riesterer does not know the precise sound effects settings he  
2 used to create the alleged sound effects used to create the “guitar twang sequence” heard in  
3 “I Gotta Feeling” and the fact that Geluso had to manipulate the instrument samples and  
4 the alleged sound effects settings manually in order to recreate the “guitar twang  
5 sequence” heard in “I Gotta Feeling” is circumstantial evidence from which any reasonable  
6 person could conclude that Riesterer did not create the original “guitar twang sequence,”  
7 but simply manipulated the music files he obtained from someone else to create the “guitar  
8 twang sequence.”

9           27.     To demonstrate how important saving the precise sound processing settings  
10 is to musicians and songwriters alike, I have attached an advertisement for a device called  
11 a “locking security cover” (*see*, Exhibit 10). This device covers the front control panel of  
12 rack-mountable sound processing devices and was invented to prevent unwanted  
13 adjustments to the composer’s musical sound effects settings. These locking security  
14 devices have been around for decades. I can personally attest to the fact that saving the  
15 precise sound processing settings for a song is of paramount importance to all musicians,  
16 songwriters and audio engineers. To suggest otherwise, as Geluso does, is false and  
17 misleading.

18           28.     As it takes considerable time to adjust the actual sound effects processing  
19 settings, musicians and composers take great care in securing the actual settings. It also  
20 takes a long time to adjust just one sound effect processor setting, let alone trying to  
21 reproduce 4 sound effect processor settings, as Geluso alleges Riesterer used to create the  
22 “guitar twang sequence” heard in “I Gotta Feeling.” Thus, the suggestion that Riesterer did  
23 not save and does not know the actual sound effects processor settings for the “guitar  
24 twang sequence” heard in “I Gotta Feeling” is neither credible nor dispositive of whether  
25 or not I created “Take A Dive” (Dance Version) in 1999 with the original “guitar twang  
26 sequence.”

27           29.     Geluso tells us that he “was able to manually recreate the “guitar twang  
28 sequence” from scratch.” Regardless, it is irrelevant that Geluso’s ability to recreate the

1 guitar twang sound proves that I did not create “Take A Dive” (Dance Version) in 1999 as  
2 I have alleged and established through the work of forensic expert David Gallant  
3 (“Gallant”) (Exhibit 1-Gallant Report). Although Geluso’s opinion is an invalid  
4 conclusion, it does suggest that the Defendants could have recreated the “guitar twang  
5 sequence” heard in my song “Take A Dive” (Dance Version) from scratch, too. After all,  
6 the “guitar twang sequence” is simply a guitar that has been manipulated through various  
7 commonly available sound effects and simple layering.

8         30. Geluso’s re-creation through manual manipulation of Riesterer’s music files  
9 does not exonerate any of the Defendants from having copied my work. Indeed, Geluso’s  
10 stated ability to recreate the “guitar twang sequence” from scratch is neither incredible nor  
11 miraculous. This re-creation of the “guitar twang sequence” by Geluso simply points out  
12 the ease with which sophisticated samplers and high-tech computer-based musical  
13 software can replicate or easily sample parts of my song and its “guitar twang sequence”  
14 from the CDs and instrumental soloed tracks that I provided to the Defendants. Given the  
15 access to my song which I provided to several Defendants prior to 2008, Geluso’s  
16 representation that he could reproduce the “guitar twang sequence” from scratch, serves  
17 only to expose the ease with which the alleged copyright infringement could have, and  
18 ultimately did occur.

19         31. If Riesterer actually used reverberation, distortion, equalization, and  
20 compression in creating “I Gotta Feeling,” it is incredulous to suggest that the precise  
21 sound effect processor settings that give the “guitar twang sequence” its “unique character”  
22 could not be recreated by the original composer without having to hire an audio expert to  
23 “manipulate” the sound effect processor settings and instrumentation manually. It is only  
24 logical that the creator of one of the most recognizable musical “hook-lines” in recent  
25 songwriting history would have saved the precise sound effect processor settings for the  
26 “guitar twang sequence”: (i) on his computer, (ii) in his “I Gotta Feeling - Logic Session  
27 Song File,” or (iii) on some scrap of paper just like thousands of musicians, songwriters  
28 and audio engineers do everyday.

1           32.     Without knowing the precise sound effect processor settings that were used  
2 to create the parts of “I Gotta Feeling,” neither Riesterer nor Geluso can establish as a  
3 matter of law that it was Riesterer, and not me, who produced the original “guitar twang  
4 sequence” found in “I Gotta Feeling.”

5           33.     Unlike Riesterer, I can explain how the sounds on “Take A Dive” (Dance  
6 Version) were made and can actually demonstrate how those sounds are played on an  
7 Ensoniq ASR-10. I can also show where the actual notes and instrumentation for the  
8 “guitar twang sequence” were derived from, in songs that were registered and on deposit  
9 with the Copyright Office since 1998.

10          34.     To prove that it was Riesterer, not me, that produced the original “guitar  
11 twang sequence,” Riesterer, not Geluso, must demonstrate how and identify the specific  
12 sound effect processor settings he used to create the parts of “I Gotta Feeling.” If summary  
13 judgment is to be granted, Riesterer must eliminate the existence of any material fact in  
14 dispute with respect to his original creative efforts. He has not done so. Geluso’s manual  
15 manipulation of the sound effect processor settings and instrumentation files does not  
16 eliminate the existence of a factual dispute as to the origin of the music in question or  
17 establish conclusively what Riesterer did to compose all the parts of “I Gotta Feeling.”

18          35.     Geluso’s manual manipulation of the music files is, in effect, nothing more  
19 than a sophisticated “doctoring” of the evidence for the purpose of creating a  
20 misimpression as to the origin of the “guitar twang sequence.” Having Geluso manually  
21 create the alleged sound effect processor settings and instrumentation, to reproduce the  
22 sound which is created from such manipulation, does not establish who originally created  
23 the “guitar twang sequence” found in both “Take A Dive” (Dance Version) and “I Gotta  
24 Feeling”; or whether there was copyright infringement by the Defendants.

25                   **(3)     The Logic Session File was not produced and is now corrupted.**

26          36.     The original “Logic Session Song File” has been repeatedly requested, but  
27 actually never provided.

28

1           37.     An unaltered Logic Session Song File should include all of the midi files,  
2 sound effects, instrumentation, mixdown volumes, and other relevant material involved in  
3 the original creative process for “I Gotta Feeling.” Riesterer files bates Nos. 1-9, 38 do not  
4 constitute the original “I Gotta Feeling” creation files.

5           38.     In lieu of the alleged creator of the “guitar twang sequence,” providing  
6 detailed information as to how he created the song, what settings he used and how he did  
7 it, the Defendants rely upon the work of an audio expert and student protégé of  
8 Defendants’ musicologist brought into the case to manipulate the sound effect processor  
9 settings and instrumentation manually to achieve a sound he heard in “I Gotta Feeling,”  
10 which is a musical sequence that I created in 1999. (*See Geluso Dep.*, p. 137.)

11           39.     If Riesterer had been the originator of the “guitar twang sequence” in “I  
12 Gotta Feeling,” one would assume that it would be he who would have detailed the  
13 creative information, including the specific instrumental “layering” and precise sound  
14 effect processor settings that he used, along with a detailed discussion of how he selected  
15 the specific musical sound effects present in the “guitar twang sequence” and why the  
16 reverberation, distortion, equalization, and compression one hears in “I Gotta Feeling” was  
17 selected. The fact that he was not able to do so supports my assertion that he did not create  
18 the “guitar twang sequence,” but merely layered samples from my “guitar twang  
19 sequence,” which was provided to Guetta, years prior to the creation of “I Gotta Feeling.”

20           40.     Since Riesterer didn’t turn over all of his original Logic Session Song Files  
21 used in the creation of “I Gotta Feeling” when originally requested, and before that file  
22 was manually manipulated by Geluso, we can now never know whether or not Riesterer  
23 could have actually produced the “guitar twang sequence” as it is heard in “I Gotta  
24 Feeling” all by himself.

25           41.     Since Geluso concedes that Riesterer himself wasn’t able to identify the  
26 correct sound effect processor settings and exact instrumental layering, Geluso can only  
27 speculate as to what, if anything, Riesterer actually did to create the “guitar twang  
28 sequence” heard in “I Gotta Feeling.” Given the fact that Riesterer himself cannot identify

1 the sound effect processor settings and instrumental layering used in the “guitar twang  
2 sequence” heard in “I Gotta Feeling,” Geluso certainly is not in a position to render any  
3 credible opinion as to what Riesterer actually created.

4 42. All computer-based programs save files to the hard drive in a specific  
5 location. If one re-opens the Logic Session Song File that Geluso claims is “identical” to  
6 the original creation song file for “I Gotta Feeling” without the exact same computer used  
7 to create the file, one would receive an error message.

8 43. The original Logic Session Song File would be searching for the exact same  
9 files in the exact same location, on the original hard drive that Riesterer “gave away.”  
10 Geluso is being less than candid and is intentionally misleading the reader of his  
11 Declaration when suggesting what the Logic Session Song File in his possession shows.  
12 He omits to state rather conspicuously that Riesterer’s original Logic Session Song File for  
13 “I Gotta Feeling” has actually been altered. Since Riesterer gave away the original  
14 computer used to create “I Gotta Feeling” to a friend whose name he doesn’t know, the  
15 only way now to re-load the original “I Gotta Feeling” Logic Session Song File in order to  
16 have the same instruments, midi files, sound effects settings, and the like, in the same  
17 locations as in the original song creation file, is to alter the Logic Session Song File itself,  
18 to reflect the new locations of the saved files on the new hard drive, or other storage  
19 media. However, by doing this, the original Logic Session Song File becomes permanently  
20 altered and no longer identical to the original Logic Session Song File for “I Gotta  
21 Feeling.”

22 44. Thus, the Logic Session Song File upon which Geluso relied was not the  
23 original song file and any re-creation of that Logic Session Song File is not a re-creation of  
24 what is represented by Geluso to be the original evidence of his creation of the song files  
25 for “I Gotta Feeling.”

26  
27  
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1                   (4)    **Riesterer refused to provide the original computer and backed-up**  
2    **files to Plaintiff.**

3           45.    Riesterer refused to turn over the original computer he states was used to  
4 compose the music for “I Gotta Feeling.” He also failed to turn over any of the actual files  
5 that backed up the original computer he states was used to compose “I Gotta Feeling.” His  
6 rationale for not doing so is particularly evasive:

7                   Q.    Do you still have this computer?

8                   A.    No.

9                   Q.    Where is it now?

10                  A.    I gave it to a friend.

11                  Q.    Which friend did you give it to?

12                  A.    I don’t remember, I have a lot of friends.

13 (*See*, Deposition of Frederic Riesterer, Exhibit C to Dickie Decl. (“Riesterer Dep.”),  
14 pp. 192-193.)

15           46.    If Riesterer did create all of the musical parts for “I Gotta Feeling,” then  
16 there is no legitimate reason for me to be denied access to that computer and the backed-up  
17 files from that computer.

18           47.    Certainly, the failure to turn over the Riesterer computer and backed-up files  
19 under the circumstances, suggests that Riesterer was either being purposefully evasive as  
20 to the whereabouts of his evidence, or is trying to prevent examination of the contents of  
21 that computer and the backed-up files.

22           48.    Computers used to create professional-grade music with a “virtual software-  
23 based studio” are expensive to build, and not lightly disposed of, because of their  
24 specialized software and hardware requirements. (Exhibit 11 - Waves Mercury Sound  
25 Processing Ad).

26           49.    Most virtual software-based studio computers, of which I am aware, have  
27 professional-grade software and hardware that can cost anywhere from a few thousand  
28 dollars to upwards of one-hundred thousand dollars; and even more.

1           50.     Riesterer’s act of giving to a friend, whose name is unknown, of the very  
2 instruments and files that could prove his independent creation claim, for an unstated  
3 reason, is so sufficiently unusual, that serious questions arise as to the nature and  
4 circumstances of that particular act and the purpose behind it. These questions, if not  
5 answered with an adequate explanation, provide additional circumstantial evidence of a  
6 willful intent to prevent me from conducting an appropriate analysis of the device  
7 allegedly used to create the original musical work of “I Gotta Feeling.”

8                   (5)     **Geluso is incorrect as to what musical instruments were available**  
9                             **in 1999 to create the “guitar twang sequence” heard in “Take A**  
10                            **Dive” (Dance Version).**

11           51.     Geluso tells us that the origin of the guitar ‘twang’ sound in “I Gotta  
12 Feeling” emanates from “Plugsound: Fretted Instruments” and the instrument preset that  
13 Riesterer supposedly used to create the “guitar twang sequence” is called “Strat With  
14 SM57 Stereo Spread.” (Dckt. #162, p. 4) He suggests that such instrumentation was not  
15 available in 1999 and therefore I did not create the song in 1999. Geluso is incorrect as to  
16 what was available to create musical compositions in 1999.

17           52.     The actual instrument of the Plugsound: Fretted Instruments “Strat With  
18 SM57 Stereo Spread” preset, is a Fender Stratocaster electric guitar that is plugged into a  
19 Fender amplifier. The Fender Stratocaster has been available to musicians in the  
20 marketplace since 1954 (*see*, Exhibit 12 - Fender Stratocaster History). Fender amplifiers  
21 have been available to musicians since 1945 (Exhibit 13 - Fender Amplifier History).  
22 Thus, anyone could have reproduced the identical sound of the Plugsound: Fretted  
23 Instruments “Strat With SM57 Stereo Spread” preset, with an instrument and amplifiers  
24 which have been around for over 50 years.

25           53.     Geluso concedes these facts as well. Anyone could have reproduced the  
26 sound of the “Strat With SM57 Stereo Spread” preset, because that sound is nothing more  
27 significant than an indication of the popularity and availability of that instrumentation,  
28

1 both as a guitar and as “stock” sound effects instrumentation found on almost all  
2 keyboards, licensed sampled libraries, and producer series music libraries.

3         54.     Given the general availability of the Fender Stratocaster instrumentation, I  
4 had access to and did use, on numerous occasions, the Fender Stratocaster instrumentation  
5 around 1999. The Fender Stratocaster is in fact one of my favorite guitars. I have used both  
6 the Fender Stratocaster guitar and the substantially similar sounding Fender Telecaster  
7 guitar in numerous musical compositions that I have composed throughout the years. I  
8 produced the strikingly similar “guitar twang sequence” that is found in “I Gotta Feeling”  
9 in 1999. I created the original version of “Take A Dive” around 1998, and the derivative  
10 version titled “Take a Dive” (Dance Version) in 1999.

11         55.     The “guitar twang sequence” is not musically complex and can be described  
12 simply as a layered guitar sound which has been processed through the commonly  
13 available sound effects of reverb, distortion, equalization, compression and stereo spread  
14 effects.

15         56.     Most importantly, however, is that all of the sound effects Geluso stats that  
16 were used in composing the “guitar twang sequence” were available to me around 1999 as  
17 stock sound processing effects on the Ensoniq ASR-10 Keyboard. These sound processing  
18 effects were also available to me via the other sound processing equipment that I owned  
19 around 1999. The stock sound processing effects which were available in 1999 included  
20 the actual “stereo spread” sound effect used on the Plugsound: Fretted Instruments “Strat  
21 With SM57 Stereo Spread.” Any suggestion to the contrary by Alain Etchart (“Etchart”) is  
22 simply incorrect. Doc. #169, p. 2).

23         57.     The Plugsound Fretted Instruments “Strat With SM57 Stereo Spread” is  
24 commonly referred to as the “EQ+LFO DELAY” sound processing effect in the Ensoniq  
25 ASR-10 Musician’s Manual (Exhibit 14 - Ensoniq ASR-10 Effects.)

26         58.     Exhibit 14 contains a listing of all of the stock Ensoniq ASR-10 sound  
27 processing effects plus a single listing of the “stereo spread effect” called the EQ+LFO  
28



1 Delay. I believe that I most likely used this stereo spread effect on the “guitar twang  
2 sequence” contained in “Take A Dive” (Dance Version).

3 59. I have attached a copy of “Regret,” a song I composed and registered with  
4 the Copyright Office in 1998 (*see*, Exhibit 15 and Exhibit M, 1998 Copyright  
5 Registration). In “Regret,” one can hear my use in 1998, of the stereo spread sound effect,  
6 called EQ+LFO Delay.

7 60. This sound processing effect was also used on the Univers Sons “Strat With  
8 SM57 Stereo Spread” preset.

9 61. The sound processing effects which appear on “Regret” in 1998, are direct  
10 evidence that as early as 1998, I was using the same sound processing effects in my own  
11 musical compositions, more than 10 years before the Black Eyed Peas published “I Gotta  
12 Feeling.”

13 62. Geluso used commonly available “sound processing effects” and commonly  
14 available instrumentation to recreate the “guitar twang sequence” heard in “I Gotta  
15 Feeling. Both the instrumentation and the sound processing effects that Geluso allegedly  
16 used in recreating the “guitar twang sequence” of “I Gotta Feeling,” were all available to  
17 the general public, in 1999.

18 63. As the “guitar twang sequence” is a relatively easy sequence to recreate once  
19 it is heard, the ability to replicate it from scratch as Geluso did leads inevitably to the  
20 conclusion that given the striking similarity of the “guitar twang sequence” makes it more  
21 probable than not that the Defendants infringed upon and copied parts from my song,  
22 “Take A Dive” (Dance Version).

23 64. Missing from the Geluso analysis, however, is any discussion by him as to  
24 whether the Defendants could have recreated the “guitar twang sequence” from the Demo  
25 CDs I distributed which contained the solo track versions (and instrumentation, including  
26 the individual layers of the “guitar twang sequence”) of “Take A Dive” (Dance Version)  
27 which I provided to Guetta around 1999 to 2003.

28

1           65.     Geluso does not consider the possibility that one or more of the Defendants  
2 obtained a copy of my song, heard or mixed it during a live performance as a Dj, prior to  
3 2009. He, of course, makes no attempt to analyze what could have been done with such  
4 Demo CDs. His failure to opine on what could have been done with one of my soloed  
5 samples or the actual instrumentation that was given to Guetta, ignores the possibility that  
6 the Black Eyed Peas, Riesterer and/or Guetta manipulated my sample manually to recreate  
7 the “guitar twang sequence” they heard in the soloed sample of “Take a Dive” (Dance  
8 Version) or in the instrumentation of the “guitar twang sequence,” that I provided prior to  
9 2008 to Guetta and the other Defendants.

10           66.     It was intellectually dishonest for an audio expert like Geluso to have  
11 ignored my sworn statement that I had delivered and mailed, the actual tracks for “Take A  
12 Dive” (Dance Version), which included the instrumentation and individual samples of my  
13 “guitar twang sequence” to both Guetta and Garraud, around 1999 to 2003. (*See*, Pringle  
14 Dep.)

15           67.     The circumstantial conclusion of these facts is undeniable: (i) both Guetta  
16 and Garraud often worked directly with Riesterer in composing music; (ii) Guetta does not  
17 deny that he worked directly with Riesterer; and (iii) Guetta acknowledged under oath that  
18 it was possible that artists may have sent samples to the address of Gum Productions. (*See*,  
19 Deposition of Dave Guetta, Exhibit B to Dickie Decl. (“Guetta Dep.”), p. 69.)

20           68.     I provided Garraud and Guetta, with all of the sound settings,  
21 instrumentation and sound effects of my songs, including “Take A Dive” (Dance Version),  
22 so that they could re-create the exact same sounds when performing and mixing my music  
23 with other songs at different beats-per-minute, in the clubs they worked as Dj’s, in Paris,  
24 France.

25           69.     Geluso also ignores Guetta’s testimony where he admits that Gum  
26 Productions, from time to time, received copies of music from unknown artists, such as  
27 myself. (Guetta Dep.)

28

1           70. I provided many different versions of “Take A Dive” (Dance Version) to  
2 Guetta and Garraud, years prior to 2009 and those tracks could have been sampled by them  
3 at that time from the Demo CDs, I provided. *See*, Pringle Dep., p. 228; *see also*, Exhibit  
4 16, Response No. 25 which provides expressly as follows:

5                           **“Plaintiff states that there were multiple derivative versions of**  
6                           **“Take A Dive” that were included on Plaintiff’s demo CDs and**  
7                           **tapes, including several where the guitar sequence was soloed out**  
8                           **as the introduction to the song.”**

9 Geluso ignores the possible consequence of my having done so.

10           71. It is my opinion that Guetta and Garraud also sampled one of the other songs  
11 from the same Demo CD they received via mail from me, in around 2001 to 2003. This  
12 sample is best heard in the beginning of “Open Your Eyes,” which is found on the album  
13 known as “Guetta Blaster” (see, Exhibit 17, Guetta Blaster CD Liner Notes and Exhibit 18  
14 – “Open Your Eyes,” a song that appears as Track 9 on the “Guetta Blaster” album,  
15 released in 2004).

16           72. The sound in the “Open Your Eyes” song, suggests that Guetta was less than  
17 candid, when he stated on November 9, 2011, that he had never received any music,  
18 whether in the form of a Demo CD or otherwise, from anyone named Bryan Pringle (*see*,  
19 Dckt. #167). Guetta does, however, concede that from time to time, he has received  
20 unsolicited Demo CDs from individuals, even though he cannot identify the senders. (*See*,  
21 Guetta Dep., *see also* Declaration of Jeffrey Pringle.)

22           73. I received a letter from Gum Productions, sometime around 2001 to 2003,  
23 acknowledging receipt of my Demo CD submission and requesting tracks of other songs  
24 ,which I provided to Guetta and Garraud. Further, Guetta admits that Gum Productions  
25 has corresponded with individuals regarding unsolicited music sent to him. (Guetta Dep.)

26           74. It is a common practice in the “Techno-Dance” music genre, for dance artists  
27 to give their actual individual instruments and tracks to Dj’s who work at night clubs.  
28 Guetta, Garraud and William Adams are such Dj’s. By giving Dj’s the individual tracks or

1 instruments of the song, it makes it easier for them to re-mix songs and integrate the dance  
2 artist's songs, with songs from other artists.

3       75. Access to the individual tracks, instrumentation and sound settings received  
4 from composers and songwriters, enables Dj's at dance clubs to integrate songs with  
5 completely different beats-per-minute, to create an almost seamless and continuous non-  
6 stop dance mix.

7       76. Riesterer not only had access to the same samples I used for my "guitar  
8 twang sequence" through his working relationships with Garraud and Guetta, but he has  
9 already acknowledged that he was involved in developing the supposedly third party  
10 instrumentation allegedly used to create the "guitar twang sequence", heard in "I Gotta  
11 Feeling." (Riesterer Dep.)

12       77. Riesterer stated on November 23, 2010, that the guitar twang musical  
13 sequence was "recorded by Univers Sons in February 2001, using a Fender Stratocaster  
14 electric guitar, a Fender amplifier and a Shure SM57 microphone. It is my understanding  
15 that this musical sequence had its official launch in October 2004 and became part of what  
16 equipment was known as 'Plugsound Volume 2: Fretted Instruments' which became part  
17 of the Plugsound Box in 2004." (*See*, Dckt. #22-3– Frederic Riesterer Declaration 1.)

18       78. None of this information regarding the Plugsound: Fretted Instruments, is  
19 contained in the documentation of the Plugsound: Fretted Instruments preset list itself.  
20 (*See*, Exhibit 19 – Plugsound Fretted Instruments Preset List.) The significance of this  
21 fact, is that the only way Riesterer could have obtained that information is through intimate  
22 contact with Univers Sons and their employees.

23       79. Riesterer admits he helped to develop and test the Plugsound Box Set which  
24 contains the Plugsound: Fretted Instruments supposedly used to create the "guitar twang  
25 sequence" heard in "I Gotta Feeling " Riesterer states that he was at least a "beta tester."  
26 (*See*, Dckt. #22-3, p. 1). Etchart ignores the significance of Riesterer's involvement and  
27 never mentions that crucial fact or discloses the nature of Riesterer's actual role in the  
28 creation of the Plugsound Box Set's preset sounds (*see*, Dckt. #169 - Etchart Declaration).

1           80.     Etchart also neglects to inform us of the fact in his Declaration, that  
2 Plugsound: Fretted Instruments (which is part of the Plugsound Box instrumentation) was  
3 discontinued years ago, and cannot be purchased! (See, Exhibit 20 - Plugsound Box  
4 Website.)

5           81.     Since the Plugsound Box instrumentation was discontinued years ago,  
6 neither I nor my experts, can test Riesterer’s alleged statement that he used the Plugsound:  
7 Fretted Instruments preset, to create the “guitar twang sequence”, without access to the  
8 “authorized and unlocked” discontinued “Strat With SM57 Stereo Spread” preset,  
9 contained within the Plugsound Box: Fretted Instruments.

10          82.     Geluso claims Riesterer applied distortion, equalization and reverberation  
11 sound processing techniques to create the sound of the “guitar twang sequence” heard in “I  
12 Gotta Feeling.” (Dckt. #162, p. 5). His contention is not only speculative, in light of  
13 Riesterer’s inability to recall any precise sound processing settings he actually used, it  
14 actually contradicts Riesterer’s November 23, 2010, sworn statement, as to what he did to  
15 create the final “guitar twang sequence” heard in “I Gotta Feeling.” (See, Dckt. #22-3)  
16 Further, Geluso admits that sound processing effects settings for reverberation, distortion  
17 and equalization are present on the ASR-10. (Dckt. #162.)

18                   **(6)     Geluso contradicts Riesterer on sound effects and layering.**

19          83.     When Geluso states that Riesterer used sound effects and layering to achieve  
20 the final sound of the “guitar twang sequence” heard in “I Gotta Feeling,” he contradicts  
21 Riesterer’s November 23, 2010, sworn statement, that the “guitar twang sequence of  
22 ‘Nevermind’ (which was subsequently used in “‘Love Is Gone’ and then in ‘I Gotta  
23 Feeling’)” was licensed from a French music library known as Univers Sons.” (See, Dckt.  
24 #22-3, p. 2.)

25          84.     If as Riesterer stated under oath in his Declaration, signed on November 23,  
26 2010, that he only licensed the “guitar twang sequence”; then Riesterer obviously did not  
27 create it or otherwise use sound processing manipulation or layering. What then did  
28 Riesterer really do? We do not know. That question remains unanswered,

1 notwithstanding the statements made in the several Declarations used to support the  
2 request for Summary Judgment. His licensing of the “guitar twang sequence” from a  
3 supposed third party, would explain why he would not know the sound effects processor  
4 settings used to create the “guitar twang sequence” heard in “I Gotta Feeling.”

5 85. Contrary to the contentions now being asserted, in November 2010, before  
6 reviewing any technical analysis by Gallant of the “DISK05.NRG,” which contained the  
7 “guitar twang sequence” instrumentation for “Take A Dive” (Dance Version), Riesterer  
8 swore that the “guitar twang sequence ultimately used in ‘I Gotta Feeling’ was known as  
9 the ‘Strat With SM57 Crunchy’ in the Univers Sons music library.” (Dckt. #22-3, p 2).  
10 Riesterer now claims that this representation was a mistake of a material fact, i.e. the  
11 nature of the origin of the “guitar twang sequence.” This mistake is far too convenient to  
12 be credible.

13 86. If these examples were not enough to establish a material dispute as to the  
14 origin of the “guitar twang sequence” at issue, one need only consider Riesterer’s June 23,  
15 2011 Deposition testimony, in which he confirmed that the “guitar twang sequence” found  
16 in “I Gotta Feeling” did not come from the Plug Sound Box. (*See*, Riesterer Dep., p. 180)

17 **Q. So the guitar twang sequence was not in the Plugsound**  
18 **Box, was it?**

19 **A. No, when you go to the Plugsound system you have the**  
20 **preset, which is called Strat with SM57 Crunchy, the guitar**  
21 **twang, it’s the gimmick.**

22 **Q. And then you take that gimmick and prepare the sequence?**

23 **A. No, no, no, no.**

24 **A. Not that too, not that too, I create the gimmick. The**  
25 **gimmick doesn’t exist in the Plugsound.**

26 (*See also*, Riesterer Dep., p. 184, where gimmick is described by Riesterer as the guitar  
27 twang sequence.)

28

1                   (7)    Only single guitar notes used according to Riesterer.

2           87.    Riesterer acknowledges that only single guitar notes were used in order to  
3 create the “guitar twang sequence” gimmick that became the hook-line for “I Gotta  
4 Feeling.”

5           88.    As Riesterer never mentions his use of any sound effects processing or  
6 “layering” of any samples in the creation of the “guitar twang sequence”, it is reasonable to  
7 conclude that Geluso is now ascribing substantive creative conduct to Riesterer, which  
8 Riesterer himself denied in November 2010.

9           89.    To support the instant request for summary judgment, Riesterer changed his  
10 November 2010 declaration and deposition testimony, so that he can now claim that:

11                   **“In order to create the guitar ‘twang’ sequence of ‘I Gotta**  
12                   **Feeling’, I used a different preset from the PlugSound sound**  
13                   **library, different musical notes and chords, and different sound**  
14                   **processing effects than the ones I used in the ‘Love Is Gone’**  
15                   **sequence of ‘I Gotta Feeling.’ To create the guitar ‘twang’**  
16                   **sequence from ‘I Gotta Feeling’, I selected a guitar preset called**  
17                   **‘Strat With SM57 Stereo Spread’ from the Plugsound sound**  
18                   **library, which allowed me to use my keyboard to play music that**  
19                   **seemed to come from an electric guitar. After I selected the ‘Strat**  
20                   **With SM57 Stereo Spread’ preset, I composed each note and each**  
21                   **chord constituting the guitar ‘twang’ sequence by playing them**  
22                   **on my keyboard.”**

23 (*See, Geluso Dep.*)

24                   **“In my November 2010 Declaration -- which, from what I**  
25                   **understood, had to be filed as soon as possible in order to answer**  
26                   **an urgent motion from Pringle - I mistakenly declared that I had**  
27                   **used the “Strat With SM57 Crunchy” preset for ‘I Gotta Feeling’**  
28                   **and ‘Love Is Gone’.... It was only later, when I reviewed my files,**







1           96.     A consequence of providing demo CDs to other artists and Dj's, with the  
2 individual tracks and/or individual instrumentation of a song, is that the individual song  
3 parts can easily be sampled or reconstructed into other musical compositions by other  
4 artists and Dj's, as appears to be the case here, with the Defendants.

5                   **(9) My NRG files are different than those posted on Beatport.com**  
6                   **August 21, 2009 - September 8, 2009**

7           97.     Geluso opines that: "The guitar twang chord samples that exist in the clear in  
8 Mr. Pringle's NRG file are essentially identical to the isolated guitar twang stem that the  
9 Defendants caused to be posted to Beatport.com." Geluso does not, however, state that the  
10 song files for "Take A Dive" (Dance Version) contained on the "DISK05.NRG" file are  
11 identical to the "I Gotta Feeling" song files posted at Beatport.com. He does not so state  
12 this fact, because he has no evidence that I downloaded anything from Beatport.com.

13           98.     Around June of 2010, during the mutually agreed to settlement discussions, I  
14 created the "Take A Dive vs I Gotta Feeling" comparison mp3, which contained the  
15 manipulated vocals from one of the Beatport.com "I Gotta Feeling" re-mixes, for the sole  
16 purpose of demonstrating to the Defendants and their attorneys, the clearly obvious fact  
17 that the Black Eyed Peas members had sung their vocals to "I Gotta Feeling" along to the  
18 music for "Take A Dive." In addition to being provided a copy of this mp3 comparison  
19 by my former attorney, Ira Gould, the Defense Counsel was well aware of the exact reason  
20 and circumstances surrounding the creation of this mp3 comparison and no attempts have  
21 ever been made on my part to contest the fact that I created this mp3 comparison. I find  
22 their "newly manufactured" accusations that I downloaded the individual mp3 tracks for "I  
23 Gotta Feeling" from Beatport.com, to be intentionally misleading, given the fact that they  
24 were well aware of the source of the Black Eyed Peas' vocal track used in the creation of  
25 this comparison mp3.

26           99.     I did not at any time download any sample or any individual mp3 track of "I  
27 Gotta Feeling" from Beatport.com. I did not pay for any complete version of the song, nor  
28 did I download any partial sample or any partial individual track of "I Gotta Feeling," and

1 thereafter manipulate that downloaded sample or mp3 to create “Take A Dive” (Dance  
2 Version). I created “Take A Dive” (Dance Version) around 1999, which is roughly 10  
3 years prior to the release and publication of “I Gotta Feeling.”

4 100. Geluso attempts to explain that the only apparent explanation for this identity  
5 between the two songs is that Mr. Pringle sampled the isolated guitar twang sound file  
6 from Beatport.com (or from one of the re-mixes that sampled the Beatport.com mp3 sound  
7 files and inserted it into “Take A Dive” (Dance Version).

8 101. Geluso’s conclusion is wrong and his explanation ignores several equally  
9 viable alternative explanations, including the possibility that my original soloed version of  
10 “Take A Dive” (Dance Version) with the individual layered instrumentation, provided by  
11 me, to Guetta and Garraud, around 1999 to 2003, was sampled and then manipulated  
12 manually to arrive at the “guitar twang sequence” at issue here. It is also possible that  
13 Guetta, Garraud or Riesterer heard and recorded a version of “Take A Dive” (Dance  
14 Version ) that played on the radio in France around 1999 to 2003 (*see* Declaration of  
15 Jeffrey Pringle). It is also possible that someone other than me provided one of my widely  
16 distributed Demo CDs to Guetta or Garraud at a DJ event, which one of them used and  
17 saved. Indeed, Geluso’s statement that the only possible explanation for the “striking  
18 similarity” between the “guitar twang sequence” heard in “Take A Dive” (Dance Version)  
19 and the “guitar twang sequence” heard in “I Gotta Feeling,” is that I copied the song from  
20 Beatport.com, is patently false and absolutely incorrect.

21 102. The Geluso conclusion that the only explanation for the “strikingly similar”  
22 sound of the two works, is my having copied the song from the Beatport.com website, is  
23 sophomoric in that Geluso refuses to analyze the possibility of the Defendants having  
24 copied, replicated, sampled or manually manipulated a version of my song. He has no  
25 knowledge of whether I downloaded anything from Beatport.com during the August 21,  
26 2009 and September 8, 2009 download phase, of that Remix Contest. (Exhibits 18, 21).

27 103. Nothing that Geluso states in his Declaration establishes a factual basis that  
28 supports the one and only conclusion he suggests. Nowhere does he state that he searched

1 the files of Guetta, Garraud, Riesterer or any of the Black Eyed Peas, to see if there was a  
2 copy of any of my music in their possession. Nor does Geluso state anywhere that he  
3 interviewed each of the Defendants and asked probing questions about their access to the  
4 music of Bryan Pringle. He simply relies upon the constantly changing misleading,  
5 contradictory and false statements of those charged with copyright infringement, that they  
6 never had any of my music in their possession. He then proceeds from that assumption as  
7 if the alleged infringer's statement is dispositive, of all disputed facts on this issue.

8         104. The sound files for the "I Gotta Feeling" Remix Contest containing the  
9 "guitar twang sequence" as posted on Beatport.com, were only available from August 21,  
10 2009, to September 8, 2009. I did not access Beatport.com with any computer during that  
11 period of time. No objective evidence has been presented that I did so. Geluso fails to  
12 identify just how and when I accessed the Beatport.com website, or refer to any  
13 documentation from Beatport.com, containing such proof. Apparently, Geluso believes  
14 that repeating that proposition many times, is tantamount to proving it.

15         105. I was unaware of any potential infringement claim arising against these  
16 Defendants for "I Gotta Feeling", until around February of 2010, at which time it was  
17 impossible for me to have accessed any sample, individual track, or complete version of "I  
18 Gotta Feeling," posted on the Beatport.com website, for the "I Gotta Feeling" Remix  
19 Contest.

20         106. More specifically, I never downloaded any version of I Gotta Feeling from  
21 Beatport.com, purchased a complete version of "I Gotta Feeling" from Beatport.com, or  
22 filled out any "I Gotta Feeling Remix Contest Application" as a condition precedent to  
23 participating in the "I Gotta Feeling" Beatport.com Remix Contest.

24         107. Neither Beatport, the Defendants, nor Geluso, has proffered anything, but an  
25 unsubstantiated theory to support the claim that I downloaded anything from the  
26 Beatport.com website in the way of the sound files, made available for download by the  
27 Defendants, including the isolated guitar twang sequence during the "I Gotta Feeling"  
28 Remix Contest, or otherwise.

1           108. Geluso states that it is his understanding that I accessed Beatport.com to  
2 download “I Gotta Feeling.” He does not identify any factual basis for his understanding,  
3 the timing of such access, the purpose of such access, or anything else as set forth in Dckt.  
4 #162. Geluso concedes that he has no personal knowledge of such conduct. (Geluso Dep.,  
5 pp. 134-137).

6           109. Geluso cannot and does not point to any specific download by me of any  
7 individual tracks from Beatport.com pertaining to “I Gotta Feeling” during the period of  
8 August 21, 2009, to September 8, 2009. He fails to do so, because there is no such  
9 evidence.

10                           **(10) The Beatport.com sound files were only available as an mp3 and**  
11                           **could not be copied by me.**

12           110. Further, the sound files to which Geluso refers were only available as an mp3  
13 (*see*, Exhibit 23 - Beatport Remix Contest details).

14           111. The .NRG file to which Geluso references titled “DISK05.NRG”, contains  
15 the Ensoniq-formatted instrumentation for “Take A Dive” (Dance Version) and has a  
16 creation date of “8-22-99.”

17           112. The original CD-Rom disk that contains the “DISK05.NRG” file was  
18 manufactured on February 24, 1999, by Verbatim (*see*, Exhibit 1 - Gallant Report 4-28-11,  
19 p. 3, Sec. B, and p. 3, Sec. 5.).

20           113. The musical equipment used to create the Ensoniq-formatted instrumentation  
21 and song files for “Take A Dive” (Dance Version) which contains the “guitar twang  
22 sequence” that I created in 1999, is an Ensoniq ASR-10 Keyboard. The Ensoniq ASR-10  
23 Keyboard, pre-dates the popular use of the mp3 in computer-based musical production  
24 software studios and electronic music equipment (*See*, Exhibit 14- ASR-10 Specifications  
25 Brochure, p. 2).

26           114. It is technologically impossible for a standard Ensoniq ASR-10 to recognize  
27 or work with any audio file in an mp3 format. Additionally, it is not possible for me or  
28 anyone else, so far as I am aware, to modify an Ensoniq ASR 10, to be made to work with

1 any audio file in an mp3 format, which is the audio format that the Defendants claim to  
2 have had their isolated guitar twang sequence in and available for download, on  
3 Beatport.com between August 21, 2009, to September 8, 2009. (*See*, Exhibit 24 - Beatport  
4 Isolated Guitar Twang Sequence Mp3, which is the same file, filed with the Court, along  
5 with the Defendants' Motion For Summary Judgment, on November 17, 2011, as the  
6 Audio Exhibit referenced in Exhibit 1 and identified by Geluso as the isolated guitar twang  
7 sound file).

8       115. The "isolated guitar twang sound file mp3" which was supposedly posted on  
9 Beatport.com in 2009, by the Defendants, is actually an encoded audio file with no  
10 associated instrumentation or single notes, but rather is represented to be the audio  
11 mixdown of the midi file, with the associated instrumentation playing simultaneously;  
12 recorded; then encoded into an mp3 audio file format and uploaded to Beatport.com.  
13 Since mp3's are digitally encoded files, versus the normal analog or digital wave files, they  
14 have "fidelity" loss, which is essentially an overall "loss in sound quality", also called  
15 "truthfulness" to the original sound. The tradeoff or advantage of an mp3 versus a wave  
16 file, is that an mp3 is quite a bit smaller than a wave file. Mp3 audio formatted files are  
17 created by utilizing a "lossy audio data compression algorithm which takes advantage of  
18 perceptual limitation of human hearing called audio masking." (*see*, Exhibit 25 - Wave  
19 History).

20       116. The isolated guitar twang sequence mp3 the Defendants posted on  
21 Beatport.com, is approximately 11.2 megabytes as an mp3.

22               **(11) My Demonstrative Effort to duplicate the Geluso theory.**

23       117. To rebut directly Geluso's contention that I somehow used this identical mp3  
24 audio file (as he states in Dkt. No. \_\_, p. 6, line 1), I performed an exercise so that I would  
25 be able to comment directly on his theory. Upon reading Geluso's allegation that I  
26 downloaded and copied the isolated guitar twang sequence mp3 from Beatport.com, I  
27 sought to duplicate his theory. My attempt consisted of the following:  
28

1 (i) As the Ensoniq ASR-10 doesn't recognize or work with mp3's, I  
2 converted the isolated guitar twang sequence mp3 file that was posted  
3 on Beatport.com, and provided to me by the Defendants, to a working  
4 wave file (which the Ensoniq ASR-10 recognizes and can play).

5 (ii) Next, I took the isolated "guitar twang sequence" mp3 Geluso  
6 references as the isolated guitar twang sequence posted by the  
7 Defendants as an mp3 on Beatport.com in 2009, and imported it into a  
8 Cubase SX software-based music studio (in my current Windows XP  
9 Professional-based operating system with an Intel 2.66Ghz processor),  
10 which converted it from the original en-coded mp3 sound file, to a  
11 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 -  
12 Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq  
13 ASR-10 recognizes and operates;

14 (iii) In proceeding as outlined above, I determined that the converted  
15 isolated guitar twang mp3 furnished by Geluso with his Declaration,  
16 when converted to a wave file, was approximately "48.9 megabytes".

17 (iv) However, the Ensoniq ASR-10 only has a maximum amount of  
18 "16 megabytes" of available RAM (Random Access Memory).

19 Consequently, I was unable to the import the converted mp3 into the  
20 Ensoniq ASR-10. (See, Exhibit 27 - ASR-10 Specifications  
21 Brochure).

22 (v) The significance of this exercise in respect to Geluso's theory as  
23 applied to an Ensoniq ASR-10, is that Geluso's opinion and  
24 conclusions are factually incorrect and simply not possible with the  
25 equipment which I used to create "Take A Dive" (Dance Version), in  
26 1999.

27 118. Geluso's opinion that: "The guitar twang chord samples that exist in the clear  
28 in Mr. Pringle's NRG file are essentially identical to the isolated guitar twang stem that the

1 Defendants caused to be posted to Beatport.com.” is a technological impossibility, as it  
2 relates to me. I say this because the Ensoniq ASR-10, which I used to create the “guitar  
3 twang sequence” of “Take A Dive” (Dance Version) doesn’t recognize or work with  
4 mp3’s; and any mp3 from Beatport.com of the isolated guitar twang sequence converted  
5 into a wave file, is too big to sample or import into the Ensoniq ASR-10, because of its  
6 limitation on RAM (Random Access Memory). Thus, it is impossible to have an  
7 “identical” en-coded or converted mp3, used in my song “Take A Dive” (Dance Version),  
8 from Beatport.com.

9       119. Once the mp3 is converted from an en-coded mp3 file, to an un-encoded  
10 wave file, there is significant “idelity” loss, which changes the quality or “truthfulness” of  
11 the actual sound. Significantly, however, Geluso states in his Declaration, that there is no  
12 “fidelity” loss and my samples of the “guitar twang sequence” in “Take A Dive” (Dance  
13 Version), are “essentially identical.” This means that both samples of the “guitar twang  
14 sequence” in “Take A Dive” (Dance Version) and the samples of the Defendants’ “guitar  
15 twang sequence”, would have to have come from the same “identical” source for his  
16 statement to be correct. Given the impossibility of my having used an Ensoniq ASR-10 to  
17 record and produce a song containing the same “essentially identical guitar twang  
18 sequence” of “I Gotta Feeling,” Geluso’s conclusion is direct evidence which supports my  
19 contention that the Defendants used versions of the instrumentation and samples of “Take  
20 A Dive” (Dance Version), which I provided to them around the early 2000’s, in order to  
21 create “I Gotta Feeling”, in 2009.

22       120. I am not now and was not so, technologically equipped in 1999, to be able to  
23 import the Beatport.com isolated guitar twang sequence mp3 samples into the Ensoniq  
24 ASR-10, without “fidelity” loss.” There is no “fidelity loss” to the “guitar twang  
25 sequence” which appears in my song “Take A Dive” (Dance Version). Thus, I did not  
26 copy the isolated “guitar twang sequence” mp3 from Beatport.com.

27  
28



1                   **(12) My song does not contain four low notes which are found on “I**  
2                   **Gotta Feeling.”**

3           121. Geluso recognizes that the four lowest notes that appear on bars 153, 155  
4 157 and 159 of “I Gotta Feeling” are muted on the “guitar twang sequence”, thereby  
5 leaving a sequence consisting of three 2-note guitar chords. While these lowest notes  
6 appear in “I Gotta Feeling” as a variation to the basic guitar twang sequence, these same  
7 low notes do not appear in “Take A Dive” (Dance Version).

8           122. These “extra notes” in the “I Gotta Feeling” “guitar twang sequence”, which  
9 my “guitar twang sequence” on the “DISK05.NRG” does not have, is factually significant.  
10 The absence of these “extra notes” is direct evidence that I did not copy the Defendants’  
11 song as Geluso would have us believe.

12           123. Since December of 2010, the “DISK05.NRG file”, which contains “Take A  
13 Dive” (Dance Version), has been in the possession of my hired forensic expert, Gallant.  
14 Gallant has determined that the “DISK05.NRG” has a creation date of not later than  
15 August of 1999. Gallant has also been able to determine that in addition to  
16 “DISK05.NRG” having a creation date in August of 1999, that the actual CD-Rom disk  
17 that contains the “DISK05.NRG”, was also manufactured in February of 1999. Other than  
18 rank speculation, the Defendants cannot and have not been able to dispute these facts. (*See*,  
19 Exhibit 1 – Gallant Report, p. 3).

20           124. Given the absence of these 4 lower notes, I couldn’t have sampled the  
21 Defendants’ “guitar twang sequence” directly, because it is technologically impossible for  
22 me to remove “extra notes” that were allegedly fused together in the “guitar twang  
23 sequence” of “I Gotta Feeling,” in 2009.

24           125. Just as it would have been impossible for the Defendants to sample my guitar  
25 twang sequence out of the full sound recording of “Take A Dive” (Dance Version) with all  
26 the instrumentation playing; I, too, cannot just simply remove extra notes from their  
27 “guitar twang sequence” and import the manipulated version into my “guitar twang  
28 sequence” of “Take A Dive” (Dance Version). Given the technological impossibility

1 stated above, a substantial question of fact exists as to whether or not, it was even possible  
2 for me to use the “guitar twang sequence” from even the isolated individual guitar twang  
3 mp3 track of “I Gotta Feeling,” available at Beatport.com, because the “extra notes” would  
4 still be present, a fact which is conceded by Geluso.

5 126. Moreover, as my song does not contain “extra notes” found in the  
6 Defendants’ “guitar twang sequence” of “I Gotta Feeling,” a question of fact remains as to  
7 whether I copied anything from the Defendants when I wrote “Take A Dive” (Dance  
8 Version) in 1999, without those “extra notes”.

9 **(13) “I Gotta Feeling” has extra layering which “Take A Dive” (Dance**  
10 **Version) does not.**

11 127. The statement by Geluso that “... in a number of instances in “I Gotta  
12 Feeling” (particularly at 0:31-0:33) the guitar twang sequence appears with no other sound  
13 elements (often referred to as ‘artifacts’ or ‘ghosts’) which one would expect to find if the  
14 guitar twang sequence had been sampled from ‘Take A Dive’ (Dance Version)” is  
15 misleading.

16 128. The reference to ghosts or artifacts suggests that “I Gotta Feeling,” has an  
17 additional “layering” of instrumentation that my “guitar twang sequence” does not have.  
18 The Defendants call this “extra layering” the “Guitar Brut (Cycle)” (*see*, Exhibit 28 -  
19 Guitar Brut (Cycle), which was turned over on November 17, 2011, by the Defendants  
20 along with their Motion For Summary Judgment, as an Audio Exhibit, titled “I Gotta  
21 Feeling - Guitar Brut (Cycle) - Original Part.mp3.”

22 129. Given the nature and extent of the equipment available to me at the time the  
23 Beatport.com Remix Contest was open to the public, it was technologically impossible to  
24 have been able to remove a fused “extra layer” of instrumentation from my “guitar twang  
25 sequence”. Had I sampled from “I Gotta Feeling,” or used the posted Beatport.com  
26 downloadable isolated guitar twang sequence, these ghosts or artifacts would have been  
27 present in my “guitar twang sequence”, but are not.

28

1           130. As “Take A Dive” (Dance Version) does not have either the “extra notes”  
2 which appear in the “I Gotta Feeling’s” “guitar twang sequence”, or the “extra Guitar Brut  
3 (Cycle) layer”, a fair conclusion that can be drawn from this evidence is that the  
4 Defendants copied, replicated, or sampled a version of my song “Take A Dive” (Dance  
5 Version), which was provided to them along with the actual instrumentation for the “guitar  
6 twang sequence”, long before any work on “I Gotta Feeling” commenced.

7           131. My “guitar twang sequence” has been forensically determined to have been  
8 created on or before September 1999. It has also been determined to have been recorded  
9 on a CD-Rom disk manufactured in 1999, by Verbatim. The original non-derivative  
10 version of “Take A Dive” was registered and a copy of the sound recording on file with the  
11 Copyright Office, since 1998 (*see*, Exhibit M - 1998 Copyright Registration).

12           132. Additional support for my independent creation of “Take A Dive” (Dance  
13 Version) appears from the fact that it would have been impossible for me to change the  
14 “guitar twang sequence” made in 1999, to fit a song which hasn’t been changed since  
15 1998, except for the addition of the “guitar twang sequence” and the slight changing of the  
16 placement of the bass drum, in the last two-thirds of the song.

17           133. The “guitar twang sequence” of notes was originally created for, and is based  
18 upon, the vocal notes of another song I composed titled “Faith,” which was registered and  
19 a copy of the sound recording on file with the Copyright Office, since 1998 (*see*,  
20 Exhibit 29 - “Faith” 1998).

21           134. Further, the “guitar twang sequence” instrumentation in “Take A Dive”  
22 (Dance Version), was inspired by, and layered with, instrumentation from a song titled  
23 “Cruellest Joke,” which was registered and a copy of the sound recording on file with the  
24 Copyright Office, since 1998 (*see*, Exhibit 30 – “Cruellest Joke” 1998).

25           135. I have included an original copy of “Faith” with the “guitar twang sequence”  
26 (*see*, Exhibit 31 - Faith With Guitar Twang). This is simply a re-creation of what “Faith”  
27 originally sounded like with the original “guitar twang sequence”, when I first created it  
28

1 around 1996-1999; before I decided to place the “guitar twang sequence” into “Take A  
2 Dive” (Dance Version).

3 136. “Take A Dive” (Dance Version) is a derivative of the 1998 version of “Take  
4 A Dive,” which was one of the tracks on the Registered CD titled “Dead Beat Club.”

5 137. Further, the Defendants’ own computer forensics expert, Erik Laykin, cannot  
6 and has not, refuted the evidence I provided, that shows that I created “Take A Dive”  
7 (Dance Version) with the “guitar twang sequence”, back in 1999. In fact, he concedes at  
8 his Deposition, that there is evidence of an earlier creation of my song “Take A Dive”  
9 (Dance Version). (*See* Deposition of Erik Laykin, Exhibit E to Dickie Decl. (“Laykin  
10 Dep.”)).

11 138. On page 6, line 6, Section 14 of Dckt. #162, Geluso sets forth a musical  
12 notation of a particular section of “David Pop Guitar” midi file version of the “guitar  
13 twang sequence”. As discussed earlier, this musical notation shows that there is an “extra  
14 note” on the lowest notes of bars 153, 155, 157, and 159 of “I Gotta Feeling’s” “guitar  
15 twang sequence”.

16 139. These “extra notes” and “extra layer” of the “Guitar Brut (Cycle)” do not  
17 significantly change the musical sound or timbre of the “guitar twang sequence” in “I  
18 Gotta Feeling” at all. From these facts, there would appear to be no other reasonable  
19 explanation as why these “extra notes and “extra Guitar Brut (Cycle) layer” were added  
20 over the top of the “guitar twang sequence” in “I Gotta Feeling.” Certainly a fair question  
21 exists as to why Riesterer would have added “extra notes and an “extra Guitar Brut (Cycle)  
22 layer” of instrumentation, which provides nothing to the timbre of the sound of the “guitar  
23 twang sequence” itself. It is an equally fair conclusion that those “extra notes” and “extra  
24 layer” were added in an attempt to disguise the “guitar twang sequence” samples that were  
25 underneath these “extra notes” and “extra layer” of instrumentation.

26 140. It would certainly appear that the “extra Guitar Brut (Cycle) layer” over top  
27 of my “guitar twang sequence” samples represents a willful and intentional action on the  
28 part of Riesterer to try and hide the true fidelity and timbre of the “guitar twang sequence”,

1 in an attempt to avoid any copyright infringement legal claims, that could be brought by  
2 me.

3 141. Geluso engages in rank, unprofessional speculation when he boldly  
4 proclaims that it is “technologically impossible for the creators of ‘I Gotta Feeling’ to have  
5 sampled the ‘guitar twang sequence’ from ‘Take A Dive’ (Dance Version) as Pringle  
6 claims.”

7 142. I do not contend, nor have I ever contended, that the Defendants sampled the  
8 “guitar twang sequence” for “I Gotta Feeling” directly out of the fully played version of  
9 “Take A Dive” (Dance Version) presented to the Court. Rather my claim, is that the  
10 Defendants had access to my music and manipulated the samples to which they had access,  
11 to achieve the “guitar twang sequence” that is heard in the finished version of “I Gotta  
12 Feeling.”

13 143. I had many derivative versions of “Take A Dive” which contained the  
14 “guitar twang sequence” soloed out in the song, and provided samples of the same directly  
15 to. Guetta and Garraud, at least as far back as 1999 to 2003.

16 144. The crucial difference between my song and the Defendants’ “I Gotta  
17 Feeling,” lies in the fact that “Take A Dive” (Dance Version) does not contain “extra  
18 notes” and an “extra layer” in my “guitar twang sequence”. Had I sampled the  
19 Defendants’ musical work or used the isolated guitar twang sequence that they posted at  
20 Beatport.com, then those “extra notes” and “extra layer” would appear in “Take A Dive”  
21 (Dance Version), which it doesn’t. As previously discussed, it was technologically  
22 impossible for me to remove a single fused “extra layer” of instrumentation. Therefore,  
23 the “guitar twang sequence” which is heard in “Take A Dive” (Dance Version) simply  
24 could not have been created by me by downloading a version of “I Gotta Feeling’s” “guitar  
25 twang sequence” from Beatport.com, as Geluso speculates and opines in support of the  
26 Defendants’ Motion for Summary Judgment.

27 145. Given the “striking similarity” of the two works, I understand that the law  
28 presumes access. Thus, it is not a quantum leap for anyone to conclude that this “guitar

1 twang sequence” was shared with and utilized by the Defendants in the creation of “I Gotta  
2 Feeling.” Certainly, the credibility of the various songwriters is at issue and the issue of  
3 whose version came first can only be resolved through the presentation of evidence and  
4 cross examination at trial.

5 **(14) Inspiration for “Take A Dive.”**

6 146. “Take A Dive” was inspired by and created in part, with instrumentation  
7 from “Cruellest Joke,” another song created by me and registered with the Copyright Office  
8 in 1998; “Take A Dive” (Dance Version) was also inspired by, the vocal notes from  
9 “Faith,” which was registered with the Copyright Office in 1998. Thus, there are a number  
10 of pre-1999 songs I wrote, which form the basis of the music which is heard in “Take A  
11 Dive” (Dance Version).

12 **(15) Theft of my original equipment and music files.**

13 147. Unlike Riesterer, who gave his computer with the original composition to a  
14 friend whose name he does not know, because he has a lot of friends, at a time he cannot  
15 remember, and refuses to turn over his backed-up original files from that computer; the  
16 only reason that I do not still presently possess the individual layers that comprise my  
17 “guitar twang sequence” of “Take A Dive” (Dance Version), is because all of my musical  
18 equipment was stolen in the year 2000. (*see*, Exhibit 32 - Theft - Police Report)

19 148. In the year 2000, my storage locker, which contained the hard drive that had  
20 the individual sample layers of my “guitar twang sequence” from the original derivative  
21 version of “Take A Dive,” was broken into and all of my musical equipment, including my  
22 Ensoniq ASR-10 Keyboard, which is the instrument that I used to create the “guitar twang  
23 sequence”, was stolen and never recovered. This fact is uncontroverted.

24 149. As the break-in took place almost 10 years before the allegedly infringing “I  
25 Gotta Feeling” song was written, it cannot be argued that the disappearance of those  
26 musical files and equipment had anything to do with the claims being asserted by me, here.

27  
28

1                   **(16) Geluso is incorrect as to what makes up my song and the**  
2                   **capabilities of the Ensoniq ASR-10.**

3           150. Geluso states that he understands that Pringle claims to have used an ASR-10  
4 sampling keyboard workstation in creating “Take A Dive” (Dance Version) and that the  
5 “guitar twang sequence” in Pringle’s NRG file is made up of three separate sound  
6 recordings (or ‘wave samples’), one for each chord, and stored instructions to play back  
7 the chords in a sequence.

8           151. Geluso is wrong as demonstrated by the following: The “guitar twang  
9 sequence” wave samples of “Take A Dive” (Dance Version) are located in 2 separate  
10 layers on 3 separate piano keys, with 2 wave samples for each chord. That means that  
11 there are a total of 6 wave samples, not three as Geluso states.

12           152. These 6 wave samples that comprise the “guitar twang sequence” chords  
13 used in “Take A Dive” (Dance Version), are located within the instrument labeled as the  
14 “Delay SMPL,” which is indexed as “FILE 6” in Directory 7 (“Dir 7”), located on “Track  
15 6,” when “Take A Dive” (Dance Version) is played back in its entirety.

16           153. Geluso’s opinion that the guitar ‘twang’ sequence in Pringle’s NRG file are  
17 three separate recordings is rank speculation, as he sets forth no facts which address the  
18 manner in which I recorded the “guitar twang sequence”. Absent such facts, any  
19 suggestion as to how I composed “Take A Dive” (Dance Version), is a meaningless  
20 exercise in futility.

21           154. I have never spoken with Geluso, nor was he present when I created the  
22 “guitar twang sequence” used in “Take A Dive” (Dance Version). Therefore, it is  
23 impossible for him to have concluded that I made three separate recordings, back in 1999.  
24 I may have recorded the “guitar twang sequence” in one recording through effects and then  
25 copied the entire identical wavesample to three separate piano keys; then dissected them,  
26 by cutting and truncating them, into only one chord per piano key.

27           155. Geluso misleads again when he suggests that there are simply stored  
28 instructions to playback the chords in the “guitar twang sequence” and that somehow I

1 only have haphazardly written instructions to playback the “guitar twang sequence” of  
2 “Take A Dive” (Dance Version), located on the “DISK05.NRG” file. That contention is  
3 untrue.

4 156. The DISK05.NRG file is an Ensoniq-based proprietary disk. As such, it can  
5 only be recognized by Ensoniq-based musical equipment, e.g., the Ensoniq ASR-10  
6 Keyboard. The “DISK05.NRG” disk is well-organized and divided into 10 different  
7 “Song Directories” (labeled and abbreviated as “Dir 1,” “Dir 2,” etc.). Each Song  
8 Directory contains only one song with the associated instrument and sound effects setting  
9 files for that song. Each file on the disk, and in the “Song Directory”, is assigned an  
10 indexing “FILE” number (i.e. “FILE 6 - Delay SMPL”).

11 157. The Song Directories labeled “Dir 1”, “Dir 5”, “Dir 7”, “Dir 8”, “Dir 9” and  
12 “Dir 10”, contain the complete song file and associated instrument and sound effects  
13 setting files (with associated instrumental wave samples) to playback and construct one  
14 song. “Dir 1” has all of the associated song files to playback and construct my song  
15 “1952.” “Dir 5” has all of the associated song files to playback and construct my song  
16 “Until the End of Time.” “Dir 7” has all the associated song files to playback and  
17 construct my song “Take A Dive” (Dance Version). “Dir 8” has all the associated song  
18 files to playback and construct my song “Broken Wing.” “Dir 9” has all the associated  
19 song files to playback and construct my song “7 Seconds To Heartbreak.” “Dir 10” has all  
20 the associated song files to playback and construct my song “Too Young To Drown.” The  
21 Song Directories labeled “Dir 2”, “Dir 3”, “Dir 4” and “Dir 6”, are empty as I ran out of  
22 hard drive space before I was able to fill these Song Directories with any song, instrument  
23 or sound effects setting files. This was typically the case, because of the very limited  
24 storage capacity of the hard drives available in the late 1990’s.

25 158. Geluso states that he understands that Pringle claims to have used an ASR-10  
26 sampling keyboard workstation in creating “Take A Dive” (Dance Version)”. He provides  
27 no factual basis, as to why he is in a position to state, what instrument or device I allegedly  
28 claim to have used to create “Take A Dive” (Dance Version). Also, I don’t claim to have



1 created “Take A Dive” (Dance Version) with an Ensoniq ASR-10; I did create it with an  
2 Ensoniq ASR-10. It is undisputed that I used an Ensoniq ASR-10 Keyboard to create  
3 “Take A Dive” (Dance Version). I did so with all of the song files and associated  
4 instrumentation and sound effects setting files, which are located on the “DISK05.NRG”  
5 file, in the “Song Directory” labeled “Dir 7.”

6 159. To hear “Take A Dive” (Dance Version) in its entirety, all one has to do is  
7 load up the song file, located in “Dir 7” on the “DISK05.NRG”; load up the instrument  
8 files, located in “Dir 7” on the “DISK05.NRG”; and load up the correct sound effects bank  
9 on the ASR-10 Keyboard; and push “play.” The entire “Take A Dive” (Dance Version)  
10 song will then play; and it will sound identical to what the deposit copy of “Take A Dive”  
11 (Dance Version) that is on file and registered with the Copyright Office, sounds like. If  
12 loaded properly, the Ensoniq ASR 10 will play “Take A Dive” (Dance Version) identically  
13 every time.

14 (17) **The “DISK05.NRG” file contains all of the parts to play the**  
15 **original “stereo-mixed sound recording” of “Take A Dive” (Dance**  
16 **Version).**

17 160. Geluso opines that “The NRG file does not contain a stereo-mixed sound  
18 recording,” but rather is made up of separate wave samples of instrumental parts. He is  
19 again in error.

20 161. In 1999, I created the song “Take a Dive” (Dance Version) on an Ensoniq  
21 ASR-10 keyboard and backed up his creation file onto an .NRG image file titled  
22 “DISK05.NRG”. The Ensoniq ASR-10 keyboard, which stands for “Advanced Sampling  
23 Recorder,” is a complete digital music production studio that allows the user to upload  
24 instruments, sounds, and other audio samples from external third-party sources into the  
25 keyboard. These instruments/sounds can then be sequenced and arranged by the user to  
26 create and record songs. These songs, and all the component parts that make up the songs  
27 (i.e. the instruments, the recorded sequences, etc.) can then be saved to disks via an  
28 external disk drive that is attached directly to the Ensoniq ASR-10 keyboard.

1           162. Directions for isolating and playing the “guitar twang sequence” by itself, on  
2 the Ensoniq ASR-10 keyboard, are straight forward and not complicated. See attached  
3 instructions provided to Defendants on August 8, 2011, Exhibit 47 hereto.

4           163. When the “Song Directory” labeled “Dir 7” is accessed on the  
5 “DISK05.NRG” file and burned to a CD-Rom Disk, all that is needed to hear this stereo-  
6 mixed sound recording is to load up the song file, located in “Dir 7” on the  
7 “DISK05.NRG”; load up the instrument files, located in “Dir 7” on the “DISK05.NRG”;  
8 and load up the correct stock sound effects bank on the Ensoniq ASR-10; and push “play.”

9           164. The entire “Take A Dive” (Dance Version) song will then play; and it will  
10 sound identical to what the deposit copy of “Take A Dive” (Dance Version) that is on file  
11 and registered with the Copyright Office sounds like.

12           165. The audio outputs of the Ensoniq ASR-10 will play the identical sound  
13 recording every time these song files are loaded properly. Geluso is incorrect when he  
14 states that the “DISK05.NRG” file does not contain a “stereo-mixed sound recording”, for  
15 at least three possible reasons: (1) he doesn’t know how to properly load the “Take A  
16 Dive” (Dance Version) into the Ensoniq ASR-10; (2) he doesn’t know how the Ensoniq  
17 ASR-10 operates, in general; or (3) he intentionally avoided gaining a working knowledge  
18 of and instructions for, the use and operation of an Ensoniq ASR-10 instrument, in order to  
19 not be in a position to re-create the “stereo-mixed sound recording” of “Take A Dive”  
20 (Dance Version).

21           166. The Ensoniq ASR-10 is a device that plays the original “sound recording”  
22 for “Take A Dive” (Dance Version). The original “sound recording” was actually  
23 recorded onto the hard disk which is the “DISK05.NRG” file, but in a technologically-  
24 advanced non-traditional way, via a computer hard disk.

25  
26  
27  
28

1                   **(18) How the Ensoniq ASR 10 works is similar to other historical**  
2                   **sound recording and playing devices.**

3           167. The Ensoniq ASR-10 can be likened to the “reel-to-reel tape recorder”  
4 machine that was invented in the 1940’s (*see*, Exhibit 33 - Reel-To-Reel Tape Recorder  
5 History).

6           168. The reel-to-reel tape recorder machine records the actual “sound recording”  
7 and imprints it onto a magnetic tape that is spun around a circular metal or sometimes  
8 plastic reel (referred to as a “tape reel”). After recording the sound recording onto this  
9 tape reel, the tape reel contains the magnetic imprint of the sound recording. These sound  
10 recording tape reels can then be placed into storage. When taken out of storage, one  
11 cannot simply hear the sound recording on the tape reel, unless one has a reel-to-reel tape  
12 recorder machine that can play back the tape reel. Once the tape reel is properly re-loaded  
13 onto the reel-to-reel tape recorder machine, the tape reel containing the sound recording  
14 can be heard, but only after pressing “play” on the reel-to-reel tape recorder machine.

15           169. The same concept applies with the Ensoniq ASR-10 when trying to play the  
16 “sound recording” created on that equipment. To play the original “sound recording” for  
17 “Take A Dive” (Dance Version), on the Ensoniq ASR-10, one simply re-loads all the  
18 “Take A Dive” (Dance Version) saved files from the “DISK05.NRG”, into the Ensoniq  
19 ASR-10 and pushes the “play” button, just as one did when seeking to hear the “sound  
20 recording” saved onto the magnetic tape reel of a reel-to-reel tape recorder machine.

21           170. The sound recording of “Take A Dive” (Dance Version) was saved as files  
22 on a magnetic hard disk, instead of being saved as imprints on a magnetic tape reel. The  
23 magnetic hard disk contains all the saved files (the instruments, the individual samples,  
24 and the midi song file) needed to play back the original “sound recording” of the song.  
25 When all of these files that are saved on the magnetic hard disk or .NRG file are properly  
26 re-loaded into the Ensoniq ASR-10, from the .NRG file, the song will play the identical  
27 original “sound recording” through the audio outputs of the Ensoniq ASR-10 every time,  
28

1 just like the reel-to-reel tape recorder machine plays the original sound recording that was  
2 saved as a magnetic imprint onto the tape reel.

3 171. The “DISK05.NRG” is a “sound recording”. By suggesting that there is no  
4 “stereo-mixed sound recording” for “Take A Dive” (Dance Version), Geluso simply lacks  
5 the requisite working knowledge of how to load the song with all of the instrument tracks  
6 into an Ensoniq ASR-10, and then cause the device to play the original “sound recording”.

7 172. Geluso demonstrates his lack of knowledge regarding the use and operation  
8 of an Ensoniq ASR-10, by stating that creating a stereo-mixed sound recording from the  
9 instrumental parts contained in the .NRG file is not a simple one step process. He  
10 compounds his lack of knowledge when he states:

11 **“In order to hear a stereo-mix, such as the sound file on the**  
12 **deposit copy of ‘Take A Dive’ (Dance Version) submitted to the**  
13 **Copyright Office, it is necessary to manually load each of these**  
14 **instrument files from the .NRG into a specific ‘track’ slot, in the**  
15 **ASR-10 and then replay them together using the ASR-10.**

16 **This process requires at least 20 steps and requires working**  
17 **knowledge of the ASR10 and instructions specific to ‘Take A**  
18 **Dive’ (Dance Version) to put it back together. Moreover, without**  
19 **access to the original mixed version of ‘Take A Dive’ (Dance**  
20 **Version) or to instructions as to which specific instrument file is**  
21 **assigned to which specific track slot in the ASR10, there is no**  
22 **guarantee that the process of re-loading the NRG files into the**  
23 **ASR10 will yield a sound recording that was identical to the**  
24 **original.”**

25 173. Not only does the “DISK05.NRG” file contain the original stereo-mixed  
26 version of “Take A Dive” (Dance Version), but the Defendants were also provided with  
27 the instructions as to which specific instrument file is assigned to which specific track in  
28

1 the Ensoniq ASR-10. (*See*, Exhibit 34, Plaintiff's Answer to Headphone Junkie  
2 Interrogatory No. 17).

3 174. Additionally, I brought my Ensoniq ASR-10 to Gallant's office, in San  
4 Antonio, Texas, on August 8, 2011, and an attached SCSI compatible CD-Rom player, for  
5 the sole purpose of demonstrating to the Defendants' hired computer expert, Danny Aga,  
6 "Take A Dive" (Dance Version), as played through the Ensoniq ASR-10. At that same  
7 time, I also made available, the "DISK05.NRG" original disk, manufactured and burned in  
8 1999, which has been in my hired computer expert Gallant's possession, since December  
9 of 2010.

10 175. On August 8, 2011, in front of the Defendants' hired computer expert,  
11 Danny Aga, I loaded into the Ensoniq ASR-10, from the attached SCSI compatible CD-  
12 Rom player, all the "Take A Dive" (Dance Version) song files located in "Dir 7" on the  
13 "DISK05.NRG" CD-Rom. That material was given to Mr. Aga, along with a copy of a  
14 document that I created, which listed the specific instrument file track locations and  
15 settings to load up all the files to play back the original sound recording of "Take A Dive"  
16 (Dance Version) on the Ensoniq ASR-10 (*see*, Exhibit 35 - Disk 05 Contents Menu).

17 176. Mr. Aga, then video-taped the Ensoniq ASR-10 I had brought to Gallant's  
18 office, playing "Take A Dive" (Dance Version), in its entirety. I also had delivered to  
19 Mr. Aga, at that same time, through chain-of-custody forms, via a CD-Rom copy of all the  
20 backed-up files that I had saved from my 2011 corrupted computer hard drive, labeled  
21 "Backup Disk 2011" (*see*, Exhibit 36 - HD Chain Of Custody Form); a forensic copy of  
22 the "DISK05.NRG" file, which was located on a CD-Rom disk, labeled as "Ensoniq Disk  
23 2"; and a CD-Rom Disk labeled "Promo Photos/1999 Ensoniq NRG Files" (*see*, Exhibit 37  
24 - NRG CD-ROMs - Custody Form).

25 177. Obviously, if he could not get the song to play, Geluso did not properly load  
26 up and play the entire "Take A Dive" (Dance Version) song files on the Ensoniq ASR-10.  
27 If he was unable to hear the song, it was not because there was any impediment in the  
28 recording, but rather because he lacked sufficient experience with and understanding of the

1 device, to make it work or he simply chose not to be able to make it work, so that he could  
2 render an opinion that it was difficult or impossible to generate any sound recording from  
3 the “DISK05.NRG” file, through an Ensoniq ASR-10 device.

4 178. Consequently, Geluso did not investigate or analyze the entirety of the  
5 materials I created in 1999, with the Ensoniq ASR-10, thoroughly. He also did not  
6 apparently investigate and validate whether I saved all of the files needed to re-construct  
7 and play back the entirety of “Take A Dive” (Dance Version) from the “DISK05.NRG” on  
8 the Ensoniq ASR-10; and he didn’t investigate and validate whether, the “Take A Dive”  
9 (Dance Version) song files (including the “guitar twang sequence”) could have been  
10 created in the year 1999.

11 **B. OTHER CONTRADICTORY STATEMENTS SUBMITTED WITH THE**  
12 **DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

13 179. Riesterer’s statement that he created the “guitar twang sequence” and wrote  
14 the music for “I Gotta Feeling,” is disputed by Defendant Adams.

15 180. Adams has represented that he wrote the music to “I Gotta Feeling,” both to  
16 *Rolling Stone Magazine* and in the liner notes for “I Gotta Feeling,” on *The E.N.D.* album.  
17 (See, Exhibits 38 and 39.)

18 181. On *The E.N.D.* album, in the “I Gotta Feeling” liner notes (Exhibit 39 – “I  
19 Gotta Feeling” Liner Notes), is written “Synths: Will.i.am.” This songwriting credit  
20 notation is a representation to the public that Adams, not Riesterer, is credited with writing  
21 any synthesized parts for “I Gotta Feeling,” on *The E.N.D.* album (which would include  
22 the “guitar twang sequence”, since it was synthesized into a computer-based software  
23 program that can be played electronically on a midi keyboard).

24 182. It is also my understanding that Adams receives the largest share of the  
25 songwriting credits, not Riesterer, which indicates that it was Adams, not Riesterer, who  
26 composed the “guitar twang sequence” of “I Gotta Feeling.” If Adams receives the lion’s  
27 share of the songwriting credit, and Riesterer substantially less, then such differences  
28 would serve to confirm that Adams created the synthesizer portions of “I Gotta Feeling.”

1           183. In *Rolling Stone Magazine's* April 29, 2010 "Issue 1103," Adams states that  
2 nobody asked him to write "I Gotta Feeling" - it just came to him. (*See*, Exhibit 38 -  
3 *Rolling Stone/Adams* Interview, p. 56)

4           184. Given Adams' lack of real musical training or knowledge of musical  
5 instruments and his demonstrated history of sampling others' intellectual property with and  
6 without their permission, the notion that "I Gotta Feeling," just came to him, is not  
7 credible. (Deposition of William Adams, Exhibit D to Dickie Decl. ("Adams Dep.).

8           185. Adams claims to have written the synths for "I Gotta Feeling." (*See*,  
9 Exhibit 39, the liner notes for "I Gotta Feeling" on *The E.N.D.* album). Yet he has no idea  
10 as to what Guetta contributed to "I Gotta Feeling."

11                   **Q. What did David Guetta do?**

12                   **A. I don't know.**

13                   **Q. So as of right now, you don't know if David Guetta wrote a**  
14 **beat for 'I Gotta Feeling'?**

15                   **A. I have no idea.**

16                   **Q. You have no idea whether Fred Riesterer wrote a beat for**  
17 **'I Gotta Feeling'?**

18                   **A. I have no idea.**

19                   **Q. Did you write a beat?**

20                   **A. Nope, sure didn't.**

21                   **Q. Did you have anything to do with the music?**

22                   **A. I had nothing to do with the music, just the lyrical portion.**

23                   **Q. Just the lyrical portion?**

24                   **A. Just the lyrical portion, that's it.**

25                   **Q. Okay, can you tell me why David Guetta received royalties**  
26 **for I Gotta Feeling, if you don't know what his relationship**  
27 **to the song is?**

28                   **A. Because he presented that as something he composed.**

1 (Adams Dep., p. 75). If Adams is receiving the major songwriting credit and  
2 commensurate royalty payments reflecting his contribution for writing the “Synths,” but  
3 has no idea as to who wrote “I Gotta Feeling,” or what the contributions of the other  
4 alleged writers to that composition were, then a material question of fact exists, as to who  
5 wrote what.

6 186. Adams is unable to state who composed the “guitar twang sequence” and has  
7 no idea who made the actual music for “I Gotta Feeling.” Certainly Adams cannot offer  
8 any evidence as to who or when the “guitar twang sequence”, which is found in “I Gotta  
9 Feeling,” was composed, as his contribution to the song according to him, is limited to  
10 writing the lyrics to tracks which were sent to him by Guetta. (*See*, Adams Dep., p. 74, line  
11 11).

12 187. During an interview at the 52<sup>nd</sup> Grammy Awards, in Los Angeles, California  
13 (*see*, Exhibit 40 - David Guetta Rhapsody 52<sup>nd</sup> Grammy Interview), Guetta states: **“So my**  
14 **first experience being with Will, he selected that track and I went to uhm - uhm,**  
15 **finish it with him in - in Los Angeles. In - huge studio, you know. The Peas were there**  
16 **and everybody was there in the studio, cause what we were doing was sounding so**  
17 **different, that all the other artists that were working in the other studios, just came**  
18 **checking it out.”**

19 188. This statement contradicts the July 25, 2011, sworn statement of Adams,  
20 who didn’t know Guetta’s contribution to “I Gotta Feeling” and hadn’t participated in any  
21 of the music production of “I Gotta Feeling.” (*See*, Adams Dep.)

22 189. Likewise, Guetta refuses to disclose the specific email addresses he used and  
23 has redacted the email addresses from the alleged email evidence he provided, which show  
24 email communications between himself, Riesterer and Adams regarding the exchange of  
25 music files.

26 190. Guetta knows that these specific email addresses are needed to validate the  
27 alleged email communications between Guetta, Riesterer and Adams (*see*, Exhibit 44 -  
28 Guetta Redacted Email Addresses). Without these email addresses, one cannot validate



1 whether these email communications even occurred, let alone establish the substance of  
2 the communications which occurred between these individuals over time.

3 191. In the Guetta interview referenced above, he states that the “Peas were there”  
4 in the studio, in Los Angeles.

5 192. Jaime Gomez (“Gomez”), another Black Eyed Peas member, corroborates  
6 the Guetta statement that Adams was in the studio in Los Angeles, working on the “I Gotta  
7 Feeling” tracks. *See*, Deposition of Jaime Gomez, Exhibit G to Dickie Decl. (“Gomez  
8 Dep.), p. 176, lines 1-24:

9 **Q. Do you know David Guetta?**

10 **Q. Do you know him?**

11 **A. Yes.**

12 **Q. And when did you first meet him?**

13 **A. I don’t know the exact date.**

14 **Q. Where did you meet him?**

15 **A. The studio.**

16 **Q. What studio?**

17 **A. Record Planet.**

18 **Q. And where is that located?**

19 **A. In Hollywood.**

20 **Q. In what year did you meet him?**

21 **A. Don’t remember.**

22 **Q. Did you meet him before or after the album which is**  
23 **identified on Exhibit 5 – before the masters were**  
24 **completed?**

25 **A. Before.**

26 **Q. Who else was present when you met David Guetta and the**  
27 **masters had yet to be completed?**

28 **A. William Adams.**

1           193. Allan Pineda (“Pineda”) also contradicts Guetta when he testified that he had  
2 no idea as to what Guetta did because he was not present when he produced it (“I Gotta  
3 Feeling”) (*see*, Deposition of Allan Pineda, Exhibit H to Dickie Decl. (“Pineda Dep.”),  
4 p. 145). Pineda testified on July 25, 2011, starting on page 145, line 14, as follows:

5                           **Q. And can you tell me what David Guetta did to produce ‘I**  
6                           **Gotta Feeling’?**

7                           **A. No, I don’t know. I wasn’t present when he produced it.**

8           194. Pineda was in fact present, at least at some point in the production of “I  
9 Gotta Feeling,” according to Guetta.

10           195. Gomez also contradicts Adams’ testimony that Guetta finished the final  
11 production of the musical tracks for “I Gotta Feeling” at Square Production Studios in  
12 Paris, France (with only Guetta and Riesterer being present).

13           196. Actually, Gomez also confirms that the accused song and the album were not  
14 completed in France, as suggested by Adams:

15                           **Q. Sure. Were the master tracks completed at the London**  
16                           **studio?**

17                           **A. No.**

18                           **Q. Were they completed at the Paris, France studio?**

19                           **A. No.**

20           197. Accordingly there are serious questions of fact, as to where and when the  
21 master tracks to “I Gotta Feeling” were finished and who participated in that process.

22           198. Gomez acknowledges that the master tracks for “I Gotta Feeling” were not  
23 finished in Paris, France, and that at least Adams, himself and Guetta, were all present at  
24 the “Record Planet” studio, in Los Angeles, working on the musical tracks for “I Gotta  
25 Feeling.” (Gomez Dep.)

26           199. This fact is corroborated by Guetta, in his January 31, 2010, interview at the  
27 52<sup>nd</sup> Grammy Awards, in Los Angeles, in which he stated that: “The Peas were there and  
28 everybody was there in the studio.” (Exhibit 40).

1           200. The “I Gotta Feeling” liner notes specifically state that “I Gotta Feeling” was  
2 “Recorded at Square Prod in Paris, France and Metropolis Studios in London, England.”  
3 (Exhibit 39).

4           201. Gomez and Stacy Ferguson (“Ferguson”) both state they were present in the  
5 recording sessions at Metropolis Studios in London, England. Gomez stated in his  
6 Deposition, on page 183, starting on line 5:

7                           **Q. Did you work on the tracks in ‘*The E.N.D.*’ album at the**  
8                           **English Studio?**

9                           **A. Yes.**

10 Ferguson stated in her Deposition (Exhibit N to Dickie Decl. (“Ferguson Dep.”), on page  
11 164, starting on line 15:

12                           **Q. Now, did you participate in the recording of any tracks on**  
13                           **the album ‘*The E.N.D.*’ in any studio outside – recording**  
14                           **studio outside the United States?**

15                           **A. Did I – did I participate on any recordings? I participated**  
16                           **on recordings for the album ‘*The E.N.D.*’ in London at**  
17                           **Metropolis Studio.**

18           202. Gomez stated that he worked on the tracks of “I Gotta Feeling.” (Gomez  
19 Dep., p. 183).

20           203. Ferguson admits she worked on the *The E.N.D.* album, at Metropolis  
21 Studios, where the “I Gotta Feeling” tracks were recorded.

22           204. In fact, every single one of the Black Eyed Peas was present, at least at some  
23 stage in the recording of the actual music tracks for “I Gotta Feeling,” because they were  
24 all present in the Metropolis Studios in London, England, where Guetta was recording, at  
25 least a portion of the musical tracks for “I Gotta Feeling.”

26           205. Even though every single one of the Black Eyed Peas members has stated at  
27 their Depositions that they were not present and didn’t know what involvement Guetta had  
28

1 in the creation and recording of the musical tracks for “I Gotta Feeling”; and that  
2 testimony is further belied by the public record.

3 206. For example Adams states in his deposition, on page 74, line 11:

4 **Q. What did David Guetta do?**

5 **A. I don’t know.**

6 **Q. So as of right now, you don’t know if he wrote a beat for ‘I  
7 Gotta Feeling?**

8 **A. I have no idea.**

9 Gomez states in his Deposition, on page 184, line 6:

10 **Q. And can you tell me what specific aspect of ‘I Gotta  
11 Feeling’ David Guetta wrote?**

12 **A. I don’t know.**

13 Ferguson states in her deposition regarding Guetta’s involvement in the creation of “I  
14 Gotta Feeling,” on page 169, starting on line 21:

15 **Q. And what did he (David Guetta) produce?**

16 **A. I don’t know.**

17 Pineda states in his deposition, on page 145, line 14:

18 **Q. And can you tell me what David Guetta did to produce ‘I  
19 Gotta Feeling’?**

20 **A. No, I don’t know. I wasn’t present when he produced it.**

21 (Exhibits G and H.)

22 207. Each member of the Black Eyed Peas was less than candid about Guetta’s  
23 involvement in the production and creation of “I Gotta Feeling,” as it appears that all were  
24 present during the creation of the musical tracks of “I Gotta Feeling,” at both Metropolis  
25 Studios in London and the Record Planet, in Los Angeles.

26 208. The Defendants assert that Adams wrote “I Gotta Feeling” and receives a  
27 substantial portion of the royalties for “I Gotta Feeling.” But Adams claims that he did not  
28 write any of the music, just the lyrics. Even though the liner notes of “I Gotta Feeling”

1 clearly indicate “Synths: Will.i.am”; and he has stated publically that he wrote “I Gotta  
2 Feeling.”

3         209. We also now know that Adams and Pineda, who claimed under oath not to  
4 be present during the creation of “I Gotta Feeling,” made sworn statements that they were  
5 in fact present during some or all of the recording and finishing of “I Gotta Feeling.”  
6 (Exhibits D and H).

7         210. Finally, as every member of the Black Eyed Peas was present in the studio  
8 while Guetta was working on the production and creation of “I Gotta Feeling,” the  
9 suggestion that the Black Eyed Peas have no knowledge of how the song was created, is  
10 simply not credible. At the very least, these contradictory positions create questions of fact  
11 which can not be resolved through a summary disposition.

12         211. In addition to Riesterer assisting in the development and creation of  
13 instrumentation for Univers Sons, Guetta, has also worked with Univers Sons and their co-  
14 founder, Etchart, in the development and creation of instrumentation. Guetta and Univers  
15 Sons released a computer-based software instrument called “Electrobeats” (Reference –  
16 Exhibit 43 –Guetta Electrobeats and Exhibit 44 – Electrobeats – Advertisement). Etchart  
17 conspicuously fails to mention this fact, anywhere in his Declaration. Clearly the  
18 relationship between Univers Sons and the Defendants Riesterer and Guetta is far more  
19 intimate than they let on.

20         212. Despite these conflicting statements, Geluso opines that I copied the music  
21 of the Black Eyed Peas, because there can be no doubt that Riesterer proved that he  
22 composed the “guitar twang sequence” of “I Gotta Feeling.” He so opines, however,  
23 without any effort to address, explain or refute, these various contradictions by the  
24 Defendants. Given that Geluso also opines that Riesterer could not re-create the musical  
25 sound settings used to compose the “guitar twang sequence” as it is heard in “I Gotta  
26 Feeling,” his statement as to the origin of the “guitar twang sequence” lacks sufficient  
27 objectivity and credibility to form the basis of any determination that there are no material  
28 facts still in dispute.

1           213. Geluso’s most recent assertion in his Declaration, that the sound could not  
2 have been reproduced without substantial “layering” and “sound processing” manipulation,  
3 is another new and incredible version of what Riesterer now claims to has to be done in  
4 order to create the “guitar twang sequence” in the accused song.

5           214. Only after the manual manipulation of the stock Plugsound: “Strat With  
6 SM57 Stereo Spread” preset was Geluso able to recreate the “guitar twang sequence”  
7 heard in “I Gotta Feeling.” This manual manipulation of the stock Plugsound: “Strat With  
8 SM57 Stereo Spread” preset, by Geluso, in producing the “guitar twang sequence” that he  
9 heard in “I Gotta Feeling,” is tantamount to intentional “doctoring” of the evidence, on  
10 behalf of Defendant Riesterer. Geluso’s actions also show that through layering and sound  
11 effects processing manipulation of an electric guitar sound, that it is possible to re-create  
12 the “guitar twang sequence” that is also heard in my song “Take A Dive” (Dance Version).  
13 A song which was on a Demo CD, given to Guetta and the other Defendants.

14           215. I also advised the Defendants’ counsel in my Deposition, on August 24,  
15 2011, that the “guitar twang sequence” was layered. (*See*, Pringle Dep.)

16                   **“I believe it’s a layer in the ‘Cruellest Joke’ instrument, as well as**  
17                   **some other instrument I may have specifically tweaked as well as**  
18                   **a Fender Stratocaster.”**

19 Now in support of their Motion for Summary Judgment, the Defendants suddenly  
20 assert for the first time that through manipulation of a stock electric guitar sound  
21 through “layering” and “sound effects” processing, they can re-create the “guitar  
22 twang sequence” as it is heard in their offending song. They make this brand new  
23 assertion in a Declaration from an audio expert, on November 14, 2011, which  
24 happens to coincidentally state that there are “layers” and “sound processing”  
25 manipulation (which I refer to as “tweaking” in my Deposition) in the “guitar twang  
26 sequence”, months after I identify “layering” and “sound effects” processing  
27 (“tweaking”) as a sound ingredient to creating the “guitar twang sequence”. If I  
28 didn’t create the original “guitar twang sequence”, then how would I have known

1 that there were “layers” and “sound effects” processing (tweaking) manipulation  
2 involved in creating the “guitar twang sequence”?

3         216. The simple truth is that I wouldn’t know that fact. Only the individual who  
4 originally created the “guitar twang sequence” would know that fact. I released my song  
5 “Take A Dive” (Dance Version) in 1999, so even if the Defendants didn’t have the  
6 samples for the “guitar twang sequence” that I delivered and sent via mail, to Guetta and  
7 Garraud back around 1999 to 2003, they still had a full 10 years from the time I released  
8 my song in 1999, until the time they released “I Gotta Feeling” in 2009, to figure out how  
9 to reverse-engineer my “guitar twang sequence”.

10         217. Geluso demonstrates that it was possible to reverse-engineer my “guitar  
11 twang sequence”; because he did it. Additionally, any qualified and experienced audio  
12 engineer can re-produce the “guitar twang sequence” with substantial layering and sound  
13 processing manipulation, just as Geluso did. All that is needed is a clean electric guitar  
14 sample, which doesn’t even have to be a “Fender Stratocaster,” because all electric guitars  
15 have a basic guitar-like sound and they are all substantially similar in their basic design;  
16 and are in fact, “guitars”.

17         218. Geluso’s statement that Riesterer used a distortion sound processing effect in  
18 the creation of the “guitar twang sequence” is misleading and troubling. A distortion  
19 sound processing effect does exactly what it states, it distorts. The end result of processing  
20 a signal through distortion can be any where from a minor distortion of the sound, to a  
21 distortion which makes the original fidelity and characteristics of the sound being  
22 processed through it, almost impossible to identify. An audio signal that is passed through  
23 a distortion sound processing effect tends to take on the characteristics of that particular  
24 distortion effect.

25         219. Various electric guitars may sound completely different when played without  
26 any sound processing effects, but those same guitars may all sound substantially similar  
27 when played through the exact same distortion sound processing effect. This is due to the  
28 fact that distortion substantially colors the signal being processed through it. By newly

1 claiming that Riesterer used distortion in the creation of the “guitar twang sequence” of “I  
2 Gotta Feeling,” the Defendants make it difficult, if not nearly impossible, to identify and  
3 establish what sound Riesterer actually allegedly used in creation of his offending “guitar  
4 twang sequence”.

5         220. The footnotes of the Riesterer Declaration are misleading and are obviously  
6 placed so as to be seen as insignificant. The footnotes located at the bottom of the pages in  
7 the Riesterer Declaration are presented in smaller type than the substantive portions of the  
8 Declaration and appear to be placed in a manner that are intentionally deceptive. (Dckt.  
9 #166, pp. 2-3.)

10         221. Only after learning how I composed the “guitar twang sequence” in “Take A  
11 Dive” (Dance Version), did this new version of Riesterer’s song creation allegations come  
12 to light. Certainly this “footnote” contained in Riesterer’s new Declaration is an admission  
13 by him that at least two prior sworn statements he made, were false and misleading. At the  
14 very least, these contradictory statements raise questions of material fact regarding what  
15 musical equipment and instrumental sounds were actually used by Riesterer in the creation  
16 of his “guitar twang sequence”, and how that musical equipment and those instrumental  
17 sounds he used, parallel what I used in 1999.

18         222. Geluso’s Declaration (Dckt. #162) also contradicts Riesterer (*see*, Dckt. #22-  
19 3, p. 2).

20         223. Riesterer states that there are “four notes” in “I Gotta Feeling’s” “guitar  
21 twang sequence” in his sworn Declaration in November of 2010. Geluso, however, states  
22 that there are in fact “eight” notes that make up the “guitar twang sequence” in “I Gotta  
23 Feeling.”

24         224. Apparently, the alleged composer of this song doesn’t even know how many  
25 notes comprise the “guitar twang sequence” in “I Gotta Feeling.” Riesterer’s confusion  
26 and inaccurate recollection makes sense, especially since I am the one who actually wrote  
27 and recorded the “guitar twang sequence” in 1999, not him.

28



1           225. The Geluso suggestions that (a) the three sampled guitar chords in my .NRG  
2 file were not independently created using the ASR-10, but were sampled from another  
3 source; and (b) the separate, unprocessed ‘clean’ notes that make up each chord of the  
4 guitar twang sequence do not exist in Mr. Pringle’s NRG file as they do in Riesterer’s  
5 Logic Session files which indicates that the three sampled guitar chords in Mr. Pringle’s  
6 NRG file were not independently created using the ASR-10, are both false and misleading.  
7 I say this for several reasons: (i) there isn’t one sample for each of the three chords of the  
8 “guitar twang sequence” in “Take A Dive” (Dance Version), but rather 2 wavesamples, on  
9 2 separate layers, for each of the 3 chords of the “guitar twang sequence” in “Take A  
10 Dive” (Dance Version); meaning that there a total of 6 wave samples contained in the  
11 guitar twang sequence; (ii) Geluso has no idea as to which base guitar sound I used in  
12 1999, to create the “guitar twang sequence” heard in “Take A Dive” (Dance Version), and  
13 as a consequence, his statement is simple unsubstantiated conjecture; (iii) suggesting that  
14 because a separate unprocessed clean note doesn’t make up each chord of my “guitar  
15 twang sequence”, means that “Take A Dive” (Dance Version) was not independently  
16 created, is utterly ridiculous and devoid of any evidentiary support; (iv) I may have simply  
17 used a fully processed original guitar sound without any sound effects processing to create  
18 the “guitar twang sequence” in “Take A Dive” (Dance Version); and (v) the Ensoniq ASR-  
19 10 allows only one stereo or mono sound effect preset to be used at a time, to process a  
20 wavesample, so therefore I had to have fused together “layers” for the multi-sampled  
21 “guitar twang sequence” chords which exist with the respective sound effects processing.

22           226. Therefore, to process the “guitar twang sequence” with four different sound  
23 effects, the “guitar twang sequence” has to be re-sampled at least four different times  
24 internally with the Ensoniq ASR-10's sound effects processing chip. Thus, the sound  
25 effects and any layers stacked on top of a stereo layer, will all become fused together in at  
26 most, a stereo wavesample. To address the limited “16 megabytes” of RAM on the  
27 Ensoniq ASR-10, I purposely fused together multiple layers of stacked wavesamples. The  
28 Ensoniq ASR-10 had a maximum of 16 megabytes of RAM memory space. The typical

1 amount of available RAM space that I would use if I composed a song on my computer  
2 today, is roughly around 8 to 10 gigabytes. “1” gigabyte, is equal to “1000” megabytes.  
3 So today, I typically use “8,000” to “10,000” megabytes of space to compose a song; as  
4 compared to the extremely meager “16” megabytes of available RAM space, that was  
5 available on the Ensoniq ASR-10, when I composed “Take A Dive” (Dance Version), back  
6 in 1999.

7         227. Another reason why I purposely fused together multiple stacked layers of  
8 wavesamples together, such as the individual piano keys which contained the chorded  
9 notes of the “guitar twang sequence” of “Take A Dive” (Dance Version), is due to the  
10 severe limitation on the amount of multiple voices that can be played at once, within the  
11 song sequencer of the Ensoniq ASR-10. The amount of multiple voices that can be played  
12 at one time is referred to as polyphony (multiple voices being played at once). The Ensoniq  
13 ASR-10 only allows a maximum of “31” voices of polyphony to be played at one time (or  
14 “5½” stereo voices can be played at one time). “One” stereo voice (usually a panned left  
15 wavesample and a panned right wavesample) would consume “2” voices of polyphony.  
16 This becomes an extremely crucial issue when constructing entire songs for playback all at  
17 once, on the Ensoniq ASR-10; as is the case with “Take A Dive” (Dance Version).  
18 Therefore, the only way to conserve available RAM memory space and polyphony, was to  
19 fuse multiple stacked layers of wavesamples down to a single stereo or mono wavesample.  
20 This is why the 3 two-note chords which comprise the “guitar twang sequence” of “Take  
21 Dive” (Dance Version), appear to be fused together with the sound effects. Finally, “Take  
22 A Dive” (Dance Version) was only one of the many derivative versions of “Take A Dive”  
23 that contained the “guitar twang sequence”, and as previously stated, the original “guitar  
24 twang sequence” chord layers were on another hard disk that was stolen out of my storage  
25 locker, back in the year 2000.

26         228. Geluso states: “I compared the Beatport guitar twang sequence stem with  
27 Pringle’s isolated guitar twang sequence that was submitted with Mr. Rubel’s report. The  
28 results of my waveform analysis are depicted in Figure 7 below. The waveforms match so

1 closely that I believe that they are electronic copies of one another, meaning that they  
2 could have only come from the same source 8.” Under footnote 8, at the bottom of page  
3 15 in Dckt. #162, it states: “I understand Pringle has acknowledged that he downloaded  
4 certain re-mixes of “I Gotta Feeling” created as part of the Beatport Re-mix competition,  
5 which contain the guitar twang sequence in the clear. Analysis of those re-mixes could  
6 provide further evidence as to the origin of the guitar twang sequence in ‘Take A Dive’  
7 (Dance Version), including additional confirmation that Mr. Pringle copied the guitar  
8 twang sequence the Beatport stems.” (Dckt. #162, p. 15)

9 229. The vocal track to which Geluso refers is from one of the completed re-  
10 mixed versions which actually used the individual track posted on Beatport.com. In my  
11 Deposition, on page 180, starting at line 16, the following conversation occurred:

12 **Q: All right. ‘The Song: “Take A Dive” vs. I Gotta Feeling’**  
13 **that was posted and uploaded there (BroadJam.com), did**  
14 **you do that?**

15 **A: Yes, I believe so.**

16 **Q: All right. Where did you get the vocals for ‘I Gotta Feeling’**  
17 **in this posting?**

18 **A: From – I think it was one of the remix versions there was –**  
19 **like I said previously, there was like 1200 different versions.**  
20 **Some...**

21 **Q: I’m sorry. What remix version?**

22 **A: I don’t recall exactly.**

23 **Q: Were these the remix versions that you were referring to**  
24 **from Beatport.com?**

25 **A: I can’t recall specifically, but yes, I believe so, from what I**  
26 **recollect...**

27 230. In Plaintiff’s Response To Headphone Junkie, LLC’s First Set Of  
28 Interrogatories, in Interrogatory No. 3, I also set out the circumstances in obtaining, and

1 the purpose in using, the remixed version of “I Gotta Feeling.” (Please reference  
2 Exhibit 34 - Headphone Junkie Interrogatory Response):

3 **Interrogatory No. 3:** Identify with specificity where Plaintiff Bryan Pringle  
4 obtained a copy of the Black Eyed Peas’ a capella for I Gotta Feeling and when it  
5 was obtained.

6 **Answer:** Plaintiff states that to the best of his recollection at this time, he  
7 used a remixed version of “I Gotta Feeling” with less instrumentation and “EQ’ed”  
8 the instrumentation out of the song, to the best of his ability, to make the vocals  
9 more easily heard.

10 231. The vocals I used originated from a finished re-mix version that someone  
11 created of “I Gotta Feeling.” There are literally thousands of these re-mixed versions that  
12 flooded the internet and YouTube.com; long after the Beatport Re-mix Contest closed.  
13 However, I never had access to the individual “guitar twang sequence” mp3 posted by the  
14 Defendants and offered for a limited time period. It is also my understanding that  
15 everyone who accessed the posted individual “I Gotta Feeling” mp3 tracks in order to  
16 participate in the Re-mix Contest had to register with Beatport.com, by leaving valid  
17 contact information.

18 232. I have never inserted the individual track containing the “guitar twang  
19 sequence” mp3 posted by the Defendants to Beatport.com, for use in the Re-mix Contest  
20 website, into my “Take A Dive” (Dance Version) song. This is due to the fact that; (1) “I  
21 Gotta Feeling” wasn’t created until 2009; and (2) I created the “guitar twang sequence” in  
22 “Take A Dive” (Dance Version) in 1999 (which is 10 years prior to the creation of “I Gotta  
23 Feeling”).

24 233. The significance of the Defendants’ failure to provide the original musical  
25 files and data allegedly created by Riesterer and relied upon by Geluso and others, lies in  
26 the simple fact that that Riesterer independently cannot re-create the “guitar twang  
27 sequence” as it is heard on “I Gotta Feeling” (Dckt. #162, ftn at page 8).

28

1           234. I have had an opportunity to examine what Geluso claims is Riesterer's  
2 "Logic Session File" for the "David Pop Guitar" song file, the alleged initial name for "I  
3 Gotta Feeling" (Dckt. \_\_, p. 6). I have found many inconsistencies between the sworn  
4 testimony of Riesterer and the actual evidence contained in the "David Pop Guitar" song  
5 files, which Riesterer turned over to the Plaintiff's Counsel, around June of 2011, marked  
6 highly confidential "attorneys' eyes only."

7           235. First, Riesterer stated in his Deposition on page 193, line 3, taken on June 23,  
8 2011, that he had given away his computer which contained the original Logic Session  
9 Files used in the creation of "I Gotta Feeling" (titled "David Pop Guitar," which also  
10 contained the original "guitar twang sequence" for "I Gotta Feeling") (bates Nos. 1-9, 38),  
11 to a friend whose name he didn't know. However, when I examined Riesterer's "David  
12 Pop Guitar" song files, that were turned over to the Plaintiff's Counsel, on or about June 5,  
13 2011, I found that the "David Pop Guitar" song files contained numerous files that had  
14 creation dates which clearly contradicted Riesterer's testimony that he had given away his  
15 computer containing the original "David Pop Guitar" song files. Many of those "David  
16 Pop Guitar" song files have creation dates which clearly pre-date the actual date, that  
17 Riesterer claims to have given away his computer. For instance, in the "David Pop Guitar"  
18 song folder, the individual file titled "Clave Percussion Loop 01.caf," has a creation date  
19 of "2/15/2007"; the individual files titled "Guitar Bass 1.aif" and "Guitar Lead 1.aif," have  
20 creation dates of "10/17/2008"; the individual file titled "loop kick.aif," has a creation date  
21 of "11/16/2007"; and the individual file titled "0.6s\_Snare Hall.SDIR," has a creation date  
22 of "3/22/2007" (Reference Exhibit 3 – David Pop GTR File Dates 1).

23           236. Normally, when saving individual files from one storage device to another,  
24 the individual files receive new creation dates, which reflect the actual dates on which they  
25 were saved to the new storage device. On page 193, line 18, of his Deposition, Riesterer  
26 claims to have backed up the original hard drive that contained the "Dave Pop Guitar"  
27 song files, by saving all the files from that hard drive to a new storage device, before he  
28 gave it away to his friend. If in fact Riesterer had actually copied all of the individual

1 “David Pop Guitar” song files he turned over to the Plaintiff’s Counsel, from that new  
2 storage device which contained those files, instead of from the original hard drive, then all  
3 of the individual “David Pop Guitar” song files would have the exact same creation date.  
4 Their creation date would reflect the date that Riesterer saved the individual “David Pop  
5 Guitar” song files from his original hard drive, to his new storage device. However, they  
6 don’t. The majority of the individual “David Pop Guitar” song files that were turned over  
7 to the Plaintiff’s Counsel, have apparently retained their same original creation dates  
8 which were assigned to them at the time that they were saved to the original hard drive  
9 used to create the original “David Pop Guitar” song file (Reference Exhibit 4 – David Pop  
10 GTR Dates 2). This anomaly clearly indicates that Riesterer actually copied the majority  
11 of the “David Pop Guitar” song files turned over to the Plaintiff’s Counsel in 2011, directly  
12 from the same original hard drive that was used in the creation of the original “David Pop  
13 Guitar” song files. This also means that Riesterer has been falsely stating under oath that  
14 he gave his hard drive away to a friend, when in fact, he still has possession of that original  
15 hard drive.

16         237. As previously stated, the only logical reason why Riesterer would claim to  
17 no longer possess the original hard drive that was used in the creation of the “David Pop  
18 Guitar” song files would be in an attempt to try and avoid having anyone inspect this hard  
19 drive, because it contained damning evidence.

20         238. Second, the “David Pop Guitar” song files turned over by Riesterer to the  
21 Plaintiff’s Counsel, that he claims represents the original song file which was used in the  
22 creation of “I Gotta Feeling,” have creation dates of files which show that they were  
23 created after the original version of “I Gotta Feeling” was recorded and released, on the  
24 Black Eyed Peas’ *The E.N.D.* album, around June of 2009. For instance, in the “David  
25 Pop Guitar” song folder, the individual file titled .”\_VEE Electro Loop 003.wav,” has a  
26 creation date of “8/18/2009” and the individual file titled .”\_VEH3 Claps 001.wav,” has a  
27 creation date of “3/25/2010” (Reference Exhibit 5 – David Pop GTR Dates 3). In fact,  
28 there are numerous files contained in the supposed original “David Pop Guitar” song file,

1 with creation dates that show that they were created after the original version of “I Gotta  
2 Feeling” was “allegedly” recorded around February of 2009, and then released to the  
3 public around June of 2009 (Reference Exhibit 6 – *The E.N.D.* Album Copyright Year  
4 2009).

5 239. It is impossible for the “David Pop Guitar” song file that Riesterer turned  
6 over to the Plaintiff’s Counsel in 2011, to be the identical original song file from the  
7 identical location, used to create the original version of “I Gotta Feeling,” that was  
8 recorded in 2008, to early 2009 and then released on the Black Eyed Peas’ *The E.N.D.*  
9 album, around June of 2009. Simply because the aforementioned song files, like the  
10 .”\_VEE Electro Loop 003.wav” and .”\_VEH3 Claps 001.wav” files, have creation dates  
11 which show that they were created after the original version of “I Gotta Feeling” was  
12 already recorded and released.

13 240. Third, the “David Pop Guitar” song file that Riesterer claims he used in  
14 2008, to early 2009, to create the original version of “I Gotta Feeling,” which was  
15 eventually released on the Black Eyed Peas’ *The E.N.D.* album, around June 2009,  
16 contains an entry in the “documentData” Logic File, for an audio device allegedly used in  
17 the creation of “I Gotta Feeling,” that wasn’t available in 2008, or 2009.

18 241. In the Logic Session File folder, there is a file titled “documentData”  
19 (Reference Exhibit 7 – Document Data File). This file contains the “David Pop Guitar”  
20 song file audio devices that were used and available in the Apple Logic Program used to  
21 create the “David Pop Guitar” song file allegedly in 2008, to 2009. When I opened up this  
22 document file using the Notepad document processing program, found in Windows XP  
23 Professional, I was able to view the available audio devices that were listed in the “David  
24 Pop Guitar” song file (Reference Exhibit 7 – Document Data File, page 2). One of the  
25 audio devices listed in this “documentData” file is the “828mk3 Hybrid.” The “828mk3  
26 Hybrid” listed in the “David Pop Guitar” “documentData” file, is actually the “Motu  
27 828mk3 Hybrid Firewire/USB Audio Interface.” This device is essentially an audio  
28 interface that can plug into a computer via a Firewire or USB port. Among other things,

1 the “828mk3 Hybrid” can be used as a mixer; used for advanced audio analysis; used to  
2 record and playback multiple analog and digital audio signals; and used to processes sound  
3 through effects (Reference Exhibit 8 - Motu 828mk3 Hybrid Audio Interface).

4 242. The significance of this audio device being listed in the “documentData” file,  
5 contained in the alleged original “David Pop Guitar” song file, is that even though this file  
6 has a listed creation date of “10/17/2008,” the Motu “828mk3 Hybrid,” wasn’t released to  
7 the public, until 2011 (Reference Exhibit 9 – Motu 828mk3 Hybrid – Debut Press  
8 Release). This means that there is no way possible (unless they were “beta testers” in 2008  
9 and 2009 for Motu, Incorporated, and given this audio device, which is highly “doubtful”)  
10 that Riesterer or Guetta used this audio device to create the original version of “I Gotta  
11 Feeling,” which was eventually released around June of 2009, because this device wasn’t  
12 available in 2008 and 2009.

13 243. Fourth, the “documentData” file also has an entry of “**Disk 1 Tb Litige (def)**  
14 **OK: David Pop Guitar: Audio Files**” (Reference Exhibit 7 – Document Data File, page 2  
15 highlighted at the top of the page). The French word “Litige,” means “Litigation.” I can  
16 only assume that the “(def)” in this entry means “Defendant or Defense” and that the “OK”  
17 entry, most likely means that someone went through this file, “vetted” it, then “removed”  
18 any evidence that may have “incriminated” Riesterer, Guetta, or any of the other  
19 Defendants (so now the song file is “okay,” to show to the Plaintiff). There is really no  
20 other logical explanation for these entries. I find it absolutely impossible to believe that in  
21 2008 and 2009, Riesterer and Guetta knew that they would become Defendants in  
22 “Litigation” and made such relevant “entries” into their song file. These entries in the  
23 “documentData” file clearly show that somebody (probably Riesterer) went through this  
24 original song file and intentionally altered it. This is clearly evidence tampering. This is  
25 also clearly not the original un-altered “David Pop Guitar” song file used in 2008 and  
26 2009, to create the original version of “I Gotta Feeling,” which was released around June  
27 of 2009. There is absolutely no doubt in my mind, that Riesterer and Guetta engaged in  
28 intentional “spoliation” of evidence pursuant to the “David Pop Guitar” song file.



1           244. Fifth, there is a file contained in the “David Pop Guitar” song file, titled  
2 “0.6s\_Snare Hall.SDIR.” This file has been produced by the Defense Counsel, to the  
3 Plaintiff’s Counsel, on two separate occasions. This file is an “Impulse Response” preset,  
4 for a reverberation sound effects plug-in, which is alleged to have originated from the  
5 original “David Pop Guitar” song file. This exact same file has been produced one time  
6 with a creation date of “9/4/2004”; and it was produced a second time, with a creation date  
7 of “3/22/2007” (Reference Exhibit 45 – Impulse Response Contradiction). It is impossible  
8 for two files which were produced from the exact source for the “David Pop Guitar” song  
9 file, to have two completely different creation dates. Therefore, these reflect production  
10 from two difference sources or an intentional “alteration” of the “creation date” of this file.

11           245. Accordingly, it would appear from the evidence contained in the Defendants’  
12 own “David Pop Guitar” song file, that there has been tampering, alteration and fabrication  
13 of the evidence. How can one be expected to rely on any of the Defendants’  
14 representations regarding their claims in the creation of “I Gotta Feeling,” when the  
15 evidence contained in their own original song files (that they themselves have turned over),  
16 contradicts their sworn testimony, testimony that has repeatedly been misleading,  
17 contradictory, and false.

18 **C. THERE HAS BEEN NO SPOLIATION OF ANY EVIDENCE**

19           246. At the time I returned my non-working and defective hard drive to Western  
20 Digital for warranty repair or replacement in late summer of 2011, it did not contain any  
21 non-attorney-client privileged music files or data relating to the creation of “Take A Dive,”  
22 “Take A Dive” (Dance Version), or any re-mix of “I Gotta Feeling.” The only reference  
23 on that hard drive to any of those 3 items was contained in direct communications with my  
24 attorneys at the time; Ryan Greely and Ira Gould.

25           247. As of July 2011, I had no reason to believe that there was anything on my  
26 defective hard drive which contained any relevant evidence for my case, as I believed that  
27 I had previously delivered all such relevant evidence in my possession, to Gallant, in 2010.

28

1           248. At all times, it was my understanding that I was to preserve all data relating  
2 to my claims in this lawsuit and any materials related to such claims, which I believe I  
3 have done. I did take all reasonable steps to preserve and protect such data by delivering  
4 all of my backed-up files and materials which related in any way to “Take A Dive,” “Take  
5 A Dive” (Dance Version) and “I Gotta Feeling,” to David Gallant, a hired forensic expert  
6 retained to preserve my evidence since 2010. Gallant established a chain of custody  
7 protocol with my evidence which as far as I can tell, has been followed religiously.

8           249. As all of the relevant non-attorney-client privileged evidence available in this  
9 case was already in the possession of Gallant when my hard drive and motherboard  
10 became defective and unusable around July of 2011, I did not advise anyone that my  
11 computer was not operable until after I returned it to the manufacturer for warranty repair  
12 or replacement.

13           250. Before returning the defective hard drive to the manufacturer for warranty  
14 repair or replacement, I backed up all of the available files located on the hard drive, onto a  
15 DVD-Rom disk. A copy of all of the non-attorney-client privileged back up files, which  
16 were saved onto that DVD-Rom disk, were turned over to Gallant, through a chain of  
17 custody form, and made available, again through a chain of custody form, to the  
18 Defendants and their computer expert Danny Aga, on August 8, 2011, in San Antonio,  
19 Texas, for inspection and copying.

20           251. When I was first informed that the Defendants wanted to inspect my personal  
21 computer, I had already returned the hard drive of that computer to the manufacturer  
22 Western Digital, for warranty repair or replacement. Prior to being so informed, I had not  
23 discussed the crashing of my personal computer’s hard drive, as that crash did not impact  
24 any of the relevant files which dealt with the creation of “Take A Dive,” “Take A Dive”  
25 (Dance Version), or “I Gotta Feeling,” as all of the relevant non-attorney-client privileged  
26 files I had which related to those songs, had already been provided to Gallant in 2010, for  
27 preservation.

28

1           252. Once I learned that my personal computer hard drive was being sought in  
2 addition to the files being maintained by Gallant, I immediately had my attorneys contact  
3 the Defense Counsel, to inform them that this particular hard drive had been sent back to  
4 Western Digital for warranty repair or replacement.

5           253. I also had Mr. Dickie offer to turn over to the Defense Counsel, all of the  
6 information available to me regarding the location of that particular hard drive; the theft of  
7 my original computer and related original files in 2000, from a storage locker in Texas;  
8 and the purchase dates of the hard drives which had crashed. (*See*, Exhibits which include  
9 the correspondence between Counsel, regarding this issue.)

10           254. Additionally, I offered to allow the Defendants' hired computer expert,  
11 Danny Aga, to inspect the rest of my computer, on August 8, 2011. My understanding is  
12 that this offer was declined by the Defense Counsel.

13           255. Regardless, on August 8, 2011, I delivered to the Defendants' hired  
14 computer expert, Danny Aga, through a chain of custody form, the DVD-Rom Disk, which  
15 contained all of the non-attorney-client privileged files that were backed up from the  
16 defective hard drive that was sent back to Western Digital for warranty repair or  
17 replacement. I have also offered to permit the Defense Counsel the opportunity to inspect  
18 the hard drive returned to me from Western Digital; an offer that thus far has been refused.  
19 I was also informed that the Defendants served a subpoena on Western Digital, pursuant to  
20 the return of the hard drive for warranty repair or replacement. A subpoena that I didn't  
21 object to, or try to have suppressed in any way, shape, or form.

22           256. I feel that it is important to reiterate that the hard drives used in the creation  
23 of "Take A Dive" and "Take A Dive" (Dance Version), were stolen from my storage  
24 locker, years earlier (in the year 2000) (*see*, Exhibit 31 - Theft - Police Report). The  
25 particular hard drive at issue, in connection with the alleged "spoliation" claim, was  
26 purchased by me in 2010, along with another identical hard drive, but wasn't installed or  
27 used in my computer until around January of 2011; and was returned to Western Digital,  
28

1 having never been used in the creation of any of the songs involved in this lawsuit or the  
2 remix discussed above.

3         257. Since the installation and use of the hard drive in question, took place after  
4 the lawsuit commenced; and after the .NRG files were deposited with Gallant; this  
5 corrupted hard drive simply could not have contained any relevant non-attorney-client  
6 privileged information relating to the Defendants' ridiculous and baseless allegations  
7 regarding their Beatport.com "scheme."

8         258. The simple fact is that hard drives can and do, fail. This particular hard drive  
9 became defective and I did what any normal consumer would do: I sent it back to the  
10 manufacturer for warranty repair or replacement, after backing up all of the non-corrupted  
11 data files. The backed-up data files have been provided to the Defendants. There was  
12 never any attempt on my part to spoil any evidence. In fact, I didn't even know what that  
13 word meant until I looked it up in the dictionary. As I now understand the word in the  
14 context of this case, I am extremely offended by the Defense Counsel's continued rhetoric  
15 of baseless allegations and can state unequivocally, that I never "spoliated" any relevant  
16 evidence, either intentionally or inadvertently.

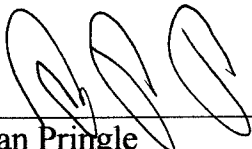
17         259. Additionally, I turned over to the Defense Counsel in Texas, on August 8,  
18 2011, all of the non-attorney-client privileged backed-up files that I had saved from the  
19 2011 defective hard drive, which was returned to Western Digital. The backed-up hard  
20 drive data files saved to the DVD-Rom Disk, contained roughly about 2,500 total files,  
21 with a size of about 8 gigabytes. Also, many of these backed-up data files turned over to  
22 the Defense Counsel were originally created many years prior to the institution of this  
23 lawsuit, in 2010. So their allegations that I intentionally "spoliated" evidence from years  
24 prior to 2011 (mainly the year 2009), is simply not true, because the DVD-Rom Disk that  
25 was given to the Defense Counsel with the backed-up 2011 hard drive data files, contained  
26 data files with creation dates that go back as far as the year 2002. I feel that the Defense  
27 Counsel is simply attempting once again, to try and create an issue, where none exists.

28

1           260. The Defense Counsel and their computer expert examined the files from the  
2 backed-up DVD-Rom Disk that was given to them on August 8, 2011, and found no  
3 relevant information that would assist in their defense.

4           261. The timeline of events supports my statements that I have never intentionally  
5 discarded, destroyed or otherwise manipulated any evidence. (See Declaration of Barbara  
6 Frederiksen-Cross, pp. 6-7.)

7 Dated: December 19, 2011

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9 \_\_\_\_\_  
10 Bryan Pringle

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**EXHIBITS 15, 18, 21, 24, 26, 28, 29, 30, 31, 40 AND 43**

**(AUDIO AND VIDEO EXHIBITS)**

**FILED MANUALLY**

## CERTIFICATE OF SERVICE

1           On December 19, 2011, I electronically filed the foregoing DECLARATION  
2 OF BRYAN PRINGLE IN OPPOSITION TO DEFENDANTS' MOTION FOR  
3 SUMMARY JUDGMENT using the CM/ECF system which will send notification of  
4 such filing to the following registered CM/ECF Users:

5  
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27           I am unaware of any attorneys of record in this action who are not registered  
28 for the CM/ECF system or who did not consent to electronic service.

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

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

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