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10	UNITED STATES	DISTRICT COURT
11	CENTRAL DISTRIC	CT OF CALIFORNIA
12	SOUTHER	N DIVISION
13	BRYAN PRINGLE, an individual,)	Case No. SACV 10-1656 JST(RZx)
14	Plaintiff,	Hon. Josephine Staton Tucker
15	v.)	Courtroom 10A
16	WILLIAM ADAMS, JR.; STACY	EVIDENTIARY OBJECTIONS TO THE DECLARATION OF BRYAN
17	FERGUSON; ALLAN PINEDA; and) JAIME GOMEZ, all individually and)	PRINGLE [DOC. 198] IN OPPOSITION TO MOTION FOR
18	collectively as the music group The Black Eyed Peas, et al.,	SUMMARY JUDGMENT BY DEFENDANTS SHAPIRO,
19	Defendants.	BERNSTEIN & CO, INC., FREDERIC RIESTERER AND
20		DAVID GUETTA
21		Complaint Filed: October 28, 2010
22		Trial Date: March 27, 2012
23		Hearing Date: January 30, 2012 10:00 AM
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28		EVIDENTIA DV OD IECTIONS
	NY994546.4 217131-10001	EVIDENTIARY OBJECTIONS TO PRINGLE DECLARATION

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and the Court's Initial Standing Order at 11(c)(iii), Defendants Shapiro, Bernstein & Co, Inc. ("Shapiro Bernstein"), Frederic Riesterer and David Guetta (collectively, "Defendants") respectfully submit these Evidentiary Objections to the Declaration of Bryan Pringle in Opposition to Defendants' Motion for Summary Judgment (Doc. 198). The Pringle Declaration is improper under Federal Rule of Civil Procedure 56 for its inclusion of legal argument, improper lay opinions made without personal knowledge, improper purported "expert" opinions by a lay witness, conjecture, speculation, and irrelevant matters. Because large portions of the Pringle Declaration are inadmissible, it should be disregarded for purposes of ruling on Defendants' Motion for Summary Judgment.

GENERAL OBJECTIONS

A. Rather Than Declaring to Factual Matters, the Pringle Declaration Includes Improper Legal Arguments, Speculation, and Personal Opinions

A declaration offered in opposition to a summary judgment motion "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated" Fed. R. Civ. P. 56(c)(4), and "[a] party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). A party may not defeat summary judgment by relying on conclusory allegations and speculation. Instead, declarations must be based on facts known to the declarant and set forth concrete particulars in order to satisfy Rule 56. *See, e.g., Hisle v. Arevalo*, 2011 WL 3961894, at *4 (C.D. Cal. July 22, 2011); *Bickerstaff v. Vassar College*, 196 F.3d 435, 451-52 (2d Cir. 1999), *cert. denied*, 530 U.S. 1242 (2000). Similarly, a declaration may not set forth legal

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19	O
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argument. *See King County v. Rasmussen*, 299 F.3d 1077, 1082 (9th Cir. 2002) ("Declarations, which are supposed to 'set forth facts as would be admissible in evidence,' should not be used to make an end-run around the page limitations of Rule 7 by including legal arguments outside of the briefs."); *Silver v. Exec. Car Leasing Long Term Disability Plan*, 466 F.3d 727, 732 (9th Cir. 2006).

Little of the Pringle Declaration could be classified as statements of fact based on personal knowledge. Instead, the Pringle Declaration largely is comprised of speculation and improper opinion testimony as to various technical aspects of sound recordings, conjecture as to what Defendants may or may not have done, Pringle's own personal interpretations of various uncontested factual matters, and legal argument on ultimate issues in the case. The Pringle Declaration is argumentative and speculative, and at nearly 70 pages in length, it constitutes additional briefing from Pringle in violation of the page limitations established by Local Rule 11-6, rather than a proper Rule 56 declaration. *King County*, 299 F.3d at 1082. It is wholly improper and should be stricken.

B. Pringle Is Not Qualified To Present Purported "Expert" Testimony On Any Issue In This Case.

A large portion of the Pringle Declaration is devoted to purported "expert" opinions on a wide variety of technical sound engineering and/or musicological issues, including purported "rebuttals" of the uncontroverted opinions of Defendants' sound recording expert, Professor Paul Geluso. For example:

- Paragraph 17 ("As a musician with 25 years of writing and recording songs electronically through equipment like an Ensoniq ASR-10, I can state that Geluso's opinion is not only incorrect factually, it is unsupported by the objective evidence and contrary to established practices by musicians, songwriters and audio engineers.")
- Paragraph 37 ("An unaltered Logic Session Song File should include all of the midi files, sound effects, instrumentation, mixdown volumes,

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and other relevant material involved in the original creative process for 'I Gotta Feeling.'")

- Paragraph 74 ("It is a common practice in the 'Techno-Dance' music genre, for dance artists to give their actual individual instruments and tracks to Dj's who work at night clubs.")
- Paragraph 114 ("It is technologically impossible for a standard Ensoniq ASR-10 to recognize or work with any audio file in an mp3 format. Additionally, it is not possible for me or anyone else, so far as I am aware, to modify an Ensoniq ASR 10, to be made to work with any audio file in an mp3 format")

It is, at best, highly unusual for a party to serve as his own "expert" witness, and impermissible where, as here, the party (i) fails to disclose himself as an "expert" witness under Fed. R. Civ. P. 26(a)(2), and (ii) in any event lacks the requisite "scientific, technical, or other specialized knowledge" to do so. Fed. R. Evid. 702(a); *Johnson v. Gordon*, 409 F.3d 12, 25 (1st Cir. 2005) (affirming district court's rejection of proposed expert testimony regarding sound recordings when the expert, *inter alia*, "had not performed a technical analysis of the type used by musicologists to detect samples in sound recordings"); *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 591 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147-48 (1999).

C. Pringle Cannot Testify As To The Contents Of His Alleged Demo CDs Allegedly Distributed In France.

In order to prove the contents of a writing or recording, the proponent must provide an original copy. Fed. R. Evid. 1001, 1002. Other proof of the contents of a recording is only permissible in certain limited circumstances—for example, when the recording is "not closely related to a controlling issue." Fed. R. Evid. 1003, 1004. Although Pringle previously claimed that Defendants copied the recording(s) of "Take a Dive" (Dance Version) that he has produced in discovery and/or provided to the Court, Pringle now alleges that Defendants copied a *different*

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France to unidentified individuals at unidentified times. (*See*, *e.g.*, Pringle Decl. ¶¶ 5, 64, 70-73, 76, 96, 101, 214). Pringle does not, however, possess a copy of this alleged recording (or recordings), even though their contents go to the heart of Pringle's infringement claim. His testimony on the contents of these alleged demo CDs is a clear violation of Rule 1002, and Pringle has not—and cannot—show that any of the exceptions in Rules 1003 and 1004 apply. In the circumstances of this case, Pringle's failure to present an original copy of this alleged demo CD renders his testimony on its alleged contents inadmissible.

recording (or recordings) contained in alleged demo CDs allegedly distributed in

D. Pringle's Declaration is Inadmissible As A Result Of His Spoliation of Evidence.

Pringle offers extensive testimony to try to authenticate certain computer files that purportedly show that he created "Take a Dive" (Dance Version) in 1999. However, because Pringle spoliated computer evidence that would directly undercut that authenticity, Pringle's incomplete, self-serving, and necessarily unreliable testimony must be stricken. A Court may impose sanctions under its inherent power to manage its own affairs so as to achieve the orderly and expeditious disposition of its cases. See Ruben Perez v. Vezer Industrial Professionals, 2011 US Dist. LEXIS 136827 (E.D. Cal. Nov. 29, 2011). If a party breaches its duty to preserve evidence, the opposing party may move the court for an appropriate sanction. *Id.* (citing *In* Re. Napster, Inc. Copyright Litigation, 462 F. Supp.2d 1060, 1066 (N.D. Cal. 2006)). It cannot seriously be questioned that Pringle spoliated crucial electronic evidence during the pendency of this litigation, and long after Defendants' provided express notice to preserve, by destroying multiple hard drives. (See Defendants' MSJ Br. [Doc. 159-2] 24-25; Defendants' Reply Br. 18-25.) This severely prejudiced Defendants by denying them access to critical evidence of Pringle's back-dating and manipulation of his music files. (Id.). Pringle's misconduct

undercuts the integrity of the evidence central to his claim—i.e., his testimony regarding when he created "Take a Dive" (Dance Version). Such testimony must be excluded.

INDIVIDUAL OBJECTIONS

Evidence submitted to the Court in opposition to a summary judgment motion must meet all requirements for admissibility of evidence if offered at the time of trial. See Beyene v. Coleman Sec. Services, Inc., 854 F.2d 1179, 1181-1182 (9th Cir. 1988); Travelers Cas. & Sur. Co. of Am. v. Telstar Const. Co., Inc., 252 F. Supp. 2d 917, 923 (D. Ariz. 2003); Fed. R. Evid. 101, 1101. Such evidence must be relevant to the claims and defenses of the case. Fed. R. Evid. 401; 403; McCormick v. City of Lawrence, Kan., 2007 WL 38400, at *3 (D. Kan. Jan. 5, 2007). Testimonial evidence must be based on the personal knowledge of the witness offering the evidence. Fed. R. Evid. 602. Documentary evidence must be properly authenticated, and an original of a writing or recording is required to prove its contents. Fed. R. Evid. 901, 1001, 1002. Hearsay evidence is inadmissible unless it has been defined as non-hearsay or the proponent establishes eligibility for one or more exceptions under the Rules. Fed. R. Evid. 801-804. Testimony requiring scientific, technical, or other specialized knowledge may be given only by an expert witness with the requisite knowledge, skill, experience, training or education, and opinion testimony is not permitted of a lay person. Fed. R. Evid. 701, 702. Even if this Court does not disregard the entirety of the Pringle Declaration, various portions are inadmissible as specified below.

Pringle Declaration	Evidentiary Objections
1. I have read the Defendants'	Fed. R. Evid. 401, 402, 403, 602,
Motion for Summary Judgment together	701, 702
with the various exhibits and statement of	The statements in the bolded
allegedly uncontested facts. I have also read	sentence ("Based upon by the
the Declarations filed by various individuals	Defendants. ") are argumentative,
in support of Defendants Shapiro, Bernstein	speculative, lack foundation, do not

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1	Pringle Declaration	Evidentiary Objections
2	and Co., Inc., Frederic Riesterer	· ·
3	("Riesterer") and David Guetta's ("Guetta")	appear to be based on the witness' personal knowledge, offer improper
3	Motion For Summary Judgment. These	legal argument, and constitute
4	Declarations are referred to by the Court's	improper opinion testimony of a lay
5	Document number and pertinent page.	witness.
	Based upon my review of those materials,	
6	numerous controverted facts exist	
7	regarding: (a) the origin of "I Gotta	
8	Feeling"; (b) whether I composed "Take	
	A Dive" and "Take A Dive" (Dance Version) in 1999, as alleged in the First	
9	Amended Complaint; and (c) whether the	
10	striking similarity of the "guitar twang	
11	sequence" in the parties' respective two	
	songs constitutes copyright infringement	
12	by the Defendants. I have also reviewed	
13	the prior Declarations of Riesterer and	
14	Guetta from November 2010 and certain	
	portions of the deposition testimony of the	
15	Defendants. [emphasis added].	Fed D Fedd 401 402 402 602
16	3. Paul Geluso ("Geluso"), an audio expert proffered by the Defendants,	Fed. R. Evid. 401, 402, 403, 602, 701, 702, 1002
17	opines in his Declaration that I copied the	The statements lack foundation,
	Black Eyed Peas song "I Gotta Feeling." He	violate the best evidence rule, and
18	is dead wrong as I independently created	constitute improper opinion
19	and copyrighted the song "Take A Dive" as	testimony of a lay person. Pringle
20	part of a collection of works which I wrote,	has not been designated as an expert
	recorded and registered with the United	witness in this case, nor has he
21	States Copyright office in 1998, under the	presented a sufficient foundation to
22	name of "Dead Beat Club." (See Certified	support any claimed technical
	copy of original Dead Beat Club registration, Exhibit M to Declaration of	expertise in the referenced subjects sufficient to address Paul Geluso's
23	Dean A. Dickie ("Dickie Decl.") filed	findings. Daubert v. Merrell Dow
24	contemporaneously herewith.) Sometime	Pharms., Inc., 509 U.S. 579, 591
25	prior to September 1, 1999, I wrote and	(1993); <i>Kumho Tire Co. v.</i>
	recorded the dance version of "Take A	Carmichael, 526 U.S. 137, 147-48
26	Dive." (See Exhibit M, 1998 Copyright	(1999).
27	Registration; Deposition of Bryan Pringle,	
28	Exhibit A to Dickie Decl. ("Pringle Dep."),	
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1	Pringle Declaration	Evidentiary Objections
2	and Expert Report of David Gallant, Exhibit	
3	1 hereto.)	F 1 P F 11 404 402 402 402
4	4. I did not sample the isolated	Fed. R. Evid. 401, 402, 403, 602
	guitar twang in the Black Eyed Peas song "I Gotta Feeling" from the Beatport.com	The statements are argumentative and lack foundation.
5	website between August 21, 2009 and	and fack foundation.
6	September 8, 2009 as Geluso speculates.	
7	Moreover, I never copied any music of the	
0	Black Eyed Peas in order to assert this	
8	copyright infringement claim; I have never	
9	back dated any CD containing NRG files of	
10	my music, including the NRG files that	
	contains "Take A Dive" (Dance Version); I have never stockpiled or saved 1999 blank	
11	CDs from Verbatim in anticipation of being	
12	able to download the music of the Black	
13	Eyed Peas and manipulate it to make a	
14	copyright infringement claim over "I Gotta Feeling."	
15	5. As appears hereinafter in	Fed. R. Evid. 401, 402, 403, 602,
	greater detail, many years before "I Gotta	1002
16	Feeling" was created independently by the	The statements are argumentative,
17	Defendants, I provided copies and samples	speculative, lack foundation, and
18	of my copyrighted music, including the	violate the best evidence rule.
	derivative dance version of "Take A Dive"	
19	and isolated versions to Messrs. Joachim Garraud ("Garraud") and Guetta in France,	
20	sometime around March 1999. In addition,	
21	sometime around January 1, 2001 and	
	December 31, 2003, Gum Productions LLC	
22	("Gum Productions"), a Guetta entity, wrote	
23	to me acknowledging receipt of the samples	
24	of my music, including "Take A Dive"	
25	(Dance Version). Subsequent to my receipt of that communication, at its request, I	
	provided additional samples of my music to	
26	Gum Productions and Guetta. Once Gum	
27	Productions advised me that it was not	
28	interested in publishing my music or	

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	Pringle Declaration	Evidentiary Objections
2	negotiating any recording agreement, I did	
3	not take any special care to preserve or save	
4	that 8 year old correspondence and most probably discarded it as I did not anticipate	
	any further need for it. I continue, however,	
5	to search various locations for additional	
6	documentation "Take A Dive."	
7	6. Geluso has no personal	Fed. R. Evid. 401, 402, 403, 602,
8	knowledge of what I did to compose the	1002
0	original "Take A Dive" or any of the several	The statements are argumentative,
9	derivative versions of that song, which I	speculative, lack foundation, and
10	composed, recorded, self published and played prior to August 1999.	violate the best evidence rule.
11	7. For the last 25 years I have	Fed. R. Evid. 401, 402, 403, 602,
	been an active songwriter. In that time	701, 702
12	period, I have written all kinds of	The statements lack foundation and
13	contemporary popular music. My	provide no basis to offer expert
14	songwriting career began around 1986 and	opinion testimony. Pringle has not
	over those 25 years, I have acquired	been designated as an expert
15	substantial knowledge about and experience	witness in this case, nor has he
16	in producing, writing, arranging and recording all kinds of music. I studied	presented a sufficient foundation to support any claimed technical
17	drums at Mann Middle School in Abilene,	expertise in the referenced subjects.
	Texas and took piano lessons as a young	Daubert v. Merrell Dow Pharms.,
18	boy.	<i>Inc.</i> , 509 U.S. 579, 591 (1993);
19		Kumho Tire Co. v. Carmichael, 526
20		U.S. 137, 147-48 (1999).
	8. I have also acquired substantial	Fed. R. Evid. 401, 402, 403, 602,
21	knowledge of and experience with computer- based musical composition	701, 702 The statements lack foundation and
22	including, without limitation, computer	provide no basis to offer expert
23	software, building and repairing of	opinion testimony. Pringle has not
24	computers, analog and digital sound	been designated as an expert
24	recording systems and signal processing,	witness in this case, nor has he
25	music production, sound mixing, and	presented a sufficient foundation to
26	specialized computer-based music software;	support any claimed technical
	which includes musical instrumentation	expertise in the referenced subjects.
27	software, sound processing software and	Daubert v. Merrell Dow Pharms.,
28	virtual sound production studios.	<i>Inc.</i> , 509 U.S. 579, 591 (1993);

1	Pringle Declaration	Evidentiary Objections
2		Kumho Tire Co. v. Carmichael, 526
3		U.S. 137, 147-48 (1999).
4	9. In the last 10 to 15 years, I have acquired a particular expertise in	Fed. R. Evid. 401, 402, 403, 602, 701, 702
5	loading, using and operating the Ensoniq-	The statements lack foundation and
	ASR-10 instrument and as a consequence,	provide no basis to offer expert
6	am quite conversant with its functions,	opinion testimony. Pringle has not
7	capabilities and availability.	been designated as an expert
8		witness in this case, nor has he
9		presented a sufficient foundation to support any claimed technical
		expertise in the referenced subjects.
10		Daubert v. Merrell Dow Pharms.,
11		<i>Inc.</i> , 509 U.S. 579, 591 (1993);
12		Kumho Tire Co. v. Carmichael, 526
	10. I attended Austin Community	U.S. 137, 147-48 (1999).
13	College and took classes regarding sound	Fed. R. Evid. 401, 402, 403, 602, 701, 702
14	recording, songwriting, the physics of	The statements lack foundation and
15	sound, studio productions and fundamentals	provide no basis to offer expert
16	of music. Besides formal instruction, I	opinion testimony. Pringle has not
	acquired substantial knowledge and skill in	been designated as an expert
17	connection with producing, writing, arranging and recording music through self	witness in this case, nor has he presented a sufficient foundation to
18	instruction and the kind of experience which	support any claimed technical
19	comes from hands-on involvement and	expertise in the referenced subjects.
20	performance. I have written hundreds, if not	Daubert v. Merrell Dow Pharms.,
	thousands of songs, in a wide variety of	Inc., 509 U.S. 579, 591 (1993);
21	musical genres including, but not limited to, rock, dance, heavy metal, romantic ballads,	Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).
22	experimental electronic and techno dance.	0.5. 157, 147-46 (1777).
23	11. Based on this experience and	Fed. R. Evid. 401, 402, 403, 602,
24	training, I am able to analyze any musical	<u>701, 702</u>
	composition with which I have been	The statements lack foundation and
25	involved, regardless of whether I wrote,	provide no basis to offer expert
26	arranged, performed, recorded or mixed the beats or lyrics. I can also comment upon and	opinion testimony. Pringle has not been designated as an expert
27	offer opinions related to the fact statements	witness in this case, nor has he
28	offered by Geluso in his Declaration, as	presented a sufficient foundation to
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1	Pringle Declaration	Evidentiary Objections
2	well as respond to various other declarations	support any claimed technical
3	used to support the Defendants' Motion for	expertise in the referenced subjects
	Summary Judgment.	sufficient to address the declarations
4		filed in support of Defendants'
5		Motion for Summary Judgment.
6		Daubert v. Merrell Dow Pharms.,
		Inc., 509 U.S. 579, 591 (1993);
7		<i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
8	13. Given my personal	Fed. R. Evid. 401, 402, 403, 602,
9	involvement in the creation of "Take A	701, 702
	Dive" and "Take A Dive" (Dance Version)	The statements lack foundation and
10	plus my extensive personal musical	provide no basis to offer expert
11	experience over the last 25 years, I have	opinion testimony. Pringle has not
12	been asked to review, analyze, comment	been designated as an expert
	upon and to the extent appropriate rebut the	witness in this case, nor has he
13	factual statements and opinions of Geluso,	presented a sufficient foundation to
14	Riesterer, Guetta, Garraud, and others using	support any claimed technical
15	such information of which I am aware and information obtained through discovery in	expertise in the referenced subjects sufficient to address the declarations
15	this case.	filed in support of Defendants'
16	tins case.	Motion for Summary Judgment.
17		Daubert v. Merrell Dow Pharms.,
		<i>Inc.</i> , 509 U.S. 579, 591 (1993);
18		Kumho Tire Co. v. Carmichael, 526
19		U.S. 137, 147-48 (1999).
20	14. Important to this analysis is the	Fed. R. Evid. 401, 402, 403, 602,
	fact that numerous materials were not made	701, 702
21	available to me or otherwise provided with	The statements are argumentative,
22	inappropriate "attorneys eyes only" designations to my attorneys, which impact	speculative, lack foundation, offer improper legal argument, and
23	directly on my ability to address completely	constitute improper opinion
	the Geluso, Riesterer, Guetta and Erik	testimony of a lay person. Pringle
24	Laykin declarations and the arguments of	has not been designated as an expert
25	counsel for the Defendants. For example, I	witness in this case, nor has he
26	was not provided with the discontinued	presented a sufficient foundation to
	"authorized and unlocked" instrumentation	support any claimed technical
27	called: "Plugsound Box" with the	expertise in the referenced subjects.
28	"Plugsound: Fretted Instruments." This	Daubert v. Merrell Dow Pharms.,

Pringle Declaration Specific instrumentation was provided to and relied upon by Geluso. The failure to provide such "authorized and unlocked" instrumentation to us is significant since it is this discontinued instrumentation which allegedly contains the "Strat With SM57 Stereo Spread" preset on which the Defendants rely. 15. The "Strat With SM57 Stereo Spread" is the specific instrumental preset that Geluso and Defendants Riesterer and Guetta now contend was allegedly used to Evidentiary Objections Inc., 509 U.S. 579, 591 (1993); Kumho Tire Co. v. Carmichael, U.S. 137, 147-48 (1999). Fed. R. Evid. 401, 402, 403, 602 701, 702 The statements are argumentative speculative, lack foundation, do	
and relied upon by Geluso. The failure to provide such "authorized and unlocked" instrumentation to us is significant since it is this discontinued instrumentation which allegedly contains the "Strat With SM57 Stereo Spread" preset on which the Defendants rely. 15. The "Strat With SM57 Stereo Spread" is the specific instrumental preset that Geluso and Defendants Riesterer and Guetta now contend was allegedly used to specific instrument to the failure to provide such "authorized and unlocked" (U.S. 137, 147-48 (1999). Kumho Tire Co. v. Carmichael, U.S. 137, 147-48 (1999). Fed. R. Evid. 401, 402, 403, 602 (701, 702) The statements are argumentative speculative, lack foundation, do	
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this discontinued instrumentation which allegedly contains the "Strat With SM57 Stereo Spread" preset on which the Defendants rely. 15. The "Strat With SM57 Stereo Spread" is the specific instrumental preset that Geluso and Defendants Riesterer and Guetta now contend was allegedly used to Speculative, lack foundation, do	<u> </u>
allegedly contains the "Strat With SM57 Stereo Spread" preset on which the Defendants rely. 15. The "Strat With SM57 Stereo Spread" is the specific instrumental preset that Geluso and Defendants Riesterer and Guetta now contend was allegedly used to Stereo Spread" preset on which the Defendants rely. Fed. R. Evid. 401, 402, 403, 602 The statements are argumentative speculative, lack foundation, do))
Stereo Spread" preset on which the Defendants rely. 15. The "Strat With SM57 Stereo Spread" is the specific instrumental preset that Geluso and Defendants Riesterer and Guetta now contend was allegedly used to Stereo Spread" preset on which the Defendants rely. Fed. R. Evid. 401, 402, 403, 602 701, 702 The statements are argumentative speculative, lack foundation, do	<u>)</u>
Defendants rely. 15. The "Strat With SM57 Stereo Spread" is the specific instrumental preset that Geluso and Defendants Riesterer and Guetta now contend was allegedly used to Defendants rely. Fed. R. Evid. 401, 402, 403, 602	<u>)</u> ,
15. The "Strat With SM57 Stereo Spread" is the specific instrumental preset that Geluso and Defendants Riesterer and Guetta now contend was allegedly used to Speculative, lack foundation, do	<u>),</u>
that Geluso and Defendants Riesterer and Guetta now contend was allegedly used to Spread is the specific institution preset Tot, 702 The statements are argumentative speculative, lack foundation, do	
Guetta now contend was allegedly used to speculative, lack foundation, do	
Guetta now contend was allegedly used to speculative, lack foundation, do	
1//	
create the guitar twang sequence at issue appear to be based on the wither	
here. What is significant about the failure of the Defendants to provide access to this legal argument, and constitute	oper
discontinued instrumentation is that it was discontinued instrumentation is that it was	lav
nonetheless available for use by Geluso. person. Pringle has not been	lay
Why wasn't it available to me or my designated as an expert witness	in
counsel for a similar purpose? The this case, nor has he presented a	
15 withholding of such instrumentation creates sufficient foundation to support	•
serious factual questions as to what one claimed technical expertise in the state of such discontinued claimed technical expertise in the state of such discontinued control and such art was a factor of such art was a fact	ıe
skined in the use of such discontinued leferenced subjects. Daubert v.	
instrumentation, like myself, would uncover Merrell Dow Pharms., Inc., 509	
if the equipment had been turned over for inspection and analysis. This is particularly U.S. 579, 591 (1993); <i>Kumho T Co. v. Carmichael</i> , 526 U.S. 13'	
19 so given the situation discussed below 147-48 (1999).	',
regarding the original "David Pon Guitar"	
original files.	
21 16. Finally, I was also not provided <u>Fed. R. Evid. 401, 402, 403, 602</u>	<u>),</u>
with all of the original "David Pop Guitar" 701, 702	
inidi mes, instrument mes, sound effect	
plug-ins, instrumental plug-ins, wave speculative, lack foundation, do	
samples, or any of the files that were appear to be based on the witner directly related to the creation of the "guitar" personal knowledge, offer impressional knowledge, offer impressio	
25 twang sequence" as it is heard in "I Gotta legal argument, and constitute	per
Feeling "With an opportunity to inspect improper opinion testimony of	ı lay
investigate and analyze those specific files, I person. Pringle has not been	•
would be able to demonstrate further how designated as an expert witness	
and why the Geluso opinion is inaccurate, this case, nor has he presented a	

4		
1	Pringle Declaration	Evidentiary Objections
2	intentionally misleading and not credible.	sufficient foundation to support any
3	Furthermore, Geluso admits that he has no	claimed technical expertise in the
4	personal knowledge that I downloaded anything from Beatport.com Re-Mix	referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
5	Contest and then back-dated any files from	U.S. 579, 591 (1993); <i>Kumho Tire</i>
	that Contest as part of a scheme to create a	Co. v. Carmichael, 526 U.S. 137,
6	claim of copyright infringement against the	147-48 (1999).
7	Black Eyed Peas. I reiterate that at no time	
8	did I sample or copy "I Gotta Feeling" in order to create the dance version of "Take A	
9	Dive" and then manipulate that sampled	
	version manually so that I could assert that I	
10	composed "Take a Dive" (Dance Version)	
11	in 1999. (See Deposition of Paul Geluso,	
12	Exhibit F to Dickie Decl. ("Geluso Dep."), pp. 134-137).	
13	17. Geluso opines that it is	Fed. R. Evid. 401, 402, 403, 602,
	common for songwriters and musicians not	701, 702
14	to save all the precise sound settings used	The statements are argumentative,
15	when creating the "final" musical sequence.	speculative, lack foundation, do not
16	(Dckt. #162, ftn. 7, p. 8). He uses this statement to support his conclusion that the	appear to be based on the witness' personal knowledge, offer improper
17	music creation files produced by Riesterer	legal argument, and constitute
	show that Riesterer created the final guitar	improper opinion testimony of a lay
18	"twang" sound and composed the chords	person. Pringle has not been
19	that make up the "guitar twang sequence" in	designated as an expert witness in
20	the song "I Gotta Feeling." (Dckt. #162, pp. 4, 8). Geluso'a conclusion is incorrect. As a	this case, nor has he presented a sufficient foundation to support any
21	musician with 25 years of writing and	claimed technical expertise in the
22	recording songs electronically through	referenced subjects. Daubert v.
	equipment like an Ensoniq ASR-10, I can	Merrell Dow Pharms., Inc., 509
23	state that Geluso's opinion is not only	U.S. 579, 591 (1993); <i>Kumho Tire</i>
24	incorrect factually, it is unsupported by the objective evidence and contrary to	Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).
25	established practices by musicians,	(2777).
26	songwriters and audio engineers.	
	18. It is not common for legitimate	Fed. R. Evid. 401, 402, 403, 602,
27	music composers to fail to save the precise	The statements leak foundation, do
28	sound effect settings used when creating the	The statements lack foundation, do

1		
	Pringle Declaration	Evidentiary Objections
2	final musical sequences. Failing to save	not appear to be based on the
3	such settings makes it very difficult to	witness' personal knowledge, and
4	replicate the identical musical sound effects used in the creation of the original music	constitute improper opinion testimony of a lay person. Pringle
5	later.	has not been designated as an expert
		witness in this case, nor has he
6		presented a sufficient foundation to
7		support any claimed technical
8		expertise in the referenced subjects. Daubert v. Merrell Dow Pharms.,
9		Inc., 509 U.S. 579, 591 (1993);
		Kumho Tire Co. v. Carmichael, 526
10		U.S. 137, 147-48 (1999).
11	19. It is not common for legitimate	Fed. R. Evid. 401, 402, 403, 602,
12	music composers to fail to save the precise	701, 702
	sound effect settings used when creating the final musical sequences. Failing to save	The statements lack foundation, do not appear to be based on the
13	such settings makes it very difficult to	witness' personal knowledge, and
14	replicate the identical musical sound effects	constitute improper opinion
15	used in the creation of the original music	testimony of a lay person. Pringle
16	later.	has not been designated as an expert
		witness in this case, nor has he
17		presented a sufficient foundation to support any claimed technical
18		expertise in the referenced subjects.
19		Daubert v. Merrell Dow Pharms.,
20		<i>Inc.</i> , 509 U.S. 579, 591 (1993);
		Kumho Tire Co. v. Carmichael, 526
21	20. Absent the original musical	U.S. 137, 147-48 (1999). Fed. R. Evid. 401, 402, 403, 602,
22	settings used for the "guitar twang	701, 702
23	sequence," the Geluso analysis does not	The statements lack foundation, do
24	resolve any disputed material fact at issue	not appear to be based on the
	here.	witness' personal knowledge, offer
25		improper legal argument, and
26		constitute improper opinion testimony of a lay person. Pringle
27		has not been designated as an expert
28		witness in this case, nor has he
20		

1	Pringle Declaration	Evidentiary Objections
2		presented a sufficient foundation to
3		support any claimed technical
4		expertise in the referenced subjects. Daubert v. Merrell Dow Pharms.,
5		Inc., 509 U.S. 579, 591 (1993);
		Kumho Tire Co. v. Carmichael, 526
6		U.S. 137, 147-48 (1999).
7	21. That Geluso is speculating here	Fed. R. Evid. 401, 402, 403, 602,
8	as to what Riesterer did appears from two	701, 702 The statements are argumentative
9	points: (a) his concession that Riesterer did not save the sound effect settings he used	The statements are argumentative, speculative, lack foundation, do not
	and (b) he had to manipulate the sound	appear to be based on the witness'
10	effects settings manually to create the sound	personal knowledge, and constitute
11	he heard on "I Gotta Feeling" from scratch.	improper opinion testimony of a lay
12	(See Dckt. #162, p. 5). The need to manipulate the sound effects settings	person. Pringle has not been designated as an expert witness in
13	manually to create the "guitar twang	this case, nor has he presented a
	sequence" does not eliminate or foreclose	sufficient foundation to support any
14	factual inquiry into what Riesterer actually	claimed technical expertise in the
15	did do, if anything, to "create" the allegedly	referenced subjects. Daubert v.
16	infringing music.	Merrell Dow Pharms., Inc., 509
17		U.S. 579, 591 (1993); <i>Kumho Tire</i> Co. v. Carmichael, 526 U.S. 137,
		147-48 (1999).
18	22. Only through the manual	Fed. R. Evid. 401, 402, 403, 602,
19	manipulation of the Logic Session Song File	701, 702
20	he received from Riesterer was Geluso able	The statements are argumentative,
21	to reproduce the sound of the "guitar twang sequence" which is heard in both "Take A	speculative, lack foundation, do not appear to be based on the witness'
	Dive" (Dance Version) and "I Gotta	personal knowledge, offer improper
22	Feeling." That file in its original, unaltered	legal argument, and constitute
23	state has never been provided so it is	improper opinion testimony of a lay
24	impossible to determine what one might	person. Pringle has not been
25	have discovered from its examination. Geluso's representation that Riesterer files	designated as an expert witness in this case, nor has he presented a
	bates Nos. 1-9, 38 are the "I Gotta Feeling"	sufficient foundation to support any
26	original creation files is false. (See and	claimed technical expertise in the
27	compare, Dckt. #162, p. 3, #5 with Exhibits	referenced subjects. Daubert v.
28	2, 3, 4, 5, 6, 7, 8 and 9.)	Merrell Dow Pharms., Inc., 509

1	Pringle Declaration	Evidentiary Objections
2		U.S. 579, 591 (1993); <i>Kumho Tire</i>
3		Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).
4	23. Significantly, Geluso does not	Fed. R. Evid. 401, 402, 403, 602,
5	state how, when, and with what precise sound effect settings Riesterer composed the	701, 702 The statements are argumentative,
6	original "guitar twang sequence." How	speculative, lack foundation, do not
7	Geluso did the manipulation likewise is unstated and the need to do so is important	appear to be based on the witness' personal knowledge, offer improper
8	in light of Riesterer's failure to save any of	legal argument, and constitute
9	the precise sound effects settings he used to create the "guitar twang sequence" heard in	improper opinion testimony of a lay person. Pringle has not been
10	"I Gotta Feeling." The conclusion that	designated as an expert witness in
11	Riesterer created the final "guitar twang	this case, nor has he presented a
12	sequence" is made without the benefit of any real factual support and as such, is	sufficient foundation to support any claimed technical expertise in the
13	entitled to little weight.	referenced subjects. Daubert v.
14		Merrell Dow Pharms., Inc., 509 U.S. 579, 591 (1993); Kumho Tire
15		Co. v. Carmichael, 526 U.S. 137,
16	24. It stands to reason that since	147-48 (1999). Fed. R. Evid. 401, 402, 403, 602,
17	Geluso was able to adjust the sound effects	701, 702
18	settings manually to replicate the "guitar	The statements are argumentative,
19	twang sequence" found in "I Gotta Feeling," that if any of the Defendants were	speculative, lack foundation, do not appear to be based on the witness'
20	previously provided with a sample or CD	personal knowledge, offer improper
21	containing a version of "Take A Dive" (Dance Version) containing the "guitar	legal argument, and constitute improper opinion testimony of a lay
22	twang sequence" with or without vocals,	person. Pringle has not been
23	any one of them could have done exactly what Geluso did – namely, manipulate the	designated as an expert witness in this case, nor has he presented a
24	sample or song from the CD, to produce a	sufficient foundation to support any
25	"guitar twang sequence" strikingly similar to mine.	claimed technical expertise in the referenced subjects. <i>Daubert v</i> .
	to mine.	Merrell Dow Pharms., Inc., 509
26		U.S. 579, 591 (1993); <i>Kumho Tire</i>
27		Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).
28		- (/ ·

1	Pringle Declaration	Evidentiary Objections
2		
	25. Certainly the manual manipulation of a music file to achieve a	Fed. R. Evid. 401, 402, 403, 602, 701, 702
3	strikingly similar sound is evidence that the	The statements are argumentative,
4	Defendants themselves could have done the	speculative, lack foundation, do not
5	same thing with (i) the samples and	appear to be based on the witness'
6	instrumentation of "Take A Dive" (Dance	personal knowledge, offer improper
6	Version) that I provided to Garraud, Guetta,	legal argument, and constitute
7	and Gum Productions around 1999-2003 or (ii) from instrumentation and samples I	improper opinion testimony of a lay person. Pringle has not been
8	provided to other DJs, publishing	designated as an expert witness in
9	companies, record companies, radio stations	this case, nor has he presented a
	and other artists, from the 1990's to around	sufficient foundation to support any
10	2008.	claimed technical expertise in the
11		referenced subjects. Daubert v.
12		Merrell Dow Pharms., Inc., 509
		U.S. 579, 591 (1993); <i>Kumho Tire</i>
13		Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).
14	26. The fact that Riesterer does not	Fed. R. Evid. 401, 402, 403, 602,
15	know the precise sound effects settings he	701, 702
	used to create the alleged sound effects used	The statements are argumentative,
16	to create the "guitar twang sequence" heard	speculative, lack foundation, do not
17	in "I Gotta Feeling" and the fact that Geluso	appear to be based on the witness'
18	had to manipulate the instrument samples	personal knowledge, offer improper
	and the alleged sound effects settings	legal argument, and constitute
19	manually in order to recreate the "guitar twang sequence" heard in "I Gotta Feeling"	improper opinion testimony of a lay person. Pringle has not been
20	is circumstantial evidence from which any	designated as an expert witness in
21	reasonable person could conclude that	this case, nor has he presented a
22	Riesterer did not create the original "guitar	sufficient foundation to support any
	twang sequence," but simply manipulated	claimed technical expertise in the
23	the music files he obtained from someone	referenced subjects. Daubert v.
24	else to create the "guitar twang sequence."	Merrell Dow Pharms., Inc., 509 U.S. 579, 591 (1993); Kumho Tire
25		Co. v. Carmichael, 526 U.S. 137,
		147-48 (1999).
26	27. To demonstrate how important	Fed. R. Evid. 401, 402, 403, 602,
27	saving the precise sound processing settings	<u>701, 702</u>
28	is to musicians and songwriters alike, I have	The statements are argumentative,

4		
1	Pringle Declaration	Evidentiary Objections
2	attached an advertisement for a device	speculative, lack foundation, do not
3	called a "locking security cover" (<i>see</i> , Exhibit 10). This device covers the front	appear to be based on the witness' personal knowledge, and constitute
4	control panel of rack-mountable sound	improper opinion testimony of a lay
5	processing devices and was invented to	person. Pringle has not been
	prevent unwanted adjustments to the	designated as an expert witness in
6	composer's musical sound effects settings.	this case, nor has he presented a
7	These locking security devices have been	sufficient foundation to support any
8	around for decades. I can personally attest to the fact that saving the precise sound	claimed technical expertise in the referenced subjects. <i>Daubert v</i> .
9	processing settings for a song is of	Merrell Dow Pharms., Inc., 509
	paramount importance to all musicians,	U.S. 579, 591 (1993); <i>Kumho Tire</i>
10	songwriters and audio engineers. To suggest	Co. v. Carmichael, 526 U.S. 137,
11	otherwise, as Geluso does, is false and	147-48 (1999).
12	misleading.	
	28. As it takes considerable time to	Fed. R. Evid. 401, 402, 403, 602,
13	adjust the actual sound effects processing settings, musicians and composers take	The statements are argumentative,
14	great care in securing the actual settings. It	speculative, lack foundation, do not
15	also takes a long time to adjust just one	appear to be based on the witness'
16	sound effect processor setting, let alone	personal knowledge, offer improper
	trying to reproduce 4 sound effect processor	legal argument, and constitute
17	settings, as Geluso alleges Riesterer used to	improper opinion testimony of a lay
18	create the "guitar twang sequence" heard in "I Gotta Feeling." Thus, the suggestion that	person. Pringle has not been designated as an expert witness in
19	Riesterer did not save and does not know	this case, nor has he presented a
	the actual sound effects processor settings	sufficient foundation to support any
20	for the "guitar twang sequence" heard in "I	claimed technical expertise in the
21	Gotta Feeling" is neither credible nor	referenced subjects. Daubert v.
22	dispositive of whether or not I created	Merrell Dow Pharms., Inc., 509
	"Take A Dive" (Dance Version) in 1999	U.S. 579, 591 (1993); <i>Kumho Tire</i>
23	with the original "guitar twang sequence."	Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).
24	29. Geluso tells us that he "was	Fed. R. Evid. 401, 402, 403, 602,
25	able to manually recreate the "guitar twang	701, 702
	sequence" from scratch." Regardless, it is	The statements are argumentative,
26	irrelevant that Geluso's ability to recreate	speculative, lack foundation, do not
27	the guitar twang sound proves that I did not	appear to be based on the witness'
28	create "Take A Dive" (Dance Version) in	personal knowledge, and constitute

1	Pringle Declaration	Evidentiary Objections
2		
2	1999 as I have alleged and established	improper opinion testimony of a lay
3	through the work of forensic expert David	person. Pringle has not been
4	Gallant ("Gallant") (Exhibit 1-Gallant	designated as an expert witness in
	Report). Although Geluso's opinion is an	this case, nor has he presented a
5	invalid conclusion, it does suggest that the	sufficient foundation to support any
6	Defendants could have recreated the "guitar	claimed technical expertise in the
	twang sequence" heard in my song "Take A	referenced subjects. Daubert v.
7	Dive" (Dance Version) from scratch, too.	Merrell Dow Pharms., Inc., 509
8	After all, the "guitar twang sequence" is	U.S. 579, 591 (1993); <i>Kumho Tire</i>
	simply a guitar that has been manipulated through various commonly available sound	Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).
9	effects and simple layering.	147-48 (1999).
10	30. Geluso's re-creation through	Fed. R. Evid. 401, 402, 403, 602,
11	manual manipulation of Riesterer's music	701, 702
11	files does not exonerate any of the	The statements are argumentative,
12	Defendants from having copied my work.	speculative, lack foundation, do not
13	Indeed, Geluso's stated ability to recreate	appear to be based on the witness'
	the "guitar twang sequence" from scratch is	personal knowledge, and constitute
14	neither incredible nor miraculous. This re-	improper opinion testimony of a lay
15	creation of the "guitar twang sequence" by	person. Pringle has not been
	Geluso simply points out the ease with	designated as an expert witness in
16	which sophisticated samplers and high-tech	this case, nor has he presented a
17	computer-based musical software can	sufficient foundation to support any
18	replicate or easily sample parts of my song	claimed technical expertise in the
10	and its "guitar twang sequence" from the	referenced subjects. Daubert v.
19	CDs and instrumental soloed tracks that I	Merrell Dow Pharms., Inc., 509
20	provided to the Defendants. Given the	U.S. 579, 591 (1993); <i>Kumho Tire</i>
	access to my song which I provided to	Co. v. Carmichael, 526 U.S. 137,
21	several Defendants prior to 2008, Geluso's	147-48 (1999).
22	representation that he could reproduce the	
	"guitar twang sequence" from scratch,	
23	serves only to expose the ease with which the alleged copyright infringement could	
24	have, and ultimately did occur.	
25	31. If Riesterer actually used	Fed. R. Evid. 401, 402, 403, 602,
	reverberation, distortion, equalization, and	701, 702
26	compression in creating "I Gotta Feeling," it	The statements are argumentative,
27	is incredulous to suggest that the precise	speculative, lack foundation, do not
	sound effect processor settings that give the	appear to be based on the witness'
28		

1	Dwingle Declaration	Evidentiany Objections
2	Pringle Declaration	Evidentiary Objections
	"guitar twang sequence" its "unique character" could not be recreated by the	personal knowledge, and constitute improper opinion testimony of a lay
3	original composer without having to hire an	person. Pringle has not been
4	audio expert to "manipulate" the sound	designated as an expert witness in
5	effect processor settings and	this case, nor has he presented a
6	instrumentation manually. It is only logical that the creator of one of the most	sufficient foundation to support any claimed technical expertise in the
7	recognizable musical "hook-lines" in recent	referenced subjects. Daubert v.
8	songwriting history would have saved the precise sound effect processor settings for	Merrell Dow Pharms., Inc., 509 U.S. 579, 591 (1993); Kumho Tire
9	the "guitar twang sequence": (i) on his	Co. v. Carmichael, 526 U.S. 137,
10	computer, (ii) in his "I Gotta Feeling - Logic Session Song File," or (iii) on some scrap of	147-48 (1999).
11	paper just like thousands of musicians,	
12	songwriters and audio engineers do everyday.	
13	32. Without knowing the precise	Fed. R. Evid. 401, 402, 403, 602,
14	sound effect processor settings that were used to create the parts of "I Gotta Feeling,"	701, 702 The statements are argumentative,
15	neither Riesterer nor Geluso can establish as	speculative, lack foundation, do not
16	a matter of law that it was Riesterer, and not	appear to be based on the witness'
	me, who produced the original "guitar	personal knowledge, offer improper
17 18	twang sequence" found in "I Gotta Feeling."	legal argument, and constitute improper opinion testimony of a lay person. Pringle has not been
19		designated as an expert witness in
20		this case, nor has he presented a
21		sufficient foundation to support any claimed technical expertise in the
		referenced subjects. Daubert v.
22		Merrell Dow Pharms., Inc., 509
23 24		U.S. 579, 591 (1993); <i>Kumho Tire</i> Co. v. Carmichael, 526 U.S. 137,
		147-48 (1999).
25	33. Unlike Riesterer, I can explain	Fed. R. Evid. 401, 402, 403, 602,
26	how the sounds on "Take A Dive" (Dance Version) were made and can actually	701, 702 The statements are argumentative,
27	demonstrate how those sounds are played	speculative, lack foundation, do not
28	on an Ensoniq ASR-10. I can also show	appear to be based on the witness'

1	Pringle Declaration	Evidentiary Objections
2	where the actual notes and instrumentation	personal knowledge, and constitute
3	for the "guitar twang sequence" were	improper opinion testimony of a lay
4	derived from, in songs that were registered and on deposit with the Copyright Office	person. Pringle has not been designated as an expert witness in
5	since 1998.	this case, nor has he presented a
		sufficient foundation to support any
6		claimed technical expertise in the
7		referenced subjects. Daubert v.
8		Merrell Dow Pharms., Inc., 509
		U.S. 579, 591 (1993); <i>Kumho Tire</i> Co. v. Carmichael, 526 U.S. 137,
9		147-48 (1999).
10	34. To prove that it was Riesterer,	Fed. R. Evid. 401, 402, 403, 602,
11	not me, that produced the original "guitar	701, 702
12	twang sequence," Riesterer, not Geluso,	The statements are argumentative,
	must demonstrate how and identify the	speculative, lack foundation, do not
13	specific sound effect processor settings he	appear to be based on the witness'
14	used to create the parts of "I Gotta Feeling." If summary judgment is to be granted,	personal knowledge, offer improper legal argument, and constitute
15	Riesterer must eliminate the existence of	improper opinion testimony of a lay
	any material fact in dispute with respect to	person. Pringle has not been
16	his original creative efforts. He has not done	designated as an expert witness in
17	so. Geluso's manual manipulation of the	this case, nor has he presented a
18	sound effect processor settings and	sufficient foundation to support any
	instrumentation files does not eliminate the	claimed technical expertise in the
19	existence of a factual dispute as to the origin of the music in question or establish	referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
20	conclusively what Riesterer did to compose	U.S. 579, 591 (1993); <i>Kumho Tire</i>
21	all the parts of "I Gotta Feeling."	Co. v. Carmichael, 526 U.S. 137,
22		147-48 (1999).
	35. Geluso's manual manipulation	Fed. R. Evid. 401, 402, 403, 602,
23	of the music files is, in effect, nothing more	701, 702
24	than a sophisticated "doctoring" of the evidence for the purpose of creating a	The statements are argumentative, speculative, lack foundation, do not
25	misimpression as to the origin of the "guitar	appear to be based on the witness'
	twang sequence." Having Geluso manually	personal knowledge, offer improper
26	create the alleged sound effect processor	legal argument, and constitute
27	settings and instrumentation, to reproduce	improper opinion testimony of a lay
28	the sound which is created from such	person. Pringle has not been

1	Pringle Declaration	Evidentiany Objections
	0	Evidentiary Objections
2	manipulation, does not establish who	designated as an expert witness in
3	originally created the "guitar twang	this case, nor has he presented a
4	sequence" found in both "Take A Dive" (Dance Version) and "I Gotta Feeling"; or	sufficient foundation to support any claimed technical expertise in the
	whether there was copyright infringement	referenced subjects. Daubert v.
5	by the Defendants.	Merrell Dow Pharms., Inc., 509
6	by the Boronaums.	U.S. 579, 591 (1993); <i>Kumho Tire</i>
7		Co. v. Carmichael, 526 U.S. 137,
		147-48 (1999).
8	36. The original "Logic Session	Fed. R. Evid. 401, 402, 403, 602,
9	Song File" has been repeatedly requested,	701, 702
10	but actually never provided.	The statements lack foundation, do
		not appear to be based on the
11		witness' personal knowledge, and constitute improper opinion
12		testimony of a lay person. Pringle
13		has not been designated as an expert
		witness in this case, nor has he
14		presented a sufficient foundation to
15		support any claimed technical
16		expertise in the referenced subjects.
		Daubert v. Merrell Dow Pharms.,
17		Inc., 509 U.S. 579, 591 (1993);
18		Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).
19	37. An unaltered Logic Session	Fed. R. Evid. 401, 402, 403, 602,
	Song File should include all of the midi	701, 702
20	files, sound effects, instrumentation,	The statements are argumentative,
21	mixdown volumes, and other relevant	speculative, lack foundation, do not
22	material involved in the original creative	appear to be based on the witness'
	process for "I Gotta Feeling." Riesterer files	personal knowledge, offer improper
23	bates Nos. 1-9, 38 do not constitute the	legal argument, and constitute
24	original "I Gotta Feeling" creation files.	improper opinion testimony of a lay person. Pringle has not been
25		designated as an expert witness in
		this case, nor has he presented a
26		sufficient foundation to support any
27		claimed technical expertise in the
28		referenced subjects. Daubert v.

1	Pringle Declaration	Evidentiary Objections
2	- Ingiv Double white	Merrell Dow Pharms., Inc., 509
3		U.S. 579, 591 (1993); <i>Kumho Tire</i>
		Co. v. Carmichael, 526 U.S. 137,
4	20 In line of the allocal areaton of	147-48 (1999).
5	38. In lieu of the alleged creator of the "guitar twang sequence," providing	Fed. R. Evid. 401, 402, 403, 602, 701, 702
6	detailed information as to how he created	The statements are argumentative,
7	the song, what settings he used and how he	speculative, lack foundation, do not
8	did it, the Defendants rely upon the work of an audio expert and student protégé of	appear to be based on the witness' personal knowledge, offer improper
9	Defendants' musicologist brought into the	legal argument, and constitute
10	case to manipulate the sound effect	improper opinion testimony of a lay
	processor settings and instrumentation	person. Pringle has not been
11	manually to achieve a sound he heard in "I Gotta Feeling," which is a musical sequence	designated as an expert witness in this case, nor has he presented a
12	that I created in 1999. (See Geluso Dep., p.	sufficient foundation to support any
13	137.)	claimed technical expertise in the
14		referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
15		U.S. 579, 591 (1993); <i>Kumho Tire</i>
16		Co. v. Carmichael, 526 U.S. 137,
	39. If Riesterer had been the	147-48 (1999).
17	originator of the "guitar twang sequence" in	Fed. R. Evid. 401, 402, 403, 602, 701, 702
18	"I Gotta Feeling," one would assume that it	The statements are argumentative,
19	would be he who would have detailed the	speculative, lack foundation, do not
20	creative information, including the specific instrumental "layering" and precise sound	appear to be based on the witness' personal knowledge, and constitute
21	effect processor settings that he used, along	improper opinion testimony of a lay
22	with a detailed discussion of how he	person. Pringle has not been
23	selected the specific musical sound effects present in the "guitar twang sequence" and	designated as an expert witness in this case, nor has he presented a
24	why the reverberation, distortion,	sufficient foundation to support any
	equalization, and compression one hears in	claimed technical expertise in the
25	"I Gotta Feeling" was selected. The fact that he was not able to do so supports my	referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
26	assertion that he did not create the "guitar	U.S. 579, 591 (1993); <i>Kumho Tire</i>
27	twang sequence," but merely layered	Co. v. Carmichael, 526 U.S. 137,
28	samples from my "guitar twang sequence,"	147-48 (1999).

1	Pringle Declaration	Evidentiary Objections
2	which was provided to Guetta, years prior to	
3	the creation of "I Gotta Feeling."	E I D E :1 401 402 402 602
4	40. Since Riesterer didn't turn over all of his original Logic Session Song Files	Fed. R. Evid. 401, 402, 403, 602, 701, 702
5	used in the creation of "I Gotta Feeling"	The statements are argumentative,
6	when originally requested, and before that	speculative, lack foundation, do not
6	file was manually manipulated by Geluso,	appear to be based on the witness'
7	we can now never know whether or not Riesterer could have actually produced the	personal knowledge, offer improper legal argument, and constitute
8	"guitar twang sequence" as it is heard in "I	improper opinion testimony of a lay
9	Gotta Feeling" all by himself.	person. Pringle has not been
		designated as an expert witness in
10		this case, nor has he presented a
11		sufficient foundation to support any
12		claimed technical expertise in the referenced subjects. <i>Daubert v</i> .
13		Merrell Dow Pharms., Inc., 509
		U.S. 579, 591 (1993); <i>Kumho Tire</i>
14		Co. v. Carmichael, 526 U.S. 137,
15		147-48 (1999).
16	41. Since Geluso concedes that	Fed. R. Evid. 401, 402, 403, 602,
17	Riesterer himself wasn't able to identify the correct sound effect processor settings and	701, 702 The statements are argumentative,
	exact instrumental layering, Geluso can	speculative, lack foundation, do not
18	only speculate as to what, if anything,	appear to be based on the witness'
19	Riesterer actually did to create the "guitar	personal knowledge, offer improper
20	twang sequence" heard in "I Gotta Feeling."	legal argument, and constitute
21	Given the fact that Riesterer himself cannot identify the sound effect processor settings	improper opinion testimony of a lay person. Pringle has not been
	and instrumental layering used in the "guitar	designated as an expert witness in
22	twang sequence" heard in "I Gotta Feeling,"	this case, nor has he presented a
23	Geluso certainly is not in a position to	sufficient foundation to support any
24	render any credible opinion as to what	claimed technical expertise in the
25	Riesterer actually created.	referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
		U.S. 579, 591 (1993); <i>Kumho Tire</i>
26		Co. v. Carmichael, 526 U.S. 137,
27		147-48 (1999).
28	42. All computer-based programs	Fed. R. Evid. 401, 402, 403, 602,

1	Pringle Declaration	Evidentiary Objections
2	save files to the hard drive in a specific	701, 702
3	location. If one re-opens the Logic Session	The statements are argumentative,
	Song File that Geluso claims is "identical"	speculative, lack foundation, do not
4	to the original creation song file for "I Gotta	appear to be based on the witness'
5	Feeling" without the exact same computer used to create the file, one would receive an	personal knowledge, and constitute improper opinion testimony of a lay
6	error message.	person. Pringle has not been
7		designated as an expert witness in
8		this case, nor has he presented a
		sufficient foundation to support any claimed technical expertise in the
9		referenced subjects. <i>Daubert v</i> .
10		Merrell Dow Pharms., Inc., 509
11		U.S. 579, 591 (1993); <i>Kumho Tire</i>
12		Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).
13	43. The original Logic Session	Fed. R. Evid. 401, 402, 403, 602,
14	Song File would be searching for the exact	701, 702
	same files in the exact same location, on the	The statements are argumentative,
15	original hard drive that Riesterer "gave away." Geluso is being less than candid and	speculative, lack foundation, do not appear to be based on the witness'
16	is intentionally misleading the reader of his	personal knowledge, and constitute
17	Declaration when suggesting what the Logic	improper opinion testimony of a lay
18	Session Song File in his possession shows. He omits to state rather conspicuously that	person. Pringle has not been
19	Riesterer's original Logic Session Song File	designated as an expert witness in this case, nor has he presented a
	for "I Gotta Feeling" has actually been	sufficient foundation to support any
20	altered. Since Riesterer gave away the	claimed technical expertise in the
21	original computer used to create "I Gotta Feeling" to a friend whose name he doesn't	referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
22	know, the only way now to re-load the	U.S. 579, 591 (1993); <i>Kumho Tire</i>
23	original "I Gotta Feeling" Logic Session	Co. v. Carmichael, 526 U.S. 137,
24	Song File in order to have the same	147-48 (1999).
	instruments, midi files, sound effects settings, and the like, in the same locations	
25	as in the original song creation file, is to	
26	alter the Logic Session Song File itself, to	
27	reflect the new locations of the saved files	
28	on the new hard drive, or other storage	

1	Pringle Declaration	Evidentiary Objections
2	media. However, by doing this, the original	
3	Logic Session Song File becomes	
4	permanently altered and no longer identical	
	to the original Logic Session Song File for "I Gotta Feeling."	
5	44. Thus, the Logic Session Song	Fed. R. Evid. 401, 402, 403, 602,
6	File upon which Geluso relied was not the	701, 702
7	original song file and any re-creation of that	The statements are argumentative,
8	Logic Session Song File is not a re-creation of what is represented by Geluso to be the	speculative, lack foundation, do not appear to be based on the witness'
9	original evidence of his creation of the song	personal knowledge, and constitute
10	files for "I Gotta Feeling."	improper opinion testimony of a lay
		person. Pringle has not been designated as an expert witness in
11		this case, nor has he presented a
12		sufficient foundation to support any
13		claimed technical expertise in the
14		referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
15		U.S. 579, 591 (1993); <i>Kumho Tire</i>
16		Co. v. Carmichael, 526 U.S. 137,
17	45. Riesterer refused to turn over	147-48 (1999).
	the original computer he states was used to	Fed. R. Evid. 401, 402, 403, 602, 701, 702
18	compose the music for "I Gotta Feeling."	The statements are argumentative,
19	He also failed to turn over any of the actual	lack foundation, and constitute
20	files that backed up the original computer he states was used to compose "I Gotta	improper opinion testimony of a lay person. Pringle has not been
21	Feeling." His rationale for not doing so is	designated as an expert witness in
22	particularly evasive:	this case, nor has he presented a
23	Q. Do you still have this	sufficient foundation to support any claimed technical expertise in the
	computer?	referenced subjects. Daubert v.
24	A. No. O. Where is it now?	Merrell Dow Pharms., Inc., 509
25	Q. Where is it now?A. I gave it to a friend.	U.S. 579, 591 (1993); <i>Kumho Tire</i> Co. v. Carmichael, 526 U.S. 137,
26	Q. Which friend did you give it	147-48 (1999).
27	to?	
28	A. I don't remember, I have a lot	

1	Pringle Declaration	Evidentiary Objections
2	of friends.	
3	(See, Deposition of Frederic Riesterer,	
4	Exhibit C to Dickie Decl. ("Riesterer Dep."), pp. 192-193.)	
5	46. If Riesterer did create all of the	Fed. R. Evid. 401, 402, 403, 602,
6	musical parts for "I Gotta Feeling," then	<u>701, 702</u>
7	there is no legitimate reason for me to be denied access to that computer and the	The statements are argumentative, speculative, lack foundation, do not
	backed-up files from that computer.	appear to be based on the witness'
8		personal knowledge, offer improper
9		legal argument, and constitute improper opinion testimony of a lay
10		person. Pringle has not been
11		designated as an expert witness in this case, nor has he presented a
12		sufficient foundation to support any
13		claimed technical expertise in the
14		referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
15		U.S. 579, 591 (1993); Kumho Tire
16		Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).
17	47. Certainly, the failure to turn	Fed. R. Evid. 401, 402, 403, 602,
18	over the Riesterer computer and backed-up	The statements are argumentative
19	files under the circumstances, suggests that Riesterer was either being purposefully	The statements are argumentative, speculative, lack foundation, do not
20	evasive as to the whereabouts of his	appear to be based on the witness'
21	evidence, or is trying to prevent examination of the contents of that	personal knowledge, offer improper legal argument, and constitute
22	computer and the backed-up files.	improper opinion testimony of a lay
		person. Pringle has not been
23		designated as an expert witness in this case, nor has he presented a
24		sufficient foundation to support any
25		claimed technical expertise in the referenced subjects. <i>Daubert v.</i>
26		Merrell Dow Pharms., Inc., 509
27		U.S. 579, 591 (1993); <i>Kumho Tire</i>
28		Co. v. Carmichael, 526 U.S. 137,

1		
	Pringle Declaration	Evidentiary Objections
2	40 6	147-48 (1999).
3	48. Computers used to create	Fed. R. Evid. 401, 402, 403, 602,
4	professional-grade music with a "virtual software- based studio" are expensive to	701, 702 The statements are argumentative,
5	build, and not lightly disposed of, because	speculative, lack foundation, do not
	of their specialized software and hardware	appear to be based on the witness'
6	requirements. (Exhibit 11 - Waves Mercury	personal knowledge, offer improper
7	Sound Processing Ad).	legal argument, and constitute
8		improper opinion testimony of a lay person. Pringle has not been
9		designated as an expert witness in
		this case, nor has he presented a
10		sufficient foundation to support any
11		claimed technical expertise in the
12		referenced subjects. Daubert v.
13		Merrell Dow Pharms., Inc., 509 U.S. 579, 591 (1993); Kumho Tire
		Co. v. Carmichael, 526 U.S. 137,
14		147-48 (1999).
15	49. Most virtual software-based	Fed. R. Evid. 401, 402, 403, 602,
16	studio computers, of which I am aware,	701, 702 The state manufacture
17	have professional-grade software and hardware that can cost anywhere from a few	The statements are argumentative, speculative, lack foundation, do not
	thousand dollars to upwards of one-hundred	appear to be based on the witness'
18	thousand dollars; and even more.	personal knowledge, offer improper
19		legal argument, and constitute
20		improper opinion testimony of a lay
21		person. Pringle has not been designated as an expert witness in
		this case, nor has he presented a
22		sufficient foundation to support any
23		claimed technical expertise in the
24		referenced subjects. Daubert v.
25		Merrell Dow Pharms., Inc., 509 U.S. 579, 591 (1993); Kumho Tire
		Co. v. Carmichael, 526 U.S. 137,
26		147-48 (1999).
27	50. Riesterer's act of giving to a	Fed. R. Evid. 401, 402, 403, 602,
28	friend, whose name is unknown, of the very	701, 702

1	Pringle Declaration	Evidentiary Objections
2	instruments and files that could prove his	The statements are argumentative,
3	independent creation claim, for an unstated reason, is so sufficiently unusual, that	speculative, lack foundation, do not appear to be based on the witness'
4	serious questions arise as to the nature and	personal knowledge, and offer
5	circumstances of that particular act and the	improper legal argument.
6	purpose behind it. These questions, if not	
7	answered with an adequate explanation, provide additional circumstantial evidence	
,	of a willful intent to prevent me from	
8	conducting an appropriate analysis of the	
9	device allegedly used to create the original	
10	musical work of "I Gotta Feeling." 51. Geluso tells us that the origin	Fed. R. Evid. 401, 402, 403, 602,
11	of the guitar 'twang' sound in "I Gotta	701, 702
	Feeling" emanates from "Plugsound:	The statements are argumentative,
12	Fretted Instruments" and the instrument	speculative, lack foundation, do not
13	preset that Riesterer supposedly used to create the "guitar twang sequence" is called	appear to be based on the witness' personal knowledge, and constitute
14	"Strat With SM57 Stereo Spread." (Dckt.	improper opinion testimony of a lay
15	#162, p. 4) He suggests that such	person. Pringle has not been
16	instrumentation was not available in 1999	designated as an expert witness in
	and therefore I did not create the song in 1999. Geluso is incorrect as to what was	this case, nor has he presented a sufficient foundation to support any
17 18	available to create musical compositions in 1999.	claimed technical expertise in the referenced subjects. <i>Daubert v</i> .
19	1777.	Merrell Dow Pharms., Inc., 509
20		U.S. 579, 591 (1993); <i>Kumho Tire</i>
21		Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).
22	52. The actual instrument of the	Fed. R. Evid. 401, 402, 403, 602,
23	Plugsound: Fretted Instruments "Strat With SM57 Stereo Spread" preset, is a Fender	701, 702 The statements are argumentative,
24	Stratocaster electric guitar that is plugged	speculative, lack foundation, do not
	into a Fender amplifier. The Fender	appear to be based on the witness'
25	Stratocaster has been available to musicians in the marketplace since 1954 (<i>see</i> , Exhibit	personal knowledge, and constitute improper opinion testimony of a lay
26	12 - Fender Stratocaster History). Fender	person. Pringle has not been
27	amplifiers have been available to musicians	designated as an expert witness in
28	since 1945 (Exhibit 13 - Fender Amplifier	this case, nor has he presented a

1	Pringle Declaration	Evidentiary Objections
2	History). Thus, anyone could have	sufficient foundation to support any
3	reproduced the identical sound of the	claimed technical expertise in the
	Plugsound: Fretted Instruments "Strat With	referenced subjects. Daubert v.
4	SM57 Stereo Spread" preset, with an	Merrell Dow Pharms., Inc., 509
5	instrument and amplifiers which have been	U.S. 579, 591 (1993); <i>Kumho Tire</i>
6	around for over 50 years.	Co. v. Carmichael, 526 U.S. 137,
	72 01 1 1 6	147-48 (1999).
7	53. Geluso concedes these facts as	Fed. R. Evid. 401, 402, 403, 602,
8	well. Anyone could have reproduced the sound of the "Strat With SM57 Stereo"	701, 702 The statements are argumentative,
9	Spread" preset, because that sound is	speculative, lack foundation, do not
	nothing more significant than an indication	appear to be based on the witness'
10	of the popularity and availability of that	personal knowledge, offer improper
11	instrumentation, both as a guitar and as	legal argument, and constitute
12	"stock" sound effects instrumentation found	improper opinion testimony of a lay
12	on almost all keyboards, licensed sampled	person. Pringle has not been
13	libraries, and producer series music	designated as an expert witness in
14	libraries.	this case, nor has he presented a
		sufficient foundation to support any
15		claimed technical expertise in the referenced subjects. <i>Daubert v.</i>
16		Merrell Dow Pharms., Inc., 509
17		U.S. 579, 591 (1993); <i>Kumho Tire</i>
		Co. v. Carmichael, 526 U.S. 137,
18		147-48 (1999).
19	54. Given the general availability	Fed. R. Evid. 401, 402, 403, 602
20	of the Fender Stratocaster instrumentation, I	The statements are argumentative,
	had access to and did use, on numerous	lack foundation, and offer improper
21	occasions, the Fender Stratocaster	legal argument.
22	instrumentation around 1999. The Fender	
23	Stratocaster is in fact one of my favorite guitars. I have used both the Fender	
	Stratocaster guitar and the substantially	
24	similar sounding Fender Telecaster guitar in	
25	numerous musical compositions that I have	
	composed throughout the years. I produced	
26	the strikingly similar "guitar twang	
27	sequence" that is found in "I Gotta Feeling"	
28	in 1999. I created the original version of	

1		
1	Pringle Declaration	Evidentiary Objections
2	"Take A Dive" around 1998, and the	
3	derivative version titled "Take a Dive"	
4	(Dance Version) in 1999. 55. The "guitar twang sequence" is	Fed. R. Evid. 401, 402, 403, 701,
5	not musically complex and can be described	702
6	simply as a layered guitar sound which has	The statements constitute improper
	been processed through the commonly available sound effects of reverb, distortion,	opinion testimony of a lay person.
7	equalization, compression and stereo spread	Pringle has not been designated as an expert witness in this case, nor
8	effects.	has he presented a sufficient
9		foundation to support any claimed
10		technical expertise in the referenced
11		subjects. Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 591
		(1993); Kumho Tire Co. v.
12		Carmichael, 526 U.S. 137, 147-48
13	56 Most importantly, however is	(1999).
14	56. Most importantly, however, is that all of the sound effects Geluso stats	Fed. R. Evid. 401, 402, 403, 602, 701, 702
15	[sic] that were used in composing the	The statements lack foundation, do
16	"guitar twang sequence" were available to	not appear to be based on the
	me around 1999 as stock sound processing	witness' personal knowledge, offer
17	effects on the Ensoniq ASR-10 Keyboard. These sound processing effects were also	improper legal argument, and constitute improper opinion
18	available to me via the other sound	testimony of a lay person.
19	processing equipment that I owned around	, , , ,
20	1999. The stock sound processing effects	
21	which were available in 1999 included the actual "stereo spread" sound effect used on	
	the Plugsound: Fretted Instruments "Strat	
22	With SM57 Stereo Spread." Any suggestion	
23	to the contrary by Alain Etchart ("Etchart")	
24	is simply incorrect. Doc. #169, p. 2). 57. The Plugsound Fretted	Fed. R. Evid. 401, 402, 403, 602,
25	Instruments "Strat With SM57 Stereo	701, 702
26	Spread" is commonly referred to as the	The statements lack foundation and
	"EQ+LFO DELAY" sound processing	constitute improper opinion
27	effect in the Ensoniq ASR-10 Musician's	testimony of a lay person. Pringle
28	Manual (Exhibit 14 - Ensoniq ASR-10	has not been designated as an expert

1	Pringle Declaration	Evidentiary Objections
2	Effects.)	witness in this case, nor has he
3		presented a sufficient foundation to
4		support any claimed technical expertise in the referenced subjects.
5		Daubert v. Merrell Dow Pharms.,
		Inc., 509 U.S. 579, 591 (1993);
6		<i>Kumho Tire Co. v. Carmichael</i> , 526
7	58. Exhibit 14 contains a listing of	U.S. 137, 147-48 (1999). Fed. R. Evid. 401, 402, 403, 602,
8	all of the stock Ensoniq ASR-10 sound	701, 702
9	processing effects plus a single listing of the	The statements are speculative, lack
10	"stereo spread effect" called the EQ+LFO Delay. I believe that I most likely used this	foundation and constitute improper opinion testimony of a lay person.
11	stereo spread effect on the "guitar twang	Pringle has not been designated as
12	sequence" contained in "Take A Dive"	an expert witness in this case, nor
	(Dance Version).	has he presented a sufficient
13		foundation to support any claimed technical expertise in the referenced
14		subjects. Daubert v. Merrell Dow
15		Pharms., Inc., 509 U.S. 579, 591
16		(1993); Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147-48
17		(1999).
18	59. I have attached a copy of	Fed. R. Evid. 401, 402, 403, 602,
	"Regret," a song I composed and registered	701, 702 The statements leak foundation and
19	with the Copyright Office in 1998 (<i>see</i> , Exhibit 15 and Exhibit M, 1998 Copyright	The statements lack foundation and constitute improper opinion
20	Registration). In "Regret," one can hear my	testimony of a lay person. Pringle
21	use in 1998, of the stereo spread sound	has not been designated as an expert
22	effect, called EQ+LFO Delay.	witness in this case, nor has he presented a sufficient foundation to
23		support any claimed technical
24		expertise in the referenced subjects.
25		Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 591 (1993);
		Kumho Tire Co. v. Carmichael, 526
26		U.S. 137, 147-48 (1999).
27	60. This sound processing effect	Fed. R. Evid. 401, 402, 403, 602,
28	was also used on the Univers Sons "Strat	<u>701, 702</u>

1	Pringle Declaration	Evidentiary Objections
2	With SM57 Stereo Spread" preset.	The statements lack foundation and
3		constitute improper opinion
4		testimony of a lay person. Pringle
		has not been designated as an expert witness in this case, nor has he
5		presented a sufficient foundation to
6		support any claimed technical
7		expertise in the referenced subjects.
8		Daubert v. Merrell Dow Pharms.,
		Inc., 509 U.S. 579, 591 (1993);
9		Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).
10	61. The sound processing effects	Fed. R. Evid. 401, 402, 403, 602,
11	which appear on "Regret" in 1998, are	701, 702
	direct evidence that as early as 1998, I was	The statements lack foundation and
12	using the same sound processing effects in	constitute improper opinion
13	my own musical compositions, more than	testimony of a lay person. Pringle
14	10 years before the Black Eyed Peas published "I Gotta Feeling."	has not been designated as an expert witness in this case, nor has he
15	published T Gotta Feeling.	presented a sufficient foundation to
		support any claimed technical
16		expertise in the referenced subjects.
17		Daubert v. Merrell Dow Pharms.,
18		Inc., 509 U.S. 579, 591 (1993);
		<i>Kumho Tire Co. v. Carmichael</i> , 526
19	62. Geluso used commonly	U.S. 137, 147-48 (1999). Fed. R. Evid. 401, 402, 403, 602,
20	available "sound processing effects" and	701, 702
21	commonly available instrumentation to	The statements lack foundation and
22	recreate the "guitar twang sequence" heard	constitute improper opinion
	in "I Gotta Feeling. Both the	testimony of a lay person. Pringle
23	instrumentation and the sound processing	has not been designated as an expert
24	effects that Geluso allegedly used in recreating the "guitar twang sequence" of "I	witness in this case, nor has he presented a sufficient foundation to
25	Gotta Feeling," were all available to the	support any claimed technical
26	general public, in 1999.	expertise in the referenced subjects.
		Daubert v. Merrell Dow Pharms.,
27		Inc., 509 U.S. 579, 591 (1993);
28		Kumho Tire Co. v. Carmichael, 526

1	Pringle Declaration	Evidentiary Objections
2	Tingle Deciaration	· ·
	62 A - (1, - % : 4 4	U.S. 137, 147-48 (1999).
3	63. As the "guitar twang sequence" is a relatively easy sequence to recreate	Fed. R. Evid. 401, 402, 403, 602, 701, 702
4	once it is heard, the ability to replicate it	The statements are argumentative,
5	from scratch as Geluso did leads inevitably	speculative, lack foundation, do not
5	to the conclusion that given the striking	appear to be based on the witness'
6	similarity of the "guitar twang sequence"	personal knowledge, offer improper
7	makes it more probable than not that the	legal argument, and constitute
8	Defendants infringed upon and copied parts	improper opinion testimony of a lay
	from my song, "Take A Dive" (Dance	person. Pringle has not been
9	Version).	designated as an expert witness in
10		this case, nor has he presented a sufficient foundation to support any
11		claimed technical expertise in the
		referenced subjects. Daubert v.
12		Merrell Dow Pharms., Inc., 509
13		U.S. 579, 591 (1993); Kumho Tire
14		Co. v. Carmichael, 526 U.S. 137,
		147-48 (1999).
15	64. Missing from the Geluso	Fed. R. Evid. 401, 402, 403, 602,
16	analysis, however, is any discussion by him as to whether the Defendants could have	701, 702, 1002 The statements are argumentative,
17	recreated the "guitar twang sequence" from	speculative, lack foundation, violate
	the Demo CDs I distributed which	the best evidence rule, do not appear
18	contained the solo track versions (and	to be based on the witness' personal
19	instrumentation, including the individual	knowledge, offer improper legal
20	layers of the "guitar twang sequence") of	argument, and constitute improper
	"Take A Dive" (Dance Version) which I provided to Guetta around 1999 to 2003.	opinion testimony of a lay person.
21	provided to Guetta around 1999 to 2003.	Pringle has not been designated as an expert witness in this case, nor
22		has he presented a sufficient
23		foundation to support any claimed
24		technical expertise in the referenced
		subjects. Daubert v. Merrell Dow
25		Pharms., Inc., 509 U.S. 579, 591
26		(1993); Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147-48
27		
	65. Geluso does not consider the	Fed. R. Evid. 401, 402, 403, 602,
27 28	65. Geluso does not consider the	(1999).

1	Pringle Declaration	Evidentiary Objections
2	possibility that one or more of the	<u>701, 702, 1002</u>
3	Defendants obtained a copy of my song,	The statements are argumentative,
4	heard or mixed it during a live performance	speculative, lack foundation, violate
	as a Dj, prior to 2009. He, of course, makes no attempt to analyze what could have been	the best evidence rule, do not appear to be based on the witness' personal
5	done with such Demo CDs. His failure to	knowledge, offer improper legal
6	opine on what could have been done with	argument, and constitute improper
7	one of my soloed samples or the actual	opinion testimony of a lay person.
8	instrumentation that was given to Guetta,	Pringle has not been designated as
	ignores the possibility that the Black Eyed	an expert witness in this case, nor
9	Peas, Riesterer and/or Guetta manipulated my sample manually to recreate the "guitar"	has he presented a sufficient foundation to support any claimed
10	twang sequence" they heard in the soloed	technical expertise in the referenced
11	sample of "Take a Dive" (Dance Version)	subjects. Daubert v. Merrell Dow
	or in the instrumentation of the "guitar	Pharms., Inc., 509 U.S. 579, 591
12	twang sequence," that I provided prior to	(1993); Kumho Tire Co. v.
13	2008 to Guetta and the other Defendants.	Carmichael, 526 U.S. 137, 147-48
14	66. It was intellectually dishonest	(1999). Fed. R. Evid. 401, 402, 403, 602,
15	for an audio expert like Geluso to have	701, 702, 1002
	ignored my sworn statement that I had	The statements are argumentative,
16	delivered and mailed, the actual tracks for	speculative, lack foundation, violate
17	"Take A Dive" (Dance Version), which	the best evidence rule, do not appear
18	included the instrumentation and individual	to be based on the witness' personal knowledge, offer improper legal
19	samples of my "guitar twang sequence" to both Guetta and Garraud, around 1999 to	argument, and constitute improper
	2003. (See, Pringle Dep.)	opinion testimony of a lay person.
20		Pringle has not been designated as
21		an expert witness in this case, nor
22		has he presented a sufficient
23		foundation to support any claimed technical expertise in the referenced
		subjects. Daubert v. Merrell Dow
24		Pharms., Inc., 509 U.S. 579, 591
25		(1993); Kumho Tire Co. v.
26		Carmichael, 526 U.S. 137, 147-48
27	67. The circumstantial conclusion	(1999). Fed. R. Evid. 401, 402, 403, 602
	of these facts is undeniable: (i) both Guetta	The statements are argumentative,
28	or more than to ansemble (1) com outline	

1	Pringle Declaration	Evidentiary Objections
2	and Garraud often worked directly with	speculative, lack foundation, do not
3	Riesterer in composing music; (ii) Guetta	appear to be based on the witness'
4	does not deny that he worked directly with Riesterer; and (iii) Guetta acknowledged	personal knowledge, and offer improper legal argument.
5	under oath that it was possible that artists	improper regar argument.
	may have sent samples to the address of	
6	Gum Productions. (See, Deposition of Dave	
7	Guetta, Exhibit B to Dickie Decl. ("Guetta	
8	Dep."), p. 69.) 68. I provided Garraud and Guetta,	Fed. R. Evid. 401, 402, 403, 602
9	with all of the sound settings,	The statements are argumentative,
	instrumentation and sound effects of my	speculative, lack foundation, do not
10	songs, including "Take A Dive" (Dance	appear to be based on the witness'
11	Version), so that they could re-create the exact same sounds when performing and	personal knowledge, and offer improper legal argument.
12	mixing my music with other songs at	improper regar argument.
13	different beats-per-minute, in the clubs they	
14	worked as Dj's, in Paris, France.	
	69. Geluso also ignores Guetta's	Fed. R. Evid. 401, 402, 403, 602
15	testimony where he admits that Gum Productions, from time to time, received	The statements are argumentative, speculative, lack foundation, do not
16	copies of music from unknown artists, such	appear to be based on the witness'
17	as myself. (Guetta Dep.)	personal knowledge, and offer
18	70 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	improper legal argument.
19	70. I provided many different versions of "Take A Dive" (Dance Version)	Fed. R. Evid. 401, 402, 403, 602, 1002
	to Guetta and Garraud, years prior to 2009	The statements are argumentative,
20	and those tracks could have been sampled	speculative, lack foundation, violate
21	by them at that time from the Demo CDs, I	the best evidence rule, do not appear
22	provided. See, Pringle Dep., p. 228; see	to be based on the witness' personal
23	also, Exhibit 16, Response No. 25 which provides expressly as follows:	knowledge, and offer improper legal argument.
	"Plaintiff states that there were	angumenu.
24	multiple derivative versions of	
25	"Take A Dive" that were included	
26	on Plaintiff's demo CDs and tapes, including several where the guitar	
27	sequence was soloed out as the	
28	introduction to the song."	

1		
1	Pringle Declaration	Evidentiary Objections
2	Geluso ignores the possible consequence of	
3	my having done so.	F 1 P F :1 401 402 402 602
4	71. It is my opinion that Guetta and Garraud also sampled one of the other songs	Fed. R. Evid. 401, 402, 403, 602, 701, 702, 1002
5	from the same Demo CD they received via	The statements are argumentative,
5	mail from me, in around 2001 to 2003. This	speculative, lack foundation, violate
6	sample is best heard in the beginning of	the best evidence rule, do not appear
7	"Open Your Eyes," which is found on the	to be based on the witness' personal
8	album known as "Guetta Blaster" (see,	knowledge, offer improper legal
	Exhibit 17, Guetta Blaster CD Liner Notes	argument, and constitute improper
9	and Exhibit 18 – "Open Your Eyes," a song that appears as Track 9 on the "Guetta	opinion testimony of a lay person.
10	Blaster" album, released in 2004).	
11	72. The sound in the "Open Your	Fed. R. Evid. 401, 402, 403, 602,
	Eyes" song, suggests that Guetta was less	701, 702, 1002
12	than candid, when he stated on November 9,	The statements are argumentative,
13	2011, that he had never received any music,	speculative, lack foundation, violate
14	whether in the form of a Demo CD or	the best evidence rule, do not appear
15	otherwise, from anyone named Bryan Pringle (<i>see</i> , Dckt. #167). Guetta does,	to be based on the witness' personal knowledge, offer improper legal
	however, concede that from time to time, he	argument, and constitute improper
16	has received unsolicited Demo CDs from	opinion testimony of a lay person.
17	individuals, even though he cannot identify	
18	the senders. (See, Guetta Dep., see also	
	Declaration of Jeffrey Pringle.)	E I D E :1 401 402 402 602
19	73. I received a letter from Gum Productions, sometime around 2001 to	Fed. R. Evid. 401, 402, 403, 602, 701, 702, 1002
20	2003, acknowledging receipt of my Demo	The statements are argumentative,
21	CD submission and requesting tracks of	speculative, lack foundation, violate
22	other songs, which I provided to Guetta and	the best evidence rule, do not appear
	Garraud. Further, Guetta admits that Gum	to be based on the witness' personal
23	Productions has corresponded with	knowledge, offer improper legal
24	individuals regarding unsolicited music sent	argument, and constitute improper
25	to him. (Guetta Dep.) 74. It is a common practice in the	opinion testimony of a lay person. Fed. R. Evid. 401, 402, 403, 602,
	"Techno-Dance" music genre, for dance	701, 702
26	artists to give their actual individual	The statements are argumentative,
27	instruments and tracks to Dj's who work at	speculative, lack foundation, do not
28	night clubs. Guetta, Garraud and William	appear to be based on the witness'

1	Pringle Declaration	Evidentiary Objections
2	Adams are such Dj's. By giving Dj's the	personal knowledge, offer improper
3	individual tracks or instruments of the song,	legal argument, and constitute
4	it makes it easier for them to re-mix songs	improper opinion testimony of a lay
	and integrate the dance artist's songs, with songs from other artists.	person.
5	75. Access to the individual tracks,	Fed. R. Evid. 401, 402, 403, 602,
6	instrumentation and sound settings received	701, 702, 1002
7	from composers and songwriters, enables	The statements are argumentative,
	Dj's at dance clubs to integrate songs with	speculative, lack foundation, violate
8	completely different beats-per-minute, to	the best evidence rule, do not appear
9	create an almost seamless and continuous	to be based on the witness' personal
10	nonstop dance mix.	knowledge, offer improper legal
		argument, and constitute improper
11	76 Disease and only had access to	opinion testimony of a lay person.
12	76. Riesterer not only had access to the same samples I used for my "guitar	Fed. R. Evid. 401, 402, 403, 602, 701, 702, 1002
13	twang sequence" through his working	The statements are argumentative,
	relationships with Garraud and Guetta, but	speculative, lack foundation, violate
14	he has already acknowledged that he was	the best evidence rule, do not appear
15	involved in developing the supposedly third	to be based on the witness' personal
16	party instrumentation allegedly used to	knowledge, offer improper legal
	create the "guitar twang sequence", heard in	argument, and constitute improper
17	"I Gotta Feeling." (Riesterer Dep.)	opinion testimony of a lay person.
18	77. Riesterer stated on November 23, 2010, that the guitar twang musical	Fed. R. Evid. 401, 402, 403, 602, 701, 702
19	sequence was "recorded by Univers Sons in	The statements are argumentative,
	February 2001, using a Fender Stratocaster	speculative, lack foundation, do not
20	electric guitar, a Fender amplifier and a	appear to be based on the witness'
21	Shure SM57 microphone. It is my	personal knowledge, and constitute
22	understanding that this musical sequence	improper opinion testimony of a lay
	had its official launch in October 2004 and	person.
23	became part of what equipment was known as 'Plugsound Volume 2: Fretted	
24	Instruments' which became part of the	
25	Plugsound Box in 2004." (See, Dckt. #22-3–	
26	Frederic Riesterer Declaration 1.)	
	78. None of this information	Fed. R. Evid. 401, 402, 403, 602,
27	regarding the Plugsound: Fretted	701, 702
28	Instruments, is contained in the	The statements are argumentative,

1	Pringle Declaration	Evidentiary Objections
2	documentation of the Plugsound: Fretted	speculative, lack foundation, do not
3	Instruments preset list itself. (See, Exhibit	appear to be based on the witness'
4	19 – Plugsound Fretted Instruments Preset	personal knowledge, and constitute
	List.) The significance of this fact, is that the only way Riesterer could have obtained	improper opinion testimony of a lay person.
5	that information is through intimate contact	person.
6	with Univers Sons and their employees.	
7	79. Riesterer admits he helped to	Fed. R. Evid. 401, 402, 403, 602,
8	develop and test the Plugsound Box Set	<u>701, 702</u>
	which contains the Plugsound: Fretted	The statements are argumentative,
9	Instruments supposedly used to create the "guitar twang sequence" heard in "I Gotta	speculative, lack foundation, do not appear to be based on the witness'
10	Feeling "Riesterer states that he was at least	personal knowledge, and constitute
11	a "beta tester." (See, Dckt. #22-3, p. 1).	improper opinion testimony of a lay
	Etchart ignores the significance of	person.
12	Riesterer's involvement and never mentions	
13	that crucial fact or discloses the nature of	
14	Riesterer's actual role in the creation of the	
15	Plugsound Box Set's preset sounds (<i>see</i> , Dckt. #169 - Etchart Declaration).	
	80. Etchart also neglects to inform	Fed. R. Evid. 401, 402, 403, 602,
16	us of the fact in his Declaration, that	701, 702
17	Plugsound: Fretted Instruments (which is	The statements are argumentative,
18	part of the Plugsound Box instrumentation)	speculative, lack foundation, do not
	was discontinued years ago, and cannot be	appear to be based on the witness'
19	purchased! (See, Exhibit 20 - Plugsound Box Website.)	personal knowledge, and constitute improper opinion testimony of a lay
20	Box website.)	person.
21	81. Since the Plugsound Box	Fed. R. Evid. 401, 402, 403, 602,
22	instrumentation was discontinued years ago,	<u>701, 702</u>
	neither I nor my experts, can test Riesterer's	The statements are argumentative,
23	alleged statement that he used the	speculative, lack foundation, do not
24	Plugsound: Fretted Instruments preset, to create the "guitar twang sequence", without	appear to be based on the witness' personal knowledge, and constitute
25	access to the "authorized and unlocked"	improper opinion testimony of a lay
26	discontinued "Strat With SM57 Stereo	person.
	Spread" preset, contained within the	
27	Plugsound Box: Fretted Instruments.	Fed D Evid 401 402 402 602
28	82. Geluso claims Riesterer	Fed. R. Evid. 401, 402, 403, 602,

1	Pringle Declaration	Evidentiary Objections
2	applied distortion, equalization and	701, 702
3	reverberation sound processing techniques	The statements are argumentative,
4	to create the sound of the "guitar twang sequence" heard in "I Gotta Feeling." (Dckt.	speculative, lack foundation, do not appear to be based on the witness'
5	#162, p. 5). His contention is not only	personal knowledge, offer improper
	speculative, in light of Riesterer's inability	legal argument, and constitute
6	to recall any precise sound processing	improper opinion testimony of a lay
7	settings he actually used, it actually	person.
8	contradicts Riesterer's November 23, 2010, sworn statement, as to what he did to create	
9	the final "guitar twang sequence" heard in	
	"I Gotta Feeling." (See, Dckt. #22-3)	
10	Further, Geluso admits that sound	
11	processing effects settings for reverberation,	
12	distortion and equalization are present on the ASR-10. (Dckt. #162.)	
13	83. When Geluso states that	Fed. R. Evid. 401, 402, 403, 602,
	Riesterer used sound effects and layering to	701, 702
14	achieve the final sound of the "guitar twang	The statements are argumentative,
15	sequence" heard in "I Gotta Feeling," he	speculative, lack foundation, do not
16	contradicts Riesterer's November 23, 2010, sworn statement, that the "guitar twang	appear to be based on the witness' personal knowledge, offer improper
17	sequence of 'Nevermind' (which was	legal argument, and constitute
	subsequently used in "Love Is Gone' and	improper opinion testimony of a lay
18	then in 'I Gotta Feeling')" was licensed	person.
19	from a French music library known as	
20	Univers Sons." (<i>See</i> , Dckt. #22-3, p. 2.) 84. If as Riesterer stated under oath	Fed. R. Evid. 401, 402, 403, 602,
21	in his Declaration, signed on November 23,	701, 702
	2010, that he only licensed the "guitar	The statements are argumentative,
22	twang sequence"; then Riesterer obviously	speculative, lack foundation, do not
23	did not create it or otherwise use sound	appear to be based on the witness'
24	processing manipulation or layering. What then did Riesterer really do? We do not	personal knowledge, offer improper legal argument, and constitute
25	know. That question remains unanswered,	improper opinion testimony of a lay
26	notwithstanding the statements made in the	person.
	several Declarations used to support the	
27	request for Summary Judgment. His	
28	licensing of the "guitar twang sequence"	

from a supposed third party, would explain why he would not know the sound effects processor settings used to create the "guitar twang sequence" heard in "I Gotta Feeling." 85. Contrary to the contentions now being asserted, in November 2010, before reviewing any technical analysis by Gallant of the "DISK05.NRG," which contained the "guitar twang sequence" instrumentation for "Take A Dive" (Dance Version), Riesterer swore that the "guitar twang sequence ultimately used in 'I Gotta Feeling' was known as the 'Strat With SM57 Crunchy' in the Univers Sons music library." (Dckt. #22-3, p 2) Riesterer now claims that this representation was a mistake of a material fact, i.e. the nature of the origin of the "guitar twang sequence." This mistake is far too convenient to be credible. 86. If these examples were not enough to establish a material dispute as to the origin of the "guitar twang sequence" at issue, one need only consider Riesterer's June 23, 2011 Deposition testimony, in which he confirmed that the "guitar twang sequence" found in "I Gotta Feeling" did not come from the Plug Sound Box. (See,
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the origin of the "guitar twang sequence" at issue, one need only consider Riesterer's June 23, 2011 Deposition testimony, in which he confirmed that the "guitar twang sequence" found in "I Gotta Feeling" did not come from the Plug Sound Box. (See
June 23, 2011 Deposition testimony, in which he confirmed that the "guitar twang sequence" found in "I Gotta Feeling" did not come from the Plug Sound Box. (See improper opinion testimony of a lay
which he confirmed that the "guitar twang sequence" found in "I Gotta Feeling" did not come from the Plug Sound Box. (See improper opinion testimony of a lay
sequence" found in "I Gotta Feeling" did not come from the Plug Sound Box (See improper opinion testimony of a lay
not come from the Plug Sound Box (See improper opinion testimony of a lay
III HOL SOME HOM ME LIGE BOUNG DOA. (DOC HIM/HODE OM/HIM/H COM/HIM/HO OF A INC.
Riesterer Dep., p. 180)
21 So the guitar twong gogyana
Q. So the guitar twang sequence was not in the Plugsound
Box, was it?
Pluggound system you have
the preset, which is called
Strat with SM57 Crunchy,
the guitar twang, it's the
gimmick.

1		
	Pringle Declaration	Evidentiary Objections
2	Q. And then you take that	
3	gimmick and prepare the	
4	sequence?	
5	A. No, no, no, no.	
6	, , ,	
7	A. Not that too, not that too, I	
	create the gimmick. The gimmick doesn't exist in the	
8	Plugsound.	
9	(See also, Riesterer Dep., p. 184, where	
10	gimmick is described by Riesterer as the	
11	guitar twang sequence.) 87. Riesterer acknowledges that	Fed. R. Evid. 401, 402, 403, 602,
	only single guitar notes were used in order	701, 702
12	to create the "guitar twang sequence"	The statements are argumentative,
13	gimmick that became the hook-line for "I	speculative, lack foundation, do not
14	Gotta Feeling."	appear to be based on the witness'
15		personal knowledge, and constitute
		improper opinion testimony of a lay person.
16	88. As Riesterer never mentions	Fed. R. Evid. 401, 402, 403, 602,
17	his use of any sound effects processing or	701, 702
18	"layering" of any samples in the creation of	The statements are argumentative,
19	the "guitar twang sequence", it is reasonable	speculative, lack foundation, do not
	to conclude that Geluso is now ascribing substantive creative conduct to Riesterer,	appear to be based on the witness' personal knowledge, offer improper
20	which Riesterer himself denied in	legal argument, and constitute
21	November 2010.	improper opinion testimony of a lay
22		person.
23	89. To support the instant request	Fed. R. Evid. 401, 402, 403, 602,
	for summary judgment, Riesterer changed his November 2010 declaration and	The statements are argumentative
24	deposition testimony, so that he can now	The statements are argumentative, speculative, lack foundation, do not
25	claim that:	appear to be based on the witness'
26	"In order to create the guitar	personal knowledge, offer improper
	'twang' sequence of 'I Gotta	legal argument, and constitute
27	Feeling', I used a different preset	improper opinion testimony of a lay
28	from the PlugSound sound library,	person.

1	Pringle Declaration	Evidentiary Objections
2	different musical notes and chords,	
3	and different sound processing	
	effects than the ones I used in the	
4	'Love Is Gone' sequence of 'I Gotta	
5	Feeling.' To create the guitar	
6	'twang' sequence from 'I Gotta	
6	Feeling', I selected a guitar preset	
7	called 'Strat With SM57 Stereo	
8	Spread' from the Plugsound sound	
	library, which allowed me to use	
9	my keyboard to play music that seemed to come from an electric	
10	guitar. After I selected the 'Strat	
11	With SM57 Stereo Spread' preset, I	
11	composed each note and each	
12	chord constituting the guitar	
13	'twang' sequence by playing them	
	on my keyboard."	
14	(See, Geluso Dep.)	
15	"In my November 2010 Declaration	
16	which, from what I understood,	
	had to be filed as soon as possible in	
17	order to answer an urgent motion	
18	from Pringle - I mistakenly	
	declared that I had used the "Strat With SM57 Crunchy" preset for 'I	
19	Gotta Feeling' and 'Love Is	
20	Gone' It was only later, when I	
21	reviewed my files, that I realized	
	that I had used a slightly different	
22	preset, 'Strat With SM57 Stereo	
23	Spread' in "I Gotta Feeling.""	
24	***	
	But see Guetta: "I want to re I	
25	want to answer this question	
26	precisely. If he said – if Fred	
27	Riesterer said he has used the same	
	sound bank with the song 'Love Is Gone' and 'I Gotta Feeling', then	
28	John and I John Teening, then	

1	D. L. D. L	
	Pringle Declaration	Evidentiary Objections
2	that's correct."	
3	(See, Guetta Dep., p. 150)	E I D E :1 401 402 402 602
4	90. If the alleged co-writer of "I	Fed. R. Evid. 401, 402, 403, 602, 701, 702
5	Gotta Feeling," Guetta, confirms Riesterer's conduct, then Geluso is in no position to	The statements are argumentative,
3	credibly substitute his opinion in place of	speculative, lack foundation, do not
6	the sworn testimony of the individuals for	appear to be based on the witness'
7	those who were actually involved in the	personal knowledge, offer improper
·	creation of the "guitar twang sequence",	legal argument, and constitute
8	simply to create a fact scenario from which	improper opinion testimony of a lay
9	he can speculate that I copied the "guitar	person.
10	twang sequence" heard in "Take A Dive"	
	(Dance Version) from the Defendants.	Fed D Evid 401 402 402 602
11	91. Given the representation by Guetta that Riesterer independently	Fed. R. Evid. 401, 402, 403, 602, 701, 702
12	composed the "guitar twang sequence" that	The statements are argumentative,
13	appears in "Love Is Gone" and that the	speculative, lack foundation, do not
	"guitar twang sequence" in "I Gotta	appear to be based on the witness'
14	Feeling" was created using a different guitar	personal knowledge, offer improper
15	preset, different notes, different chords, and	legal argument, and constitute
16	different sound processing effects, than	improper opinion testimony of a lay
	those used in creating the guitar twang	person.
17	sequence in "Love Is Gone," it is unclear factually whether Riesterer actually used the	
18	same instrumentation for both "Love Is	
19	Gone" and "I Gotta Feeling," as he claims.	
	92. Riesterer initially claimed he	Fed. R. Evid. 401, 402, 403, 602,
20	used a "Strat With SM57 Crunchy" preset	<u>701, 702</u>
21	for both "Love Is Gone" and "I Gotta	The statements are argumentative,
22	Feeling"; and did so without sound effects	speculative, lack foundation, do not
23	processing or layering manipulation, in "I Gotta Feeling" (see, Dckt. #, p). [sic]	appear to be based on the witness' personal knowledge, offer improper
	Now Riesterer states that he used a	legal argument, and constitute
24	completely different instrument preset than	improper opinion testimony of a lay
25	the "Strat With SM57 Crunchy." One	person.
26	wonders what instrumentation Riesterer will	
	swear that he used to create the "guitar	
27	twang sequence" in "I Gotta Feeling", when	
28	he takes the stand to testify at trial.	

1	Pringle Declaration	Evidentiary Objections
2	G	, ,
3	93. In order to have permanent multiple sound processing effects used on a	Fed. R. Evid. 401, 402, 403, 602, 701, 702
	particular musical sequence or	The statements lack foundation, do
4	"wavesample" originally created within,	not appear to be based on the
5	sampled into, or loaded into the Ensoniq	witness' personal knowledge, and constitute improper opinion
6	ASR-10 Keyboard, such as the "guitar twang sequence" used in "Take A Dive"	testimony of a lay person. Pringle
7	(Dance Version), one must re-sample the	has not been designated as an expert
8	sequence into a wavesample and then take	witness in this case, nor has he
	that re-sampled wavesample and re-record it, with the internal sound processing effects	presented a sufficient foundation to support any claimed technical
9	contained within the Ensoniq ASR-10.	expertise in the referenced subjects.
10		Daubert v. Merrell Dow Pharms.,
11		<i>Inc.</i> , 509 U.S. 579, 591 (1993);
12		Kumho Tire Co. v. Carmichael, 526
13	94. This process is true regardless	U.S. 137, 147-48 (1999). Fed. R. Evid. 401, 402, 403, 602,
	of whether the original wavesample was	701, 702
14	part of a "midi instrument," was sampled	The statements lack foundation, do
15	into the ASR-10 via the audio inputs, loaded	not appear to be based on the
16	in as an instrument via the internal floppy disk drive, loaded in via an attached SCSI	witness' personal knowledge, and constitute improper opinion
17	Ensoniq-compatible hard disk drive, or	testimony of a lay person. Pringle
	loaded in via an SCSI Ensoniq-compatible	has not been designated as an expert
18	CD-Rom drive, containing an Ensoniq-	witness in this case, nor has he
19	formatted CD-Rom disk.	presented a sufficient foundation to
20		support any claimed technical expertise in the referenced subjects.
21		Daubert v. Merrell Dow Pharms.,
22		<i>Inc.</i> , 509 U.S. 579, 591 (1993);
		Kumho Tire Co. v. Carmichael, 526
23	95. In the context of creating	U.S. 137, 147-48 (1999). Fed. R. Evid. 401, 402, 403, 602,
24	permanent multiple sound processing	701, 702
25	effects, I use the word "re-sampling" to	The statements lack foundation, do
26	mean the taking of the same sequence of	not appear to be based on the
27	music that has been recorded from a "mono" or "stereo" wavesample, regardless	witness' personal knowledge, and
	of whether this wavesample is a midi-track	constitute improper opinion testimony of a lay person. Pringle
28	or moder and maresumple is a final track	testimony of a my person. I migre

1	Pringle Declaration	Evidentiary Objections
2	created on the Ensoniq ASR-10 with the	has not been designated as an expert
3	corresponding wavesamples being played, a	witness in this case, nor has he
4	single wavesample played, or multiple instruments with their corresponding	presented a sufficient foundation to support any claimed technical
5	wavesamples being played on multiple	expertise in the referenced subjects.
	midi-track sequences at once, and re-	Daubert v. Merrell Dow Pharms.,
6	recording it over and over again, each time	<i>Inc.</i> , 509 U.S. 579, 591 (1993);
7	using a different sound processing effect (or	Kumho Tire Co. v. Carmichael, 526
8	no effect at all), until the creating the final mixdown of a mono or stereo wavesample.	U.S. 137, 147-48 (1999).
9	A final mixdown of the wavesample is	
	simply a wavesample that has incorporated	
10	into its final sound, the multiple sound	
11	processing effects with which the	
12	wavesample was recorded. This re-sampling technique can either be done with a stereo	
13	or mono wavesample, at either a 44.1 khz,	
	or a 29.76 khz, sampling rate. A mono	
14	wavesample contains 1 wave sample, on 1	
15	layer. A stereo wavesample contains 2	
16	wavesamples, on 2 layers. A stereo wavesample usually has a wavesample	
17	panned left and a wavesample panned right.	
	96. A consequence of providing	Fed. R. Evid. 401, 402, 403, 602,
18	demo CDs to other artists and Dj's, with the	701, 702
19	individual tracks and/or individual	The statements lack foundation, do
20	instrumentation of a song, is that the individual song parts can easily be sampled	not appear to be based on the witness' personal knowledge, and
21	or reconstructed into other musical	constitute improper opinion
22	compositions by other artists and Dj's, as	testimony of a lay person. Pringle
	appears to be the case here, with the	has not been designated as an expert
23	Defendants.	witness in this case, nor has he
24		presented a sufficient foundation to support any claimed technical
25		expertise in the referenced subjects.
26		Daubert v. Merrell Dow Pharms.,
		Inc., 509 U.S. 579, 591 (1993);
27		Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).
28		O.B. 137, 177-70 (1777).

1	Pringle Declaration	Evidentiary Objections
2	97. Geluso opines that: "The guitar	Fed. R. Evid. 401, 402, 403, 602,
3	twang chord samples that exist in the clear	701, 702
	in Mr. Pringle's NRG file are essentially	The statements lack foundation, do
4	identical to the isolated guitar twang stem	not appear to be based on the
5	that the Defendants caused to be posted to	witness' personal knowledge, and
6	Beatport.com." Geluso does not, however, state that the song files for "Take A Dive"	constitute improper opinion testimony of a lay person. Pringle
7	(Dance Version) contained on the	has not been designated as an expert
	"DISK05.NRG" file are identical to the "I	witness in this case, nor has he
8	Gotta Feeling" song files posted at	presented a sufficient foundation to
9	Beatport.com. He does not so state this fact,	support any claimed technical
10	because he has no evidence that I downloaded anything from Beatport.com.	expertise in the referenced subjects. Daubert v. Merrell Dow Pharms.,
11	downloaded anything from <u>Beatport.com</u> .	Inc., 509 U.S. 579, 591 (1993);
		Kumho Tire Co. v. Carmichael, 526
12		U.S. 137, 147-48 (1999).
13	98. Around June of 2010, during	Fed. R. Evid. 401, 402, 403, 602,
14	the mutually agreed to settlement discussions, I created the "Take A Dive vs I	701, 702 The statements lack foundation, do
15	Gotta Feeling" comparison mp3, which	not appear to be based on the
	contained the manipulated vocals from one	witness' personal knowledge, offer
16	of the Beatport.com "I Gotta Feeling" re-	improper legal argument, and
17	mixes, for the sole purpose of demonstrating	constitute improper opinion
18	to the Defendants and their attorneys, the	testimony of a lay person.
19	clearly obvious fact that the Black Eyed Peas members had sung their vocals to "I	
	Gotta Feeling" along to the music for "Take	
20	A Dive." In addition to being provided a	
21	copy of this mp3 comparison by my former	
22	attorney, Ira Gould, the Defense Counsel	
23	was well aware of the exact reason and circumstances surrounding the creation of	
	this mp3 comparison and no attempts have	
24	ever been made on my part to contest the	
25	fact that I created this mp3 comparison. I	
26	find their "newly manufactured"	
	accusations that I downloaded the individual	
27	mp3 tracks for "I Gotta Feeling" from Beatport.com, to be intentionally	
28	Dearport.com, to be intentionally	

1	Pringle Declaration	Evidentiary Objections
2	misleading, given the fact that they were	
3	well aware of the source of the Black Eyed	
	Peas' vocal track used in the creation of this	
4	comparison mp3.	
5	99. I did not at any time download	Fed. R. Evid. 401, 402, 403, 602
6	any sample or any individual mp3 track of	The statements lack foundation.
	"I Gotta Feeling" from <u>Beatport.com</u> . I did not pay for any complete version of the	
7	song, nor did I download any partial sample	
8	or any partial individual track of "I Gotta	
9	Feeling," and thereafter manipulate that	
	downloaded sample or mp3 to create "Take	
10	A Dive" (Dance Version). I created "Take	
11	A Dive" (Dance Version) around 1999,	
12	which is roughly 10 years prior to the	
13	release and publication of "I Gotta Feeling." 100. Geluso attempts to explain that	Fed. R. Evid. 401, 402, 403, 602
	the only apparent explanation for this	The statements are argumentative
14	identity between the two songs is that Mr.	and lack foundation.
15	Pringle sampled the isolated guitar twang	
16	sound file from <u>Beatport.com</u> (or from one	
	of the re-mixes that sampled the	
17	Beatport.com mp3 sound files and inserted	
18	it into "Take A Dive" (Dance Version). 101. Geluso's conclusion is wrong	Fed. R. Evid. 401, 402, 403, 602,
19	and his explanation ignores several equally	701, 702, 1002
	viable alternative explanations, including	The statements are argumentative,
20	the possibility that my original soloed	speculative, lack foundation, violate
21	version of "Take A Dive" (Dance Version)	the best evidence rule, do not appear
22	with the individual layered instrumentation,	to be based on the witness' personal
	provided by me, to Guetta and Garraud,	knowledge, offer improper legal
23	around 1999 to 2003, was sampled and then manipulated manually to arrive at the	argument, and constitute improper
24	"guitar twang sequence" at issue here. It is	opinion testimony of a lay person. Pringle has not been designated as
25	also possible that Guetta, Garraud or	an expert witness in this case, nor
	Riesterer heard and recorded a version of	has he presented a sufficient
26	"Take A Dive" (Dance Version) that played	foundation to support any claimed
27	on the radio in France around 1999 to 2003	technical expertise in the referenced
28	(see Declaration of Jeffrey Pringle). It is	subjects. Daubert v. Merrell Dow

1	Pringle Declaration	Evidentiary Objections
2	also possible that someone other than me	Pharms., Inc., 509 U.S. 579, 591
3	provided one of my widely distributed	(1993); Kumho Tire Co. v.
4	Demo CDs to Guetta or Garraud at a DJ event, which one of them used and saved.	Carmichael, 526 U.S. 137, 147-48 (1999).
5	Indeed, Geluso's statement that the only	(1999).
	possible explanation for the "striking	
6	similarity" between the "guitar twang	
7	sequence" heard in "Take A Dive" (Dance	
8	Version) and the "guitar twang sequence"	
	heard in "I Gotta Feeling," is that I copied the song from <u>Beatport.com</u> , is patently	
9	false and absolutely incorrect.	
10	102. The Geluso conclusion that the	Fed. R. Evid. 401, 402, 403, 602,
11	only explanation for the "strikingly similar"	<u>701, 702</u>
12	sound of the two works, is my having	The statements are argumentative,
	copied the song from the Beatport.com	speculative, lack foundation, do not
13	website, is sophomoric in that Geluso refuses to analyze the possibility of the	appear to be based on the witness' personal knowledge, offer improper
14	Defendants having copied, replicated,	legal argument, and constitute
15	sampled or manually manipulated a version	improper opinion testimony of a lay
16	of my song. He has no knowledge of	person. Pringle has not been
	whether I downloaded anything from	designated as an expert witness in
17	Beatport.com during the August 21, 2009 and September 8, 2009 download phase, of	this case, nor has he presented a sufficient foundation to support any
18	that Remix Contest. (Exhibits 18, 21).	claimed technical expertise in the
19	that Remin Contests (Similars 16, 21).	referenced subjects. Daubert v.
		Merrell Dow Pharms., Inc., 509
20		U.S. 579, 591 (1993); Kumho Tire
21		Co. v. Carmichael, 526 U.S. 137,
22	103. Nothing that Geluso states in	147-48 (1999). Fed. R. Evid. 401, 402, 403, 602,
23	his Declaration establishes a factual basis	701, 702
24	that supports the one and only conclusion he	The statements are argumentative,
	suggests. Nowhere does he state that he	speculative, lack foundation, do not
25	searched the files of Guetta, Garraud,	appear to be based on the witness'
26	Riesterer or any of the Black Eyed Peas, to see if there was a copy of any of my music	personal knowledge, offer improper legal argument, and constitute
27	in their possession. Nor does Geluso state	improper opinion testimony of a lay
28	anywhere that he interviewed each of the	person. Pringle has not been
20		

1	Pringle Declaration	Evidentiary Objections
2	Defendants and asked probing questions	designated as an expert witness in
3	about their access to the music of Bryan	this case, nor has he presented a
	Pringle. He simply relies upon the	sufficient foundation to support any
4	constantly changing misleading,	claimed technical expertise in the
5	contradictory and false statements of those charged with copyright infringement, that	referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
6	they never had any of my music in their	U.S. 579, 591 (1993); <i>Kumho Tire</i>
7	possession. He then proceeds from that	Co. v. Carmichael, 526 U.S. 137,
	assumption as if the alleged infringer's	147-48 (1999).
8	statement is dispositive, of all disputed facts	
9	on this issue. 104. The sound files for the "I Gotta	End P Evid 401 402 402 602
10	Feeling" Remix Contest containing the	Fed. R. Evid. 401, 402, 403, 602, 701, 702
11	"guitar twang sequence" as posted on	The statements are argumentative,
	Beatport.com, were only available from	speculative, lack foundation, do not
12	August 21, 2009, to September 8, 2009. I	appear to be based on the witness'
13	did not access <u>Beatport.com</u> with any	personal knowledge, offer improper
14	computer during that period of time. No objective evidence has been presented that I	legal argument, and constitute improper opinion testimony of a lay
15	did so. Geluso fails to identify just how and	person.
	when I accessed the Beatport.com website,	
16	or refer to any documentation from	
17	Beatport.com, containing such proof.	
18	Apparently, Geluso believes that repeating that proposition many times, is tantamount	
19	to proving it.	
	105. I was unaware of any potential	Fed. R. Evid. 401, 402, 403, 602,
20	infringement claim arising against these	701, 702
21	Defendants for "I Gotta Feeling", until	The statements are argumentative,
22	around February of 2010, at which time it was impossible for me to have accessed any	speculative, lack foundation, do not
23	sample, individual track, or complete	appear to be based on the witness' personal knowledge, offer improper
	version of "I Gotta Feeling," posted on the	legal argument, and constitute
24	Beatport.com website, for the "I Gotta	improper opinion testimony of a lay
25	Feeling" Remix Contest.	person.
26	106. More specifically, I never	Fed. R. Evid. 401, 402, 403, 602
27	downloaded any version of I Gotta Feeling from Beatport.com, purchased a complete	The statements are argumentative and lack foundation.
	version of "I Gotta Feeling" from	and fack foundation.
28		

1	Pringle Declaration	Evidentiary Objections
2	Beatport.com, or filled out any "I Gotta	
3	Feeling Remix Contest Application" as a	
	condition precedent to participating in the "I	
4	Gotta Feeling" Beatport.com Remix	
5	Contest. 107. Neither Beatport, the	Fed. R. Evid. 401, 402, 403, 602
6	Defendants, nor Geluso, has proffered	The statements are argumentative
7	anything, but an unsubstantiated theory to	and lack foundation.
8	support the claim that I downloaded	
	anything from the <u>Beatport.com</u> website in	
9	the way of the sound files, made available for download by the Defendants, including	
10	the isolated guitar twang sequence during	
11	the "I Gotta Feeling" Remix Contest, or	
12	otherwise.	F 1 P F 11 404 402 402 402
	108. Geluso states that it is his	Fed. R. Evid. 401, 402, 403, 602 The statements are argumentative
13	understanding that I accessed <u>Beatport.com</u> to download "I Gotta Feeling." He does not	The statements are argumentative and lack foundation.
14	identify any factual basis for his	
15	understanding, the timing of such access,	
16	the purpose of such access, or anything else	
17	as set forth in Dckt. #162. Geluso concedes that he has no personal knowledge of such	
	conduct. (Geluso Dep., pp. 134-137).	
18	109. Geluso cannot and does not	Fed. R. Evid. 401, 402, 403, 602
19	point to any specific download by me of any	The statements are argumentative
20	individual tracks from Beatport.com pertaining to "I Gotta Feeling" during the	and lack foundation.
21	period of August 21, 2009, to September 8,	
	2009. He fails to do so, because there is no	
22	such evidence.	
23	110. Further, the sound files to	Fed. R. Evid. 401, 402, 403, 602,
24	which Geluso refers were only available as an mp3 (<i>see</i> , Exhibit 23 - Beatport Remix	701, 702 The statements are argumentative,
25	Contest details).	speculative, lack foundation, do not
26	, in the second of the second	appear to be based on the witness'
		personal knowledge, and constitute
27		improper opinion testimony of a lay
28		person.

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1	Pringle Declaration	Evidentiary Objections
2	113. The musical equipment used to	Fed. R. Evid. 401, 402, 403, 602,
3	create the Ensoniq-formatted	701, 702 The statements are argumentative
4	instrumentation and song files for "Take A Dive" (Dance Version) which contains the	The statements are argumentative, speculative, lack foundation, do not
5	"guitar twang sequence" that I created in	appear to be based on the witness'
	1999, is an Ensoniq ASR-10 Keyboard. The	personal knowledge, and constitute
6	Ensoniq ASR-10 Keyboard, pre-dates the	improper opinion testimony of a lay
7	popular use of the mp3 in computer-based musical production software studios and	person. Pringle has not been designated as an expert witness in
8	electronic music equipment (See, Exhibit	this case, nor has he presented a
9	14- ASR-10 Specifications Brochure, p. 2).	sufficient foundation to support any
10		claimed technical expertise in the
		referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
11		U.S. 579, 591 (1993); <i>Kumho Tire</i>
12		Co. v. Carmichael, 526 U.S. 137,
13		147-48 (1999).
14	114. It is technologically impossible	Fed. R. Evid. 401, 402, 403, 602,
15	for a standard Ensoniq ASR-10 to recognize or work with any audio file in an mp3	701, 702 The statements are argumentative,
	format. Additionally, it is not possible for	speculative, lack foundation, do not
16	me or anyone else, so far as I am aware, to	appear to be based on the witness'
17	modify an Ensoniq ASR 10, to be made to	personal knowledge, and constitute
18	work with any audio file in an mp3 format, which is the audio format that the	improper opinion testimony of a lay person. Pringle has not been
19	Defendants claim to have had their isolated	designated as an expert witness in
20	guitar twang sequence in and available for	this case, nor has he presented a
	download, on Beatport.com between August	sufficient foundation to support any
21	21, 2009, to September 8, 2009. (<i>See</i> , Exhibit 24 - Beatport Isolated Guitar Twang	claimed technical expertise in the referenced subjects. <i>Daubert v.</i>
22	Sequence Mp3, which is the same file, filed	Merrell Dow Pharms., Inc., 509
23	with the Court, along with the Defendants'	U.S. 579, 591 (1993); Kumho Tire
24	Motion For Summary Judgment, on	Co. v. Carmichael, 526 U.S. 137,
25	November 17, 2011, as the Audio Exhibit referenced in Exhibit 1 and identified by	147-48 (1999).
	Geluso as the isolated guitar twang sound	
26	file).	
27	115. The "isolated guitar twang	Fed. R. Evid. 401, 402, 403, 602,
28	sound file mp3" which was supposedly	701, 702

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Pringle Declaration Evidentiary Objections

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

The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness' personal knowledge, offer improper legal argument, and constitute improper opinion testimony of a lay person. Pringle has not been designated as an expert witness in this case, nor has he presented a sufficient foundation to support any claimed technical expertise in the referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 591 (1993); Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147-48 (1999).

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

(i) As the Ensoniq ASR-10 doesn't recognize or work with mp3's, I converted the isolated guitar twang sequence mp3 file that was posted on Beatport.com, and provided to

Fed. R. Evid. 401, 402, 403, 602, 701, 702

The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness' personal knowledge, offer improper legal argument, and constitute improper opinion testimony of a lay person. Pringle has not been designated as an expert witness in this case, nor has he presented a sufficient foundation to support any claimed technical expertise in the referenced subjects. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 591 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137,

28

me by the Defendants, to a working wave file (which the Ensoniq ASR-10 recognizes and can play). (ii) Next, I took the isolated "guitar twang sequence" mp3 Geluso references as the isolated guitar twang sequence posted by the Defendants as an mp3 on Beatport.com in 2009, and imported it into a Cubase SX software-based music studio (in my current Windows XP Professional-based operating system with an Intel 2.66Ghz processor), which converted it from the original en-coded mp3 sound file, to a 44.1kbz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	1	Pringle De	claration	Evidentiary Objections
working wave file (which the Ensoniq ASR-10 recognizes and can play). (ii) Next, I took the isolated "guitar twang sequence" mp3 Geluso references as the isolated guitar twang sequence posted by the Defendants as an mp3 on Beatport.com in 2009, and imported it into a Cubase SX software-based music studio (in my current Windows XP Professional-based operating system with an Intel 2.66Ghz processor), which converted it from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	2			
Ensoniq ASR-10 recognizes and can play). (ii) Next, I took the isolated "guitar twang sequence" mp3 Geluso references as the isolated guitar twang sequence posted by the Defendants as an mp3 on Beatport.com in 2009, and imported it into a Cubase SX software-based music studio (in my current Windows XP Professional-based operating system with an Intel 2.66Ghz processor), which converted it from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was			•	147-48 (1999).
(ii) Next, I took the isolated "guitar twang sequence" mp3 Geluso references as the isolated guitar twang sequence posted by the Defendants as an mp3 on Beatport.com in 2009, and imported it into a Cubase SX software-based music studio (in my current Windows XP Professional-based operating system with an Intel 2.66Ghz processor), which converted it from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	3		·	
twang sequence" mp3 Geluso references as the isolated guitar twang sequence posted by the Defendants as an mp3 on Beatport.com in 2009, and imported it into a Cubase SX software-based music studio (in my current Windows XP Professional-based operating system with an Intel 2.66Ghz processor), which converted it from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	4		and can play).	
references as the isolated guitar twang sequence posted by the Defendants as an mp3 on Beatport.com in 2009, and imported it into a Cubase SX software-based music studio (in my current Windows XP Professional-based operating system with an Intel 2.66Ghz processor), which converted it from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	5	(ii)	_	
twang sequence posted by the Defendants as an mp3 on Beatport.com in 2009, and imported it into a Cubase SX software-based music studio (in my current Windows XP Professional-based operating system with an Intel 2.66Ghz processor), which converted it from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	6			
Defendants as an mp3 on Beatport.com in 2009, and imported it into a Cubase SX software-based music studio (in my current Windows XP Professional-based operating system with an Intel 2.66Ghz processor), which converted it from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes" (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was				
Beatport.com in 2009, and imported it into a Cubase SX software-based music studio (in my current Windows XP Professional-based operating system with an Intel 2.66Ghz processor), which converted it from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	1			
imported it into a Cubase SX software-based music studio (in my current Windows XP Professional-based operating system with an Intel 2.66Ghz processor), which converted it from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	8		=	
(in my current Windows XP Professional-based operating system with an Intel 2.66Ghz processor), which converted it from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	9		=	
Professional-based operating system with an Intel 2.66Ghz processor), which converted it from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	10			
system with an Intel 2.66Ghz processor), which converted it from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was			· · · · · · · · · · · · · · · · · · ·	
processor), which converted it from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	11		1 0	
from the original en-coded mp3 sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	12		•	
sound file, to a 44.1khz, 16 bit expanded un-encoded wave file (see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	13		<u> -</u>	
(see, Exhibit 26 - Beatport Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was				
Isolated Guitar Twang Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	14		-	
Sequence Wave) which the Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	15		•	
Ensoniq ASR-10 recognizes and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	16			
and operates; (iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	17		<u>=</u>	
(iii) In proceeding as outlined above, I determined that the converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was			1	
converted isolated guitar twang mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	18	(iii)	<u>=</u>	
mp3 furnished by Geluso with his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	19			
his Declaration, when converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	20		e e	
converted to a wave file, was approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was			= *	
approximately "48.9 megabytes". (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was				
24 (iv) However, the Ensoniq ASR-10 only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	22			
only has a maximum amount of "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	23		megabytes".	
25 "16 megabytes" of available RAM (Random Access Memory). Consequently, I was	24	(iv)		
26 RAM (Random Access Memory). Consequently, I was			•	
Memory). Consequently, I was	25		<u> </u>	
	26		*	
27 unable to the import the	27		unable to the import the	
converted mp3 into the			converted mp3 into the	

1	Pringle Declaration	Evidentiary Objections
2	Ensoniq ASR-10. (See, Exhibit	
3	27 - ASR-10 Specifications	
4	Brochure). (v) The significance of this	
5	exercise in respect to Geluso's	
	theory as applied to an Ensoniq	
6	ASR-10, is that Geluso's	
7	opinion and conclusions are factually incorrect and simply	
8	not possible with the	
9	equipment which I used to	
10	create "Take A Dive" (Dance	
	Version), in 1999. 118. Geluso's opinion that: "The	Fed D Evid 401 402 402 602
11	118. Geluso's opinion that: "The guitar twang chord samples that exist in the	Fed. R. Evid. 401, 402, 403, 602, 701, 702
12	clear in Mr. Pringle's NRG file are	The statements are argumentative,
13	essentially identical to the isolated guitar	speculative, lack foundation, do not
14	twang stem that the Defendants caused to be	appear to be based on the witness'
15	posted to <u>Beatport.com</u> ." is a technological impossibility, as it relates to me. I say this	personal knowledge, offer improper legal argument, and constitute
	because the Ensoniq ASR-10, which I used	improper opinion testimony of a lay
16	to create the "guitar twang sequence" of	person. Pringle has not been
17	"Take A Dive" (Dance Version) doesn't	designated as an expert witness in
18	recognize or work with mp3's; and any mp3 from Beatport.com of the isolated guitar	this case, nor has he presented a sufficient foundation to support any
19	twang sequence converted into a wave file,	claimed technical expertise in the
20	is too big to sample or import into the	referenced subjects. Daubert v.
	Ensoniq ASR-10, because of its limitation	Merrell Dow Pharms., Inc., 509
21	on RAM (Random Access Memory). Thus, it is impossible to have an "identical" en-	U.S. 579, 591 (1993); <i>Kumho Tire</i> Co. v. Carmichael, 526 U.S. 137,
22	coded or converted mp3, used in my song	147-48 (1999).
23	"Take A Dive" (Dance Version), from	
24	Beatport.com.	E-1 D E-:1 401 402 402 602
25	119. Once the mp3 is converted from an en-coded mp3 file, to an un-	Fed. R. Evid. 401, 402, 403, 602, 701, 702
	encoded wave file, there is significant	The statements are argumentative,
26	"idelity" loss, which changes the quality or	speculative, lack foundation, do not
27	"truthfulness" of the actual sound.	appear to be based on the witness'
28	Significantly, however, Geluso states in his	personal knowledge, offer improper

1	Pringle Declaration	Evidentiary Objections
2		
3	Declaration, that there is no "fidelity" loss and my samples of the "guitar twang	legal argument, and constitute improper opinion testimony of a lay
3	sequence" in "Take A Dive" (Dance	person. Pringle has not been
4	Version), are "essentially identical." This	designated as an expert witness in
5	means that both samples of the "guitar	this case, nor has he presented a
6	twang sequence" in "Take A Dive" (Dance	sufficient foundation to support any
	Version) and the samples of the Defendants' "guitar twang sequence", would have to	claimed technical expertise in the referenced subjects. <i>Daubert v</i> .
7	have come from the same "identical" source	Merrell Dow Pharms., Inc., 509
8	for his statement to be correct. Given the	U.S. 579, 591 (1993); <i>Kumho Tire</i>
9	impossibility of my having used an Ensoniq	Co. v. Carmichael, 526 U.S. 137,
10	ASR-10 to record and produce a song	147-48 (1999).
10	containing the same "essentially identical	
11	guitar twang sequence" of "I Gotta Feeling," Geluso's conclusion is direct	
12	evidence which supports my contention that	
13	the Defendants used versions of the	
	instrumentation and samples of "Take A	
14	Dive" (Dance Version), which I provided to	
15	them around the early 2000's, in order to	
16	create "I Gotta Feeling", in 2009. 120. I am not now and was not so,	Fed. R. Evid. 401, 402, 403, 602,
17	technologically equipped in 1999, to be able	701, 702
	to import the Beatport.com isolated guitar	The statements are argumentative,
18	twang sequence mp3 samples into the	speculative, lack foundation, do not
19	Ensoniq ASR-10, without "fidelity" loss."	appear to be based on the witness'
20	There is no "fidelity loss" to the "guitar twang sequence" which appears in my song	personal knowledge, offer improper legal argument, and constitute
21	"Take A Dive" (Dance Version). Thus, I did	improper opinion testimony of a lay
	not copy the isolated "guitar twang	person. Pringle has not been
22	sequence" mp3 from Beatport.com.	designated as an expert witness in
23		this case, nor has he presented a
24		sufficient foundation to support any
25		claimed technical expertise in the referenced subjects. <i>Daubert v</i> .
		Merrell Dow Pharms., Inc., 509
26		U.S. 579, 591 (1993); <i>Kumho Tire</i>
27		Co. v. Carmichael, 526 U.S. 137,
28		147-48 (1999).

1	Pringle Declaration	Evidentiary Objections
2	121. Geluso recognizes that the four	Fed. R. Evid. 401, 402, 403, 602,
3	lowest notes that appear on bars 153, 155	701, 702
4	157 and 159 of "I Gotta Feeling" are muted	The statements are argumentative,
	on the "guitar twang sequence", thereby	speculative, lack foundation, do not
5	leaving a sequence consisting of three 2- note guitar chords. While these lowest notes	appear to be based on the witness' personal knowledge, offer improper
6	appear in "I Gotta Feeling" as a variation to	legal argument, and constitute
7	the basic guitar twang sequence, these same	improper opinion testimony of a lay
8	low notes do not appear in "Take A Dive"	person. Pringle has not been
	(Dance Version).	designated as an expert witness in this case, nor has he presented a
9		sufficient foundation to support any
10		claimed technical expertise in the
11		referenced subjects. Daubert v.
12		Merrell Dow Pharms., Inc., 509 U.S. 579, 591 (1993); Kumho Tire
13		Co. v. Carmichael, 526 U.S. 137,
		147-48 (1999).
14	122. These "extra notes" in the "I	Fed. R. Evid. 401, 402, 403, 602,
15	Gotta Feeling" "guitar twang sequence", which my "guitar twang sequence" on the	The statements are argumentative
16	"DISK05.NRG" does not have, is factually	The statements are argumentative, speculative, lack foundation, do not
17	significant. The absence of these "extra	appear to be based on the witness'
18	notes" is direct evidence that I did not copy	personal knowledge, offer improper
	the Defendants' song as Geluso would have us believe.	legal argument, and constitute
19	us believe.	improper opinion testimony of a lay person. Pringle has not been
20		designated as an expert witness in
21		this case, nor has he presented a
22		sufficient foundation to support any
23		claimed technical expertise in the referenced subjects. <i>Daubert v.</i>
		Merrell Dow Pharms., Inc., 509
24		U.S. 579, 591 (1993); <i>Kumho Tire</i>
25		Co. v. Carmichael, 526 U.S. 137,
26	123. Since December of 2010, the	147-48 (1999). Fed. R. Evid. 401, 402, 403, 602,
27	"DISK05.NRG file", which contains "Take	701, 702
28	A Dive" (Dance Version), has been in the	The statements are argumentative,

1	Pringle Declaration	Evidentiary Objections	
2	possession of my hired forensic expert,	speculative, lack foundation, do not	
3	Gallant. Gallant has determined that the	appear to be based on the witness'	
4	"DISK05.NRG" has a creation date of not	personal knowledge, offer improper	
	later than August of 1999. Gallant has also	legal argument, and constitute	
5	been able to determine that in addition to	improper opinion testimony of a lay	
6	"DISK05.NRG" having a creation date in August of 1999, that the actual CD-Rom	person. Pringle has not been designated as an expert witness in	
7	disk that contains the "DISK05.NRG", was	this case, nor has he presented a	
	also manufactured in February of 1999.	sufficient foundation to support any	
8	Other than rank speculation, the Defendants	claimed technical expertise in the	
9	cannot and have not been able to dispute	referenced subjects. Daubert v.	
10	these facts. (See, Exhibit 1 – Gallant Report,	Merrell Dow Pharms., Inc., 509	
10	p. 3).	U.S. 579, 591 (1993); <i>Kumho Tire</i>	
11		Co. v. Carmichael, 526 U.S. 137,	
12	124 6: 1 1 6:1	147-48 (1999).	
	124. Given the absence of these 4	Fed. R. Evid. 401, 402, 403, 602,	
13	lower notes, I couldn't have sampled the Defendants' "guitar twang sequence"	701, 702 The statements are argumentative,	
14	directly, because it is technologically	speculative, lack foundation, do not	
15	impossible for me to remove "extra notes"	appear to be based on the witness'	
	that were allegedly fused together in the	personal knowledge, offer improper	
16	"guitar twang sequence" of "I Gotta	legal argument, and constitute	
17	Feeling," in 2009.	improper opinion testimony of a lay	
18		person. Pringle has not been	
		designated as an expert witness in	
19		this case, nor has he presented a	
20		sufficient foundation to support any claimed technical expertise in the	
21		referenced subjects. Daubert v.	
		Merrell Dow Pharms., Inc., 509	
22		U.S. 579, 591 (1993); <i>Kumho Tire</i>	
23		Co. v. Carmichael, 526 U.S. 137,	
24		147-48 (1999).	
	125. Just as it would have been	Fed. R. Evid. 401, 402, 403, 602,	
25	impossible for the Defendants to sample my	701, 702 Defendants do not chicat to the	
26	guitar twang sequence out of the full sound recording of "Take A Dive" (Dance	Defendants do not object to the statement in un-bolded text:	
27	Version) with all the instrumentation	"Just as it would have been	
	playing; I, too, cannot just simply remove	impossible for the Defendants	
28	<u> </u>	The second secon	

1	Dringle Declaration	Evidentiany Objections
	Pringle Declaration	Evidentiary Objections
2	extra notes from their "guitar twang	to sample my guitar twang
3	sequence" and import the manipulated	sequence out of the full sound
4	version into my "guitar twang sequence"	recording of 'Take A Dive'
	of "Take A Dive" (Dance Version). Given	(Dance Version) with all the
5	the technological impossibility stated	instrumentation playing."
6	above, a substantial question of fact exists as to whether or not, it was even possible	Defendants object to the statement
7	for me to use the "guitar twang	in bolded text:
	sequence" from even the isolated	"I, too, cannot just simply
8	individual guitar twang mp3 track of "I	remove extra notes from their
9	Gotta Feeling," available at	'guitar twang sequence' and
	Beatport.com , because the "extra notes"	import the manipulated
10	would still be present, a fact which is	version into my 'guitar twang
11	conceded by Geluso. [emphasis added]	sequence' of 'Take A Dive'
12		(Dance Version)"
		on the ground that it lacks
13		foundation, constitutes improper opinion testimony of a lay person,
14		and is contradicted by
15		uncontroverted testimony from a
		qualified expert.
16		
17		Defendants further object to the
18		statement in bolded text:
		"a substantial question of fact
19		exists as to whether or not, it
20		was even possible for me to
21		use the 'guitar twang sequence' from even the
		isolated individual guitar
22		twang mp3 track of 'I Gotta
23		Feeling,' available at
		Beatport.com , because the
24		'extra notes' would still be
25		present, a fact which is
26		conceded by Geluso"
		on the ground that it lacks
27		foundation, offers improper legal argument, constitutes improper
28		argument, constitutes improper

1	Pringle Declaration	Evidentiary Objections
2	8	opinion testimony of a lay person,
3		and is contradicted by
		uncontroverted testimony from a
4		qualified expert.
5	126. Moreover, as my song does not	Fed. R. Evid. 401, 402, 403, 602,
6	contain "extra notes" found in the Defendants' "guitar twang sequence" of "I	701, 702 The statements are argumentative,
7	Gotta Feeling," a question of fact remains as	speculative, lack foundation, do not
	to whether I copied anything from the	appear to be based on the witness'
8	Defendants when I wrote "Take A Dive"	personal knowledge, offer improper
9	(Dance Version) in 1999, without those	legal argument, and constitute
10	"extra notes".	improper opinion testimony of a lay person. Pringle has not been
11		designated as an expert witness in
		this case, nor has he presented a
12		sufficient foundation to support any
13		claimed technical expertise in the
14		referenced subjects. Daubert v.
15		Merrell Dow Pharms., Inc., 509 U.S. 579, 591 (1993); Kumho Tire
		Co. v. Carmichael, 526 U.S. 137,
16		147-48 (1999).
17	127. The statement by Geluso that	Fed. R. Evid. 401, 402, 403, 602,
18	" in a number of instances in "I Gotta	The statements are argumentative
19	Feeling" (particularly at 0:31-0:33) the guitar twang sequence appears with no other	The statements are argumentative, speculative, lack foundation, do not
	sound elements (often referred to as	appear to be based on the witness'
20	'artifacts' or 'ghosts') which one would	personal knowledge, offer improper
21	expect to find if the guitar twang sequence	legal argument, and constitute
22	had been sampled from 'Take A Dive' (Dance Version)" is misleading.	improper opinion testimony of a lay person. Pringle has not been
23	(Dance Version) is misleading.	designated as an expert witness in
24		this case, nor has he presented a
		sufficient foundation to support any
25		claimed technical expertise in the
26		referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
27		U.S. 579, 591 (1993); <i>Kumho Tire</i>
28		Co. v. Carmichael, 526 U.S. 137,
20		

1	Pringle Declaration	Evidentiary Objections
2		147-48 (1999).
3	128. The reference to ghosts or artifacts suggests that "I Gotta Feeling," has	Fed. R. Evid. 401, 402, 403, 602, 701, 702
4	an additional "layering" of instrumentation	The statements are argumentative,
5	that my "guitar twang sequence" does not	speculative, lack foundation, do not
6	have. The Defendants call this "extra layering" the "Guitar Brut (Cycle)" (see,	appear to be based on the witness' personal knowledge, offer improper
7	Exhibit 28 - Guitar Brut (Cycle), which was	legal argument, and constitute
8	turned over on November 17, 2011, by the Defendants along with their Motion For	improper opinion testimony of a lay person. Pringle has not been
9	Summary Judgment, as an Audio Exhibit,	designated as an expert witness in
10	titled "I Gotta Feeling - Guitar Brut (Cycle) - Original Part.mp3."	this case, nor has he presented a sufficient foundation to support any
11		claimed technical expertise in the
12		referenced subjects. Daubert v.
13		Merrell Dow Pharms., Inc., 509 U.S. 579, 591 (1993); Kumho Tire
		Co. v. Carmichael, 526 U.S. 137,
14		147-48 (1999).
15	129. Given the nature and extent of	Fed. R. Evid. 401, 402, 403, 602,
16	the equipment available to me at the time	701, 702 The statements are argumentative
17	the <u>Beatport.com</u> Remix Contest was open to the public, it was technologically	The statements are argumentative, speculative, lack foundation, do not
	impossible to have been able to remove a	appear to be based on the witness'
18	fused "extra layer" of instrumentation from	personal knowledge, offer improper
19	my "guitar twang sequence". Had I sampled	legal argument, and constitute
20	from "I Gotta Feeling," or used the posted Beatport.com downloadable isolated guitar	improper opinion testimony of a lay person. Pringle has not been
21	twang sequence, these ghosts or artifacts	designated as an expert witness in
22	would have been present in my "guitar	this case, nor has he presented a
	twang sequence", but are not.	sufficient foundation to support any
23		claimed technical expertise in the referenced subjects. <i>Daubert v.</i>
24		Merrell Dow Pharms., Inc., 509
25		U.S. 579, 591 (1993); <i>Kumho Tire</i>
26		Co. v. Carmichael, 526 U.S. 137,
	120 As "Tales A Dises?" /Demis	147-48 (1999).
27	130. As "Take A Dive" (Dance Version) does not have either the "extra	Fed. R. Evid. 401, 402, 403, 602, 701, 702, 1002
28	version) does not have cluici the extra	101, 102, 1002

1	Pringle Declaration	Evidentiary Objections
2	notes" which appear in the "I Gotta	The statements are argumentative,
3	Feeling's" "guitar twang sequence", or the "extra Guitar Brut (Cycle) layer", a fair	speculative, lack foundation, violate the best evidence rule, do not appear
4	conclusion that can be drawn from this	to be based on the witness' personal
5	evidence is that the Defendants copied,	knowledge, offer improper legal
6	replicated, or sampled a version of my song "Take A Dive" (Dance Version), which was	argument, and constitute improper opinion testimony of a lay person.
7	provided to them along with the actual	Pringle has not been designated as
	instrumentation for the "guitar twang	an expert witness in this case, nor
8	sequence", long before any work on "I	has he presented a sufficient
9	Gotta Feeling" commenced.	foundation to support any claimed technical expertise in the referenced
10		subjects. Daubert v. Merrell Dow
11		Pharms., Inc., 509 U.S. 579, 591
12		(1993); Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147-48
13		(1999).
14	131. My "guitar twang sequence"	Fed. R. Evid. 401, 402, 403, 602,
15	has been forensically determined to have been created on or before September 1999.	The statements are argumentative,
	It has also been determined to have been	speculative, lack foundation, do not
16	recorded on a CD-Rom disk manufactured	appear to be based on the witness'
17	in 1999, by Verbatim. The original non- derivative version of "Take A Dive" was	personal knowledge, offer improper
18	registered and a copy of the sound recording	legal argument, and constitute improper opinion testimony of a lay
19	on file with the Copyright Office, since	person. Pringle has not been
20	1998 (see, Exhibit M - 1998 Copyright	designated as an expert witness in
21	Registration).	this case, nor has he presented a sufficient foundation to support any
22		claimed technical expertise in the
		referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
23		U.S. 579, 591 (1993); <i>Kumho Tire</i>
24		Co. v. Carmichael, 526 U.S. 137,
25	122 Additional augment for my	147-48 (1999).
26	132. Additional support for my independent creation of "Take A Dive"	Fed. R. Evid. 401, 402, 403, 602, 701, 702
27	(Dance Version) appears from the fact that	The statements are argumentative,
28	it would have been impossible for me to	speculative, lack foundation, do not

1	Pringle Declaration	Evidentiary Objections
2	change the "guitar twang sequence" made in	appear to be based on the witness'
3	1999, to fit a song which hasn't been	personal knowledge, offer improper
4	changed since 1998, except for the addition of the "guitar twang sequence" and the	legal argument, and constitute improper opinion testimony of a lay
5	slight changing of the placement of the bass	person. Pringle has not been
6	drum, in the last two-thirds of the song.	designated as an expert witness in
		this case, nor has he presented a sufficient foundation to support any
7		claimed technical expertise in the
8		referenced subjects. Daubert v.
9		Merrell Dow Pharms., Inc., 509
10		U.S. 579, 591 (1993); <i>Kumho Tire</i> Co. v. Carmichael, 526 U.S. 137,
11		147-48 (1999).
12	133. The "guitar twang sequence" of	Fed. R. Evid. 401, 402, 403, 602
	notes was originally created for, and is	The statements are argumentative,
13	based upon, the vocal notes of another song I composed titled "Faith," which was	lack foundation, and offer improper legal argument.
14	registered and a copy of the sound recording	regar argument.
15	on file with the Copyright Office, since	
16	1998 (see, Exhibit 29 - "Faith" 1998).	
	134. Further, the "guitar twang	Fed. R. Evid. 401, 402, 403, 602
17	sequence" instrumentation in "Take A Dive" (Dance Version), was inspired by,	The statements are argumentative, lack foundation, and offer improper
18	and layered with, instrumentation from a	legal argument.
19	song titled "Cruelest Joke," which was	
20	registered and a copy of the sound recording	
21	on file with the Copyright Office, since 1998 (<i>see</i> , Exhibit 30 – "Cruelest Joke"	
	1998).	
22	135. I have included an original	Fed. R. Evid. 401, 402, 403, 602
23	copy of "Faith" with the "guitar twang	The statements are argumentative,
24	sequence" (see, Exhibit 31 - Faith With	lack foundation, and offer improper
25	Guitar Twang). This is simply a re-creation of what "Faith" originally sounded like with	legal argument.
	the original "guitar twang sequence", when	
26	I first created it around 1996-1999; before I	
27	decided to place the "guitar twang	
28	sequence" into "Take A Dive" (Dance	

1		
1	Pringle Declaration	Evidentiary Objections
2	Version).	
3	136. Take A Dive" (Dance Version)	Fed. R. Evid. 401, 402, 403, 602
4	is a derivative of the 1998 version of "Take	The statements are argumentative,
	A Dive," which was one of the tracks on the	lack foundation, and offer improper
5	Registered CD titled "Dead Beat Club."	legal argument.
6	137. Further, the Defendants' own	Fed. R. Evid. 401, 402, 403, 602,
	computer forensics expert, Erik Laykin,	The statements are argumentative
7	cannot and has not, refuted the evidence I provided, that shows that I created "Take A	The statements are argumentative, speculative, lack foundation, do not
8	Dive" (Dance Version) with the "guitar	appear to be based on the witness'
9	twang sequence", back in 1999. In fact, he	personal knowledge, offer improper
9	concedes at his Deposition, that there is	legal argument, and constitute
10	evidence of an earlier creation of my song	improper opinion testimony of a lay
11	"Take A Dive" (Dance Version). (See	person. Pringle has not been
	Deposition of Erik Laykin, Exhibit E to	designated as an expert witness in
12	Dickie Decl. ("Laykin Dep.").	this case, nor has he presented a
13		sufficient foundation to support any
14		claimed technical expertise in the
		referenced subjects. Daubert v.
15		Merrell Dow Pharms., Inc., 509
16		U.S. 579, 591 (1993); <i>Kumho Tire</i>
17		Co. v. Carmichael, 526 U.S. 137,
17	138. On page 6, line 6, Section 14 of	147-48 (1999). Fed. R. Evid. 401, 402, 403, 602,
18	Dckt. #162, Geluso sets forth a musical	701, 702
19	notation of a particular section of "David	The statements lack foundation and
	Pop Guitar" midi file version of the "guitar	constitute improper opinion
20	twang sequence". As discussed earlier, this	testimony of a lay person. Pringle
21	musical notation shows that there is an	has not been designated as an expert
22	"extra note" on the lowest notes of bars 153,	witness in this case, nor has he
	155, 157, and 159 of "I Gotta Feeling's"	presented a sufficient foundation to
23	"guitar twang sequence".	support any claimed technical
24		expertise in the referenced subjects.
25		Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 591 (1993);
		Kumho Tire Co. v. Carmichael, 526
26		U.S. 137, 147-48 (1999).
27	139. These "extra notes" and "extra	Fed. R. Evid. 401, 402, 403, 602,
28	layer" of the "Guitar Brut (Cycle)" do not	701, 702
28	` ' '	·

1	Pringle Declaration	Evidentiary Objections
2	significantly change the musical sound or	The statements are argumentative,
3	timbre of the "guitar twang sequence" in "I	speculative, lack foundation, do not
4	Gotta Feeling" at all. From these facts, there would appear to be no other reasonable	appear to be based on the witness' personal knowledge, offer improper
5	explanation as why these "extra notes and	legal argument, and constitute
	"extra Guitar Brut (Cycle) layer" were	improper opinion testimony of a lay
6	added over the top of the "guitar twang	person. Pringle has not been
7	sequence" in "I Gotta Feeling." Certainly a fair question exists as to why Riesterer	designated as an expert witness in this case, nor has he presented a
8	would have added "extra notes and an	sufficient foundation to support any
9	"extra Guitar Brut (Cycle) layer" of	claimed technical expertise in the
10	instrumentation, which provides nothing to	referenced subjects. Daubert v.
	the timbre of the sound of the "guitar twang	Merrell Dow Pharms., Inc., 509
11	sequence" itself. It is an equally fair conclusion that those "extra notes" and	U.S. 579, 591 (1993); <i>Kumho Tire</i> Co. v. Carmichael, 526 U.S. 137,
12	"extra layer" were added in an attempt to	147-48 (1999).
13	disguise the "guitar twang sequence"	· · ·
14	samples that were underneath these "extra	
15	notes" and "extra layer" of instrumentation. 140. It would certainly appear that	Fed. R. Evid. 401, 402, 403, 602,
	the "extra Guitar Brut (Cycle) layer" over	701, 702
16	top of my "guitar twang sequence" samples	The statements are argumentative,
17	represents a willful and intentional action on	speculative, lack foundation, do not
18	the part of Riesterer to try and hide the true fidelity and timbre of the "guitar twang"	appear to be based on the witness' personal knowledge, offer improper
19	sequence", in an attempt to avoid any	legal argument, and constitute
	copyright infringement legal claims, that	improper opinion testimony of a lay
20	could be brought by me.	person. Pringle has not been
21		designated as an expert witness in this case, nor has he presented a
22		sufficient foundation to support any
23		claimed technical expertise in the
24		referenced subjects. Daubert v.
		Merrell Dow Pharms., Inc., 509
25		U.S. 579, 591 (1993); <i>Kumho Tire</i> Co. v. Carmichael, 526 U.S. 137,
26		147-48 (1999).
27	141. Geluso engages in rank,	Fed. R. Evid. 401, 402, 403, 602,
28	unprofessional speculation when he boldly	<u>701, 702</u>

1	Pringle Declaration	Evidentiary Objections
2		
	proclaims that it is "technologically impossible for the creators of 'I Gotta	The statements are argumentative, speculative, lack foundation, do not
3	Feeling' to have sampled the 'guitar twang	appear to be based on the witness'
4	sequence' from 'Take A Dive' (Dance	personal knowledge, offer improper
5	Version) as Pringle claims."	legal argument, and constitute
6		improper opinion testimony of a lay person. Pringle has not been
7		designated as an expert witness in
8		this case, nor has he presented a sufficient foundation to support any
9		claimed technical expertise in the
		referenced subjects. Daubert v.
10		Merrell Dow Pharms., Inc., 509
11		U.S. 579, 591 (1993); <i>Kumho Tire</i> Co. v. Carmichael, 526 U.S. 137,
12		147-48 (1999).
13	142. I do not contend, nor have I	Fed. R. Evid. 401, 402, 403, 602
14	ever contended, that the Defendants	Defendants do not object to the
	sampled the "guitar twang sequence" for "I	statements in the un-bolded text.
15	Gotta Feeling" directly out of the fully played version of "Take A Dive" (Dance	Defendants do object to the
16	Version) presented to the Court. Rather my	statement in bolded text:
17	claim, is that the Defendants had access	"my claim, is that the
18	to my music and manipulated the	Defendants had access to my
	samples to which they had access, to	music and manipulated the samples to which they had
19	achieve the "guitar twang sequence" that is heard in the finished version of "I	access, to achieve the 'guitar
20	Gotta Feeling." [emphasis added]	twang sequence' that is heard
21		in the finished version of 'I
22		Gotta Feeling"
23		on the ground that it lacks foundation and offers improper
		legal argument.
24		
25		Moreover, to the extent the
26		statement suggests that Pringle has "[n]ever contended[] that
27		Defendants sampled the 'guitar
28		twang sequence' for 'I Gotta
20		

1	Pringle Declaration	Evidentiary Objections
2		Feeling' directly out of the
3		fully played version of 'Take A
		Dive' (Dance Version)
4		presented to the Court,"
5		it is directly contradicted by
6		numerous prior statements from
		Pringle— <i>e.g.</i> , Complaint ¶ 4 (Defendants "directly copied
7		Plaintiff's song"); FAC ¶ 4 (same);
8		Pringle PI Motion at 2 ("Defendants
9		[] copied [] the sound recording of
10		the derivative version of Pringle's
		song "Take a Dive" by directly
11		sampling it") (emphasis added); Rubel PI Decl. ¶ 3 (same).
12		rtuser i i Been. 5 (sume).
13	143. I had many derivative versions	Fed. R. Evid. 401, 402, 403, 602,
14	of "Take A Dive" which contained the	1002
	"guitar twang sequence" soloed out in the	The statements lack foundation and
15	song, and provided samples of the same directly to. [sic] Guetta and Garraud, at least	violate the best evidence rule.
16	as far back as 1999 to 2003.	
17	144. The crucial difference between	Fed. R. Evid. 401, 402, 403, 602,
18	my song and the Defendants' "I Gotta	<u>701, 702</u>
	Feeling," lies in the fact that "Take A Dive"	The statements are argumentative,
19	(Dance Version) does not contain "extra	speculative, lack foundation, do not
20	notes" and an "extra layer" in my "guitar twang sequence". Had I sampled the	appear to be based on the witness' personal knowledge, offer improper
21	Defendants' musical work or used the	legal argument, and constitute
22	isolated guitar twang sequence that they	improper opinion testimony of a lay
	posted at Beatport.com, then those "extra	person. Pringle has not been
23	notes" and "extra layer" would appear in	designated as an expert witness in
24	"Take A Dive" (Dance Version), which it doesn't. As previously discussed, it was	this case, nor has he presented a sufficient foundation to support any
25	technologically impossible for me to	claimed technical expertise in the
	remove a single fused "extra layer" of	referenced subjects. Daubert v.
26	instrumentation. Therefore, the "guitar	Merrell Dow Pharms., Inc., 509
27	twang sequence" which is heard in "Take A	U.S. 579, 591 (1993); Kumho Tire
28	Dive" (Dance Version) simply could not	Co. v. Carmichael, 526 U.S. 137,

1	Pringle Declaration	Evidentiary Objections
2	0	· ·
	have been created by me by downloading a version of "I Gotta Feeling's" "guitar twang	147-48 (1999).
3	sequence" from Beatport.com, as Geluso	
4	speculates and opines in support of the	
5	Defendants' Motion for Summary	
6	Judgment. 145. Given the "striking similarity"	Fed. R. Evid. 401, 402, 403, 602,
7	of the two works, I understand that the law	701, 702
, I	presumes access. Thus, it is not a quantum	The statements are argumentative,
8	leap for anyone to conclude that this "guitar	speculative, lack foundation, do not
9	twang sequence" was shared with and utilized by the Defendants in the creation of	appear to be based on the witness' personal knowledge, offer improper
10	"I Gotta Feeling." Certainly, the credibility	legal argument, and constitute
11	of the various songwriters is at issue and the	improper opinion testimony of a lay
12	issue of whose version came first can only be resolved through the presentation of	person. Pringle has not been designated as an expert witness in
13	evidence and cross examination at trial.	this case, nor has he presented a
		sufficient foundation to support any
14		claimed technical expertise in the
15		referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
16		U.S. 579, 591 (1993); <i>Kumho Tire</i>
17		Co. v. Carmichael, 526 U.S. 137,
18	146 ((7) 1 4 7)	147-48 (1999).
19	146. "Take A Dive" was inspired by and created in part, with instrumentation	Fed. R. Evid. 401, 402, 403, 602 The statements are argumentative,
	from "Cruelest Joke," another song created	speculative, and lack foundation.
20	by me and registered with the Copyright	,
21	Office in 1998; "Take A Dive" (Dance	
22	Version) was also inspired by, the vocal notes from "Faith," which was registered	
23	with the Copyright Office in 1998. Thus,	
24	there are a number of pre-1999 songs I	
	wrote, which form the basis of the music	
25	which is heard in "Take A Dive" (Dance Version).	
26	147. Unlike Riesterer, who gave his	Fed. R. Evid. 401, 402, 403, 602
27	computer with the original composition to a	The statements are argumentative,
28	friend whose name he does not know,	speculative, lack foundation, do not

1	Pringle Declaration	Evidentiary Objections
2	because he has a lot of friends, at a time he	appear to be based on the witness'
3	cannot remember, and refuses to turn over	personal knowledge, and offer
4	his backed-up original files from that computer; the only reason that I do not still	improper legal argument.
5	presently possess the individual layers that	
6	comprise my "guitar twang sequence" of	
	"Take A Dive" (Dance Version), is because	
7	all of my musical equipment was stolen in the year 2000. (<i>see</i> , Exhibit 32 - Theft -	
8	Police Report)	
9	148. In the year 2000, my storage	Fed. R. Evid. 401, 402, 403, 602
10	locker, which contained the hard drive that	To the extent the statement suggests
	had the individual sample layers of my	that a hard drive was stolen and
11	"guitar twang sequence" from the original derivative version of "Take A Dive," was	contained "the individual sample layers of [the] 'guitar twang
12	broken into and all of my musical	sequence," the statement is
13	equipment, including my Ensoniq ASR-10	speculative and lacks foundation.
14	Keyboard, which is the instrument that I	
	used to create the "guitar twang sequence",	
15	was stolen and never recovered. This fact is uncontroverted.	
16	149. As the break-in took place	Fed. R. Evid. 401, 402, 403, 602
17	almost 10 years before the allegedly	The statements are argumentative,
18	infringing "I Gotta Feeling" song was	speculative, lack foundation, do not
	written, it cannot be argued that the	appear to be based on the witness'
19	disappearance of those musical files and	personal knowledge, and offer
20	equipment had anything to do with the claims being asserted by me, here.	improper legal argument.
21	150. Geluso states that he	Fed. R. Evid. 401, 402, 403, 602,
22	understands that Pringle claims to have used	701, 702
	an ASR-10 sampling keyboard workstation	The statements lack foundation and
23	in creating "Take A Dive" (Dance Version)	constitute improper opinion
24	and that the "guitar twang sequence" in Pringle's NRG file is made up of three	testimony of a lay person.
25	separate sound recordings (or 'wave	
26	samples'), one for each chord, and stored	
	instructions to play back the chords in a	
27	sequence.	End D End 401 402 402 602
28	151. Geluso is wrong as	Fed. R. Evid. 401, 402, 403, 602,

Pringle Declaration demonstrated by the following: The "guitar twang sequence" wave samples of "Take A Dive" (Dance Version) are located in 2 separate layers on 3 separate piano keys, with 2 wave samples for each chord. That means that there are a total of 6 wave Evidentiary Objections 701, 702 The statements are argumentation speculative, lack foundation, do appear to be based on the witner personal knowledge, and const improper opinion testimony of	
twang sequence" wave samples of "Take A Dive" (Dance Version) are located in 2 separate layers on 3 separate piano keys, with 2 wave samples for each chord. That means that there are a total of 6 wave The statements are argumentative speculative, lack foundation, do appear to be based on the witner personal knowledge, and const improper opinion testimony of	
Dive" (Dance Version) are located in 2 separate layers on 3 separate piano keys, with 2 wave samples for each chord. That means that there are a total of 6 wave speculative, lack foundation, do appear to be based on the witner personal knowledge, and const improper opinion testimony of	
separate layers on 3 separate piano keys, with 2 wave samples for each chord. That means that there are a total of 6 wave appear to be based on the witner personal knowledge, and const improper opinion testimony of	4
with 2 wave samples for each chord. That means that there are a total of 6 wave improper opinion testimony of	
means that there are a total of 6 wave improper opinion testimony of	
6 samples, not three as Geluso states. person. Pringle has not been	
designated as an expert witness	
this case, nor has he presented sufficient foundation to suppor	
claimed technical expertise in t	-
referenced subjects. Daubert v	
Merrell Dow Pharms., Inc., 50	
U.S. 579, 591 (1993); Kumho T. Co. v. Carmichael, 526 U.S. 13	
12 147-48 (1999).	, ,
13 152. These 6 wave samples that Fed. R. Evid. 401, 402, 403, 60	<u>2,</u>
comprise the "guitar twang sequence" 14 chards used in "Take A Dive" (Dence	
cholds used in Take A Dive (Dance The statements are argumental)	
Version), are located within the instrument labeled as the "Delay SMPL," which is appear to be based on the witner appear to be base	
indexed as "FILE 6" in Directory 7 ("Dir personal knowledge, and const	
17 7"), located on "Track 6," when "Take A improper opinion testimony of	
Dive" (Dance Version) is played back in its person. Pringle has not been	
designated as an expert witness	
sufficient foundation to suppor	
claimed technical expertise in t	-
referenced subjects. <i>Daubert v</i>	
Merrell Dow Pharms., Inc., 50	
U.S. 579, 591 (1993); <i>Kumho T</i> Co. v. Carmichael, 526 U.S. 13	
147-48 (1999)	, ,
24 153. Geluso's opinion that the guitar Fed. R. Evid. 401, 402, 403, 60	<u>12,</u>
25 twang' sequence in Pringle's NRG file are 701, 702	
three separate recordings is rank speculation, as he sets forth no facts which speculative, lack foundation, do	
address the manner in which I recorded the appear to be based on the witner	
"guitar twang sequence". Absent such facts, personal knowledge, offer impressional knowledge.	

1	Pringle Declaration	Evidentiary Objections
2	any suggestion as to how I composed "Take	legal argument, and constitute
3	A Dive" (Dance Version), is a meaningless	improper opinion testimony of a lay
4	exercise in futility.	person. Pringle has not been
5		designated as an expert witness in this case, nor has he presented a
		sufficient foundation to support any
6		claimed technical expertise in the
7		referenced subjects. Daubert v. Merrell Dow Pharms., Inc., 509
8		U.S. 579, 591 (1993); <i>Kumho Tire</i>
9		Co. v. Carmichael, 526 U.S. 137,
10	154. I have never spoken with	147-48 (1999). Fed. R. Evid. 401, 402, 403, 602
11	Geluso, nor was he present when I created	The statements are argumentative,
12	the "guitar twang sequence" used in "Take	speculative, and lack foundation.
	A Dive" (Dance Version). Therefore, it is	
13	impossible for him to have concluded that I made three separate recordings, back in	
14	1999. I may have recorded the "guitar	
15	twang sequence" in one recording through	
16	effects and then copied the entire identical wavesample to three separate piano keys;	
17	then dissected them, by cutting and	
18	truncating them, into only one chord per	
	piano key.	End D Evid 401 402 402 602
19	155. Geluso misleads again when he suggests that there are simply stored	Fed. R. Evid. 401, 402, 403, 602, 701, 702
20	instructions to playback the chords in the	The statements are argumentative,
21	"guitar twang sequence" and that somehow	speculative, lack foundation, do not
22	I only have haphazardly written instructions to playback the "guitar twang sequence" of	appear to be based on the witness' personal knowledge, offer improper
23	"Take A Dive" (Dance Version), located on	legal argument, and constitute
24	the "DISK05.NRG" file. That contention is	improper opinion testimony of a lay
25	untrue.	person. Pringle has not been designated as an expert witness in
		this case, nor has he presented a
26		sufficient foundation to support any
27		claimed technical expertise in the
28		referenced subjects. Daubert v.

1	Pringle Declaration	Evidentiary Objections
2		Merrell Dow Pharms., Inc., 509
3		U.S. 579, 591 (1993); <i>Kumho Tire</i> <i>Co. v. Carmichael</i> , 526 U.S. 137,
4		147-48 (1999).
5	156. The DISK05.NRG file is an	Fed. R. Evid. 401, 402, 403, 602,
6	Ensoniq-based proprietary disk. As such, it can only be recognized by Ensoniq-based	The statements lack foundation and
7	musical equipment, e.g., the Ensoniq ASR-	constitute improper opinion
8	10 Keyboard. The "DISK05.NRG" disk is well-organized and divided into 10 different	testimony of a lay person.
9	"Song Directories" (labeled and abbreviated	
10	as "Dir 1," "Dir 2," etc.). Each Song Directory contains only one song with the	
11	associated instrument and sound effects	
	setting files for that song. Each file on the	
12	disk, and in the "Song Directory", is	
13	assigned an indexing "FILE" number (i.e.	
14	"FILE 6 - Delay SMPL"). 157. The Song Directories labeled	Fed. R. Evid. 401, 402, 403, 602,
15	"Dir 1", "Dir 5", "Dir 7", "Dir 8", "Dir 9"	701, 702
16	and "Dir 10", contain the complete song file	The statements lack foundation and
	and associated instrument and sound effects	constitute improper opinion
17	setting files (with associated instrumental wave samples) to playback and construct	testimony of a lay person.
18	one song. "Dir 1" has all of the associated	
19	song files to playback and construct my	
20	song "1952." "Dir 5" has all of the	
21	associated song files to playback and construct my song "Until the End of Time."	
	"Dir 7" has all the associated song files to	
22	playback and construct my song "Take A	
23	Dive" (Dance Version). "Dir 8" has all the	
24	associated song files to playback and construct my song "Broken Wing." "Dir 9"	
25	has all the associated song files to playback	
26	and construct my song "7 Seconds To	
	Heartbreak." "Dir 10" has all the associated	
27	song files to playback and construct my	
28	song "Too Young To Drown." The Song	

1	Pringle Declaration	Evidentiary Objections
	e e e e e e e e e e e e e e e e e e e	Evidentially Objections
2	Directories labeled "Dir 2", "Dir 3", "Dir 4"	
3	and "Dir 6", are empty as I ran out of hard	
4	drive space before I was able to fill these Song Directories with any song, instrument	
5	or sound effects setting files. This was	
5	typically the case, because of the very	
6	limited storage capacity of the hard drives	
7	available in the late 1990's.	
8	158. Geluso states that he	Fed. R. Evid. 401, 402, 403, 602,
	understands that Pringle claims to have used	701, 702
9	an ASR-10 sampling keyboard workstation in creating 'Take A Dive' (Dance	The statements lack foundation and
10	Version)". He provides no factual basis, as	constitute improper opinion testimony of a lay person.
11	to why he is in a position to state, what	testimony of a lay person.
	instrument or device I allegedly claim to	
12	have used to create "Take A Dive" (Dance	
13	Version). Also, I don't claim to have created	
14	"Take A Dive" (Dance Version) with an	
	Ensoniq ASR-10; I did create it with an	
15	Ensoniq ASR-10. It is undisputed that I used an Ensoniq ASR-10 Keyboard to	
16	create "Take A Dive" (Dance Version). I	
17	did so with all of the song files and	
	associated instrumentation and sound	
18	effects setting files, which are located on the	
19	"DISK05.NRG" file, in the "Song	
20	Directory" labeled "Dir 7."	
	159. To hear "Take A Dive" (Dance	Fed. R. Evid. 401, 402, 403, 602,
21	Version) in its entirety, all one has to do is load up the song file, located in "Dir 7" on	701, 702 The statements lack foundation and
22	the "DISK05.NRG"; load up the instrument	constitute improper opinion
23	files, located in "Dir 7" on the	testimony of a lay person.
	"DISK05.NRG"; and load up the correct	J J 1
24	sound effects bank on the ASR-10	
25	Keyboard; and push "play." The entire	
26	"Take A Dive" (Dance Version) song will	
	then play; and it will sound identical to what	
27	the deposit copy of "Take A Dive" (Dance Version) that is on file and registered with	
28	version) that is on the and registered with	

4		
1	Pringle Declaration	Evidentiary Objections
2	the Copyright Office, sounds like. If loaded	
3	properly, the Ensoniq ASR 10 will play	
4	"Take A Dive" (Dance Version) identically	
	every time. 160. Geluso opines that "The NRG	Fed D Evid 401 402 402 602
5	file does not contain a stereo-mixed sound	Fed. R. Evid. 401, 402, 403, 602, 701, 702
6	recording," but rather is made up of separate	The statements lack foundation and
7	wave samples of instrumental parts. He is	constitute improper opinion
,	again in error.	testimony of a lay person.
8	161. In 1999, I created the song	Fed. R. Evid. 401, 402, 403, 602,
9	"Take a Dive" (Dance Version) on an	701, 702
10	Ensoniq ASR-10 keyboard and backed up	The statements lack foundation and
	his creation file onto an .NRG image file titled "DISK05.NRG". The Ensoniq ASR-	constitute improper opinion testimony of a lay person.
11	10 keyboard, which stands for "Advanced	testimony of a lay person.
12	Sampling Recorder," is a complete digital	
13	music production studio that allows the user	
14	to upload instruments, sounds, and other	
	audio samples from external third-party	
15	sources into the keyboard. These	
16	instruments/sounds can then be sequenced and arranged by the user to create and	
17	record songs. These songs, and all the	
	component parts that make up the songs (i.e.	
18	the instruments, the recorded sequences,	
19	etc.) can then be saved to disks via an	
20	external disk drive that is attached directly	
21	to the Ensoniq ASR-10 keyboard. 162. Directions for isolating and	Fed. R. Evid. 401, 402, 403, 602,
	playing the "guitar twang sequence" by	701, 702
22	itself, on the Ensoniq ASR-10 keyboard, are	The statements lack foundation and
23	straight forward and not complicated. See	constitute improper opinion
24	attached instructions provided to	testimony of a lay person.
	Defendants on August 8, 2011, Exhibit 47	
25	hereto.	Fod D Evid 401 402 402 602
26	163. When the "Song Directory" labeled "Dir 7" is accessed on the	Fed. R. Evid. 401, 402, 403, 602, 701, 702
27	"DISK05.NRG" file and burned to a CD-	The statements lack foundation and
28	Rom Disk, all that is needed to hear this	constitute improper opinion

1	Pringle Declaration	Evidentiary Objections	
2	stereo- mixed sound recording is to load up	testimony of a lay person.	
3	the song file, located in "Dir 7" on the		
4	"DISK05.NRG"; load up the instrument files, located in "Dir 7" on the		
5	"DISK05.NRG"; and load up the correct		
3	stock sound effects bank on the Ensoniq		
6	ASR-10; and push "play."		
7	164. The entire "Take A Dive"	Fed. R. Evid. 401, 402, 403, 602,	
8	(Dance Version) song will then play; and it	701, 702	
	will sound identical to what the deposit copy of "Take A Dive" (Dance Version)	The statements lack foundation and constitute improper opinion	
9	that is on file and registered with the	testimony of a lay person.	
10	Copyright Office sounds like.	testimony of a lay person.	
11	165. The audio outputs of the	Fed. R. Evid. 401, 402, 403, 602,	
	Ensoniq ASR-10 will play the identical	701, 702	
12	sound recording every time these song files	The statements lack foundation and	
13	are loaded properly. Geluso is incorrect	constitute improper opinion	
14	when he states that the "DISK05.NRG" file	testimony of a lay person.	
15	does not contain a "stereo-mixed sound recording", for at least three possible		
	reasons: (1) he doesn't know how to		
16	properly load the "Take A Dive" (Dance		
17	Version) into the Ensoniq ASR-10; (2) he		
18	doesn't know how the Ensoniq ASR-10		
	operates, in general; or (3) he intentionally		
19	avoided gaining a working knowledge of		
20	and instructions for, the use and operation of an Ensoniq ASR-10 instrument, in order		
21	to not be in a position to re-create the		
	"stereo-mixed sound recording" of "Take A		
22	Dive" (Dance Version).		
23	166. The Ensoniq ASR-10 is a	Fed. R. Evid. 401, 402, 403, 602,	
24	device that plays the original "sound	701, 702	
25	recording" for "Take A Dive" (Dance	The statements lack foundation and	
	Version). The original "sound recording" was actually recorded onto the hard disk	constitute improper opinion testimony of a lay person.	
26	which is the "DISK05.NRG" file, but in a	commony of a my person.	
27	technologically- advanced non-traditional		
28	way, via a computer hard disk.		
_0			

1	Pringle Declaration	Evidentiary Objections	
2	G	·	
	167. The Ensoniq ASR-10 can be likened to the "reel-to-reel tape recorder"	Fed. R. Evid. 401, 402, 403, 602, 701, 702	
3	machine that was invented in the 1940's	The statements lack foundation and	
4	(see, Exhibit 33 - Reel-To-Reel Tape	constitute improper opinion	
5	Recorder History).	testimony of a lay person.	
5	168. The reel-to-reel tape recorder	Fed. R. Evid. 401, 402, 403, 602,	
6	machine records the actual "sound	701, 702	
7	recording" and imprints it onto a magnetic	The statements lack foundation and	
	tape that is spun around a circular metal or	constitute improper opinion	
8	sometimes plastic reel (referred to as a "tape	testimony of a lay person.	
9	reel"). After recording the sound recording		
10	onto this tape reel, the tape reel contains the		
	magnetic imprint of the sound recording.		
11	These sound recording tape reels can then		
12	be placed into storage. When taken out of storage, one cannot simply hear the sound		
13	recording on the tape reel, unless one has a		
13	reel-to-reel tape recorder machine that can		
14	play back the tape reel. Once the tape reel is		
15	properly re-loaded onto the reel-to-reel tape		
16	recorder machine, the tape reel containing		
16	the sound recording can be heard, but only		
17	after pressing "play" on the reel-to-reel tape		
18	recorder machine.	E I D E : 1 401 402 402 602	
	169. The same concept applies with	Fed. R. Evid. 401, 402, 403, 602,	
19	the Ensoniq ASR-10 when trying to play the "sound recording" created on that	701, 702 The statements lack foundation and	
20	equipment. To play the original "sound	constitute improper opinion	
21	recording" for "Take A Dive" (Dance	testimony of a lay person.	
	Version), on the Ensoniq ASR-10, one	y F	
22	simply re-loads all the "Take A Dive"		
23	(Dance Version) saved files from the		
24	"DISK05.NRG", into the Ensoniq ASR-10		
	and pushes the "play" button, just as one did		
25	when seeking to hear the "sound recording"		
26	saved onto the magnetic tape reel of a reel-		
27	to-reel tape recorder machine. 170. The sound recording of "Take	Fed. R. Evid. 401, 402, 403, 602,	
	A Dive" (Dance Version) was saved as files	701, 702	
28	11 Dive (Dunce version) was saved as files	101, 102	

1			
	Pringle Declaration	Evidentiary Objections	
2	on a magnetic hard disk, instead of being	The statements lack foundation and	
3	saved as imprints on a magnetic tape reel.	constitute improper opinion	
4	The magnetic hard disk contains all the saved files (the instruments, the individual	testimony of a lay person.	
5	samples, and the midi song file) needed to		
3	play back the original "sound recording" of		
6	the song. When all of these files that are		
7	saved on the magnetic hard disk or .NRG		
8	file are properly re-loaded into the Ensoniq		
	ASR-10, from the .NRG file, the song will play the identical original "sound recording"		
9	through the audio outputs of the Ensoniq		
10	ASR-10 every time, just like the reel-to-reel		
11	tape recorder machine plays the original		
12	sound recording that was saved as a		
	magnetic imprint onto the tape reel.	E I D E :1 401 402 402 602	
13	171. The "DISK05.NRG" is a "sound recording". By suggesting that there	Fed. R. Evid. 401, 402, 403, 602, 701, 702	
14	is no "stereo-mixed sound recording" for	The statements lack foundation and	
15	"Take A Dive" (Dance Version), Geluso	constitute improper opinion	
16	simply lacks the requisite working	testimony of a lay person.	
	knowledge of how to load the song with all		
17	of the instrument tracks into an Ensoniq ASR-10, and then cause the device to play		
18	the original "sound recording".		
19	172. Geluso demonstrates his lack	Fed. R. Evid. 401, 402, 403, 602,	
20	of knowledge regarding the use and	701, 702	
	operation of an Ensoniq ASR-10, by stating	The statements lack foundation and	
21	that creating a stereo-mixed sound recording	constitute improper opinion	
22	from the instrumental parts contained in the .NRG file is not a simple one step process.	testimony of a lay person.	
23	He compounds his lack of knowledge when		
24	he states:		
	"In order to hear a		
25	stereo-mix, such as the sound		
26	file on the deposit copy of		
27	'Take A Dive' (Dance		
	Version) submitted to the Copyright Office, it is		
28	Copyright Office, it is		

1	Pringle Declaration	Evidentiary Objections
2	necessary to manually load	
3	each of these instrument files	
	from the .NRG into a specific	
4	'track' slot, in the ASR-10	
5	and then replay them together	
6	using the ASR-10.	
6	This process requires at	
7	least 20 steps and requires	
8	working knowledge of the	
	ASR10 and instructions	
9	specific to 'Take A Dive'	
10	(Dance Version) to put it back	
11	together. Moreover, without	
11	access to the original mixed	
12	version of 'Take A Dive'	
13	(Dance Version) or to instructions as to which	
	specific instrument file is	
14	assigned to which specific	
15	track slot in the ASR10, there	
16	is no guarantee that the	
10	process of re-loading the NRG	
17	files into the ASR10 will yield	
18	a sound recording that was	
	identical to the original."	
19	173. Not only does the	Fed. R. Evid. 401, 402, 403, 602,
20	"DISK05.NRG" file contain the original	<u>701, 702</u>
21	stereo-mixed version of "Take A Dive"	The statements lack foundation and
	(Dance Version), but the Defendants were	constitute improper opinion
22	also provided with the instructions as to	testimony of a lay person.
23	which specific instrument file is assigned to which specific track in the Ensoniq ASR-10.	
	(See, Exhibit 34, Plaintiff's Answer to	
24	Headphone Junkie Interrogatory No. 17).	
25	174. Additionally, I brought my	Fed. R. Evid. 401, 402, 403, 602,
26	Ensoniq ASR-10 to Gallant's office, in San	701, 702
	Antonio, Texas, on August 8, 2011, and an	The statements lack foundation and
27	attached SCSI compatible CD-Rom player,	constitute improper opinion
28	for the sole purpose of demonstrating to the	testimony of a lay person.
28		

1	Pringle Declaration	Evidentiary Objections	
2	Defendants' hired computer expert, Danny		
3	Aga, "Take A Dive" (Dance Version), as		
4	played through the Ensoniq ASR-10. At that		
	same time, I also made available, the		
5	"DISK05.NRG" original disk, manufactured and burned in 1999, which has been in my		
6	hired computer expert Gallant's possession,		
7	since December of 2010.		
	175. On August 8, 2011, in front of	Fed. R. Evid. 401, 402, 403, 602,	
8	the Defendants' hired computer expert,	<u>701, 702</u>	
9	Danny Aga, I loaded into the Ensoniq ASR-	The statements lack foundation and	
10	10, from the attached SCSI compatible CD-	constitute improper opinion	
	Rom player, all the "Take A Dive" (Dance	testimony of a lay person.	
11	Version) song files located in "Dir 7" on the "DISK05.NRG" CD-Rom. That material		
12	was given to Mr. Aga, along with a copy of		
13	a document that I created, which listed the		
	specific instrument file track locations and		
14	settings to load up all the files to play back		
15	the original sound recording of "Take A		
16	Dive" (Dance Version) on the Ensoniq		
17	ASR-10 (<i>see</i> , Exhibit 35 - Disk 05 Contents Menu).		
	176. Mr. Aga, then video-taped the	Fed. R. Evid. 401, 402, 403, 602,	
18	Ensoniq ASR-10 I had brought to Gallant's	701, 702	
19	office, playing "Take A Dive" (Dance	The statements lack foundation and	
20	Version), in its entirety. I also had delivered	constitute improper opinion	
	to Mr. Aga, at that same time, through	testimony of a lay person.	
21	chain-of-custody forms, via a CD-Rom		
22	copy of all the backed-up files that I had saved from my 2011 corrupted computer		
23	hard drive, labeled "Backup Disk 2011"		
	(see, Exhibit 36 - HD Chain Of Custody		
24	Form); a forensic copy of the		
25	"DISK05.NRG" file, which was located on		
26	a CD-Rom disk, labeled as "Ensoniq Disk		
	2"; and a CD-Rom Disk labeled "Promo		
27	Photos/1999 Ensoniq NRG Files" (see,		
28	Exhibit 37 - NRG CD-ROMs - Custody		

1			
1	Pringle Declaration	Evidentiary Objections	
2	Form).		
3	177. Obviously, if he could not get	Fed. R. Evid. 401, 402, 403, 602,	
4	the song to play, Geluso did not properly	701, 702 The statements leak foundation and	
	load up and play the entire "Take A Dive" (Dance Version) song files on the Ensoniq	The statements lack foundation and constitute improper opinion	
5	ASR-10. If he was unable to hear the song,	testimony of a lay person.	
6	it was not because there was any	testimony of a my person.	
7	impediment in the recording, but rather		
0	because he lacked sufficient experience with		
8	and understanding of the device, to make it		
9	work or he simply chose not to be able to		
10	make it work, so that he could render an		
11	opinion that it was difficult or impossible to generate any sound recording from the		
	"DISK05.NRG" file, through an Ensoniq		
12	ASR-10 device.		
13	178. Consequently, Geluso did not	Fed. R. Evid. 401, 402, 403, 602,	
14	investigate or analyze the entirety of the	<u>701, 702</u>	
	materials I created in 1999, with the	The statements lack foundation and	
15	Ensoniq ASR-10, thoroughly. He also did	constitute improper opinion	
16	not apparently investigate and validate whether I saved all of the files needed to re-	testimony of a lay person.	
17	construct and play back the entirety of		
	"Take A Dive" (Dance Version) from the		
18	"DISK05.NRG" on the Ensoniq ASR-10;		
19	and he didn't investigate and validate		
20	whether, the "Take A Dive" (Dance		
	Version) song files (including the "guitar		
21	twang sequence") could have been created in the year 1999.		
22	179. Riesterer's statement that he	Fed. R. Evid. 401, 402, 403, 602	
23	created the "guitar twang sequence" and	The statement lacks foundation and	
24	wrote the music for "I Gotta Feeling," is	offers improper legal argument.	
	disputed by Defendant Adams.		
25	180. Adams has represented that he	Fed. R. Evid. 401, 402, 403, 602,	
26	wrote the music to "I Gotta Feeling," both	801, 802 The statement is argumentative	
27	to <i>Rolling Stone Magazine</i> and in the liner notes for "I Gotta Feeling," on <i>The E.N.D.</i>	The statement is argumentative, lacks foundation, does not appear to	
	album. (See, Exhibits 38 and 39.)	be based on the witness' personal	
28	(200, Zimetts 00 wild 071)	TI TIME OF THE STATE OF PERSONAL	

1	Pringle Declaration	Evidentiary Objections
2		knowledge, contains inadmissible
3		hearsay, and offers improper legal argument.
4	181. On <i>The E.N.D.</i> album, in the "I	Fed. R. Evid. 401, 402, 403, 602,
5	Gotta Feeling" liner notes (Exhibit 39 – "I	801, 802
6	Gotta Feeling" Liner Notes), is written "Synths: Will.i.am." This songwriting credit	The statement is argumentative, lacks foundation, does not appear to
7	notation is a representation to the public that	be based on the witness' personal
8	Adams, not Riesterer, is credited with writing any synthesized parts for "I Gotta	knowledge, contains inadmissible hearsay, and offers improper legal
9	Feeling," on <i>The E.N.D.</i> album (which	argument.
10	would include the "guitar twang sequence", since it was synthesized into a computer-	
11	based software program that can be played	
12	electronically on a midi keyboard).	E I D E :1 401 402 402 602
13	182. It is also my understanding that Adams receives the largest share of the	Fed. R. Evid. 401, 402, 403, 602 The statement is argumentative,
14	songwriting credits, not Riesterer, which indicates that it was Adams, not Riesterer,	lacks foundation, does not appear to be based on the witness' personal
15	who composed the "guitar twang sequence"	knowledge, and offers improper
16	of "I Gotta Feeling." If Adams receives the lion's share of the songwriting credit, and	legal argument.
17	Riesterer substantially less, then such	
18	differences would serve to confirm that Adams created the synthesizer portions of "I	
19	Gotta Feeling."	
20	183. In <i>Rolling Stone Magazine's</i> April 29, 2010 "Issue 1103," Adams states	Fed. R. Evid. 401, 402, 403, 602, 801, 802
21	that nobody asked him to write "I Gotta	The statement does not appear to be
22	Feeling" - it just came to him. (<i>See</i> , Exhibit 38 - <i>Rolling Stone</i> /Adams Interview, p. 56)	based on the witness' personal knowledge and contains
23	The thought stone (Traums There we p. 50)	inadmissible hearsay.
24	184. Given Adams' lack of real	Fed. R. Evid. 401, 402, 403, 602
25	musical training or knowledge of musical instruments and his demonstrated history of	The statement is argumentative, lacks foundation, does not appear to
26	sampling others' intellectual property with	be based on the witness' personal
27	and without their permission, the notion that "I Gotta Feeling," just came to him, is not	knowledge, and offers improper legal argument.
28	credible. (Deposition of William Adams,	regar argument.

1	Pringle De	claration	Evidentiary Objections
2	Exhibit D to Dickie Decl. ("Adams Dep.).		
3	185. Adams claims to have written		Fed. R. Evid. 401, 402, 403, 602
4	_	for "I Gotta Feeling." (See,	The statement is argumentative,
		the liner notes for "I Gotta	lacks foundation, does not appear to
5	_	The E.N.D. album). Yet he has o what Guetta contributed to "I	be based on the witness' personal
6	Gotta Feeling		knowledge, and offers improper legal argument.
7	Q.	What did David Guetta do?	legar argument.
	A.	I don't know.	
8	Q.	So as of right now, you don't	
9		know if David Guetta wrote a	
10		beat for 'I Gotta Feeling'?	
	A.	I have no idea.	
11	Q.	You have no idea whether	
12		Fred Riesterer wrote a beat for I Gotta Feeling'?	
13	Α.	I have no idea.	
	Q.	Did you write a beat?	
14	A.	Nope, sure didn't.	
15	Q.	Did you have anything to do	
16		with the music?	
	A.	I had nothing to do with the	
17		music, just the lyrical	
18		portion. Just the lyrical portion?	
19	Q. A.	Just the lyrical portion, that's	
	7.4.	it.	
20	Q.	Okay, can you tell me why	
21		David Guetta received	
22		royalties for I Gotta Feeling,	
		if you don't know what his	
23		relationship to the song is?	
24	A.	Because he presented that as	
25	(Adams De	something he composed. p., p. 75). If Adams is receiving	
		ongwriting credit and	
26		rate royalty payments reflecting	
27		ition for writing the "Synths,"	
28	but has no i	dea as to who wrote "I Gotta	
_0			

1			
1	Pringle Declaration	Evidentiary Objections	
2	Feeling," or what the contributions of the		
3	other alleged writers to that composition		
4	were, then a material question of fact exists,		
	as to who wrote what. 186. Adams is unable to state who	Fed. R. Evid. 401, 402, 403, 602	
5	composed the "guitar twang sequence" and	The statement is argumentative,	
6	has no idea who made the actual music for	lacks foundation, does not appear to	
7	"I Gotta Feeling." Certainly Adams cannot	be based on the witness' personal	
8	offer any evidence as to who or when the	knowledge, and offers improper	
	"guitar twang sequence", which is found in	legal argument.	
9	"I Gotta Feeling," was composed, as his		
10	contribution to the song according to him, is limited to writing the lyrics to tracks which		
11	were sent to him by Guetta. (See, Adams		
	Dep., p. 74, line 11).		
12	187. During an interview at the 52 nd	Fed. R. Evid. 401, 402, 403, 602,	
13	Grammy Awards, in Los Angeles,	801, 802	
14	California (see, Exhibit 40 - David Guetta	The statement does not appear to be	
	Rhapsody 52 nd Grammy Interview), Guetta	based on the witness' personal	
15	states: "So my first experience being with	knowledge, and contains	
16	Will, he selected that track and I went to uhm - uhm, finish it with him in - in Los	inadmissible hearsay.	
17	Angeles. In - huge studio, you know. The		
	Peas were there and everybody was there		
18	in the studio, cause what we were doing		
19	was sounding so different, that all the		
20	other artists that were working in the		
	other studios, just came checking it out."	E I D E :1 401 402 402 602	
21	188. This statement contradicts the	Fed. R. Evid. 401, 402, 403, 602 The statement is organizative	
22	July 25, 2011, sworn statement of Adams, who didn't know Guetta's contribution to "I	The statement is argumentative, lacks foundation, does not appear to	
23	Gotta Feeling" and hadn't participated in	be based on the witness' personal	
	any of the music production of "I Gotta	knowledge, and offers improper	
24	Feeling." (See, Adams Dep.)	legal argument.	
25	189. Likewise, Guetta refuses to	Fed. R. Evid. 401, 402, 403, 602	
26	disclose the specific email addresses he	The statement is argumentative,	
	used and has redacted the email addresses	lacks foundation, does not appear to	
27	from the alleged email evidence he	be based on the witness' personal	
28	provided, which show email	knowledge, and offers improper	

Pringle De	claration	Evidentiary Objections
		legal argument.
	Guetta knows that these	Fed. R. Evid. 401, 402, 403, 602
specific em		The statement is argumentative,
	_	lacks foundation, does not appear to
	•	be based on the witness' personal knowledge, and offers improper
		legal argument.
one cannot	validate whether these email	
		Fed. R. Evid. 401, 402, 403, 602,
		801, 802 The statement does not appear to be
were there	in the studio, in Los Angeles.	based on the witness' personal
		knowledge, and contains
102	1	inadmissible hearsay.
	· · · · · · · · · · · · · · · · · · ·	Fed. R. Evid. 401, 402, 403, 602 The statement does not appear to be
corroborates the Guetta statement that		based on the witness' personal
Adams was in the studio in Los Angeles,		knowledge.
	_	
-		
lines 1-24:	• • •	
0.	Do you know David Guetta?	
_	-	
Q.	Do you know nim?	
A.	Yes.	
Q.	And when did you first meet	
	him?	
A.	I don't know the exact date.	
Q.	Where did you meet him?	
	communicate and Adams files. 190. specific emission validate the between Guern Exhibit 44 - Addresses), one cannot communicate establish the communicate these indivirus for the communicate there indivirus for the communicate there indivirus for the communicate for	190. Guetta knows that these specific email addresses are needed to validate the alleged email communications between Guetta, Riesterer and Adams (see, Exhibit 44 - Guetta Redacted Email Addresses). Without these email addresses, one cannot validate whether these email communications even occurred, let alone establish the substance of the communications which occurred between these individuals over time. 191. In the Guetta interview referenced above, he states that the "Peas were there" in the studio, in Los Angeles. 192. Jaime Gomez ("Gomez"), another Black Eyed Peas member, corroborates the Guetta statement that Adams was in the studio in Los Angeles, working on the "I Gotta Feeling" tracks. See, Deposition of Jaime Gomez, Exhibit G to Dickie Decl. ("Gomez Dep.), p. 176, lines 1-24: Q. Do you know David Guetta? Q. Do you know him? A. Yes. Q. And when did you first meet him? A. I don't know the exact date.

1	Pringle De	claration	Evidentiary Objections
2 3	Α.	The studio.	
4	Q.	What studio?	
5	Α.	Record Planet.	
6	Q.	And where is that located?	
7	A.	In Hollywood.	
8 9	Q.	In what year did you meet him?	
10	Α.	Don't remember.	
11 12	Q.	Did you meet him before or	
13		after the album which is identified on Exhibit 5 –	
14		before the masters were completed?	
15	Α.	Before.	
16 17	Q.	Who else was present when	
18		you met David Guetta and the masters had yet to be	
19		completed?	
20	193.	William Adams. Allan Pineda ("Pineda") also	Fed. R. Evid. 401, 402, 403, 602
21		Guetta when he testified that he	The statement does not appear to be
22		as to what Guetta did because	based on the witness' personal
23	1	present when he produced it ("I ng") (see, Deposition of Allan	knowledge.
24		nibit H to Dickie Decl. ("Pineda	
25		45). Pineda testified on July 25, ng on page 145, line 14, as	
26	follows:	ng on page 143, mie 14, as	
27	Q.	And can you tell me what	
28		David Guetta did to produce	

1	Pringle Dec	claration	Evidentiary Objections
2		'I Gotta Feeling'?	
3	Α.	No, I don't know. I wasn't	
4		present when he produced it.	
5		Pineda was in fact present, at	Fed. R. Evid. 401, 402, 403, 602
		e point in the production of "I	The statement does not appear to be
6	Gotta Feelir	ng," according to Guetta.	based on the witness' personal
7	105	Gomez also contradicts	knowledge.
8		imony that Guetta finished the	Fed. R. Evid. 401, 402, 403, 602 The statement is argumentative and
		etion of the musical tracks for "I	does not appear to be based on the
9	_	ng" at Square Production Studios	witness' personal knowledge.
10		ance (with only Guetta and	T and
11		ing present).	
		Actually, Gomez also confirms	Fed. R. Evid. 401, 402, 403, 602
12		used song and the album were	The statement is argumentative and,
13	_	ed in France, as suggested by	does not appear to be based on the
14	Adams:		witness' personal knowledge.
	Q.	Sure. Were the master tracks	
15		completed at the London	
16		studio?	
17	Α.	No.	
18	_		
	Q.	Were they completed at the	
19		Paris, France studio?	
20	A.	No.	
21	197.	Accordingly there are serious	Fed. R. Evid. 401, 402, 403, 602
	_	fact, as to where and when the	The statement is argumentative,
22		s to "I Gotta Feeling" were	lacks foundation, does not appear to
23		I who participated in that	be based on the witness' personal
24	process.		knowledge, and offers improper
	198.	Gomez acknowledges that the	legal argument. Fed. R. Evid. 401, 402, 403, 602
25		as for "I Gotta Feeling" were not	The statement is argumentative and
26		Paris, France, and that at least	does not appear to be based on the
27		self and Guetta, were all present	witness' personal knowledge.
		ord Planet" studio, in Los	_
28	·		

1	Pringle Dec	claration	Evidentiary Objections
2		orking on the musical tracks for	
3	_	eling." (Gomez Dep.)	
		This fact is corroborated by	Fed. R. Evid. 401, 402, 403, 602
4		is January 31, 2010, interview at	The statement is argumentative and
5		mmy Awards, in Los Angeles,	does not appear to be based on the
6		stated that: "The Peas were	witness' personal knowledge.
	studio." (Ex	verybody was there in the	
7		The "I Gotta Feeling" liner	Fed. R. Evid. 401, 402, 403, 602
8		ically state that "I Gotta	The statement does not appear to be
9	_	s "Recorded at Square Prod in	based on the witness' personal
	_	e and Metropolis Studios in	knowledge.
10		gland." (Exhibit 39).	
11		Gomez and Stacy Ferguson	Fed. R. Evid. 401, 402, 403, 602
12		') both state they were present in	The statement does not appear to be
		g sessions at Metropolis Studios	based on the witness' personal
13		England. Gomez stated in his on page 183, starting on line 5:	knowledge.
14	Deposition,	on page 183, starting on fine 3.	
15	Q.	Did you work on the tracks in	
		'The E.N.D.' album at the	
16		English Studio?	
17	Α.	Yes.	
18		ated in her Deposition (Exhibit	
	_	Decl. ("Ferguson Dep."), on	
19		earting on line 15:	
20		NT 111	
21	Q.	Now, did you participate in	
		the recording of any tracks on the album 'The E.N.D.' in	
22		any studio outside –	
23		recording studio outside the	
24		United States?	
25	A.	Did I – did I participate on	
	A.	any recordings? I	
26		participated on recordings	
27		for the album 'The E.N.D.' in	
28		London at Metropolis Studio.	

1	Pringle De	claration	Evidentiary Objections
2		Gomez stated that he worked	Fed. R. Evid. 401, 402, 403, 602
3		s of "I Gotta Feeling." (Gomez	The statement does not appear to be
	Dep., p. 183	G ,	based on the witness' personal
4			knowledge.
5		Ferguson admits she worked on	Fed. R. Evid. 401, 402, 403, 602
6		T.D. album, at Metropolis	The statement is argumentative and
		ere the "I Gotta Feeling" tracks	does not appear to be based on the
7	were record		witness' personal knowledge.
8		In fact, every single one of the Peas was present, at least at	Fed. R. Evid. 401, 402, 403, 602 The statement is argumentative and
9	_	in the recording of the actual	does not appear to be based on the
-	_	s for "I Gotta Feeling," because	witness' personal knowledge.
10		ll present in the Metropolis	
11	Studios in I	London, England, where Guetta	
12		ng, at least a portion of the	
		eks for "I Gotta Feeling."	E I D E :1 401 402 402 602
13		Even though every single one	Fed. R. Evid. 401, 402, 403, 602 The statement is argumentative and
14		Eyed Peas members has stated ositions that they were not	The statement is argumentative and does not appear to be based on the
15	_	didn't know what involvement	witness' personal knowledge.
	1 -	in the creation and recording of	r
16	the musical tracks for "I Gotta Feeling"; and		
17	that testimony is further belied by the public		
18	record.		
		For example Adams states in	Fed. R. Evid. 401, 402, 403, 602
19	nis depositi	on, on page 74, line 11:	The statement is argumentative and
20	Q.	What did David Guetta do?	does not appear to be based on the witness' personal knowledge.
21			withess personal knowledge.
	A.	I don't know.	
22	Q.	So as of right now, you don't	
23		know if he wrote a beat for 'I	
24		Gotta Feeling?	
25	A.	I have no idea.	
26	Gomez state	es in his Deposition, on page	
	184, line 6:	os in ins Deposition, on page	
27			
28	Q.	And can you tell me what	

1	Pringle De	claration	Evidentiary Objections
2		specific aspect of 'I Gotta	
3		Feeling' David Guetta wrote?	
4	A.	I don't know.	
5	Ferguson st	ates in her deposition	
6		Guetta's involvement in the	
7		"I Gotta Feeling," on page g on line 21:	
8	Q.	And what did he (David	
9		Guetta) produce?	
10	A.	I don't know.	
11		es in his deposition, on page 145,	
12	line 14:		
13	Q.	And can you tell me what	
14		David Guetta did to produce 'I Gotta Feeling'?	
15		C	
16	A.	No, I don't know. I wasn't present when he produced it.	
17	(Exhibits G	and H.)	
18		Each member of the Black	Fed. R. Evid. 401, 402, 403, 602
19	-	was less than candid about volvement in the production and	The statement is argumentative and does not appear to be based on the
20		"I Gotta Feeling," as it appears	witness' personal knowledge.
21	that all wer	e present during the creation of	
22		tracks of "I Gotta Feeling," at polis Studios in London and the	
		net, in Los Angeles.	
23		The Defendants assert that	Fed. R. Evid. 401, 402, 403, 602,
24		te "I Gotta Feeling" and receives	801, 802 The statement is argumentative
25		Il portion of the royalties for "I ng." But Adams claims that he	The statement is argumentative, does not appear to be based on the
26		te any of the music, just the	witness' personal knowledge, and
27	lyrics. Ever	n though the liner notes of "I ng" clearly indicate "Synths:	contains inadmissible hearsay.
28		and he has stated publically that	

1	Pringle Declaration	Evidentiary Objections
2	he wrote "I Gotta Feeling."	
3	209. We also now know that Adams	Fed. R. Evid. 401, 402, 403, 602
4	and Pineda, who claimed under oath not to	The statement is argumentative and
	be present during the creation of "I Gotta	does not appear to be based on the
5	Feeling," made sworn statements that they	witness' personal knowledge.
6	were in fact present during some or all of the recording and finishing of "I Gotta	
7	Feeling." (Exhibits D and H).	
	210. Finally, as every member of the	Fed. R. Evid. 401, 402, 403, 602
8	Black Eyed Peas was present in the studio	The statement is argumentative and
9	while Guetta was working on the production	does not appear to be based on the
	and creation of "I Gotta Feeling," the	witness' personal knowledge.
10	suggestion that the Black Eyed Peas have no	
11	knowledge of how the song was created, is	
12	simply not credible. At the very least, these	
	contradictory positions create questions of	
13	fact which cannot be resolved through a summary disposition.	
14	211. In addition to Riesterer	Fed. R. Evid. 401, 402, 403, 602
15	assisting in the development and creation of	The statement is argumentative and
	instrumentation for Univers Sons, Guetta,	does not appear to be based on the
16	has also worked with Univers Sons and their	witness' personal knowledge.
17	cofounder, Etchart, in the development and	
18	creation of instrumentation. Guetta and	
	Univers Sons released a computer-based	
19	software instrument called "Electrobeats"	
20	(Reference – Exhibit 43 –Guetta Electrobeats and Exhibit 44 – Electrobeats –	
21	Advertisement). Etchart conspicuously fails	
	to mention this fact, anywhere in his	
22	Declaration. Clearly the relationship	
23	between Univers Sons and the Defendants	
24	Riesterer and Guetta is far more intimate	
	than they let on.	
25	212. Despite these conflicting	Fed. R. Evid. 401, 402, 403, 602,
26	statements, Geluso opines that I copied the	701, 702
27	music of the Black Eyed Peas, because there	The statements are argumentative,
	can be no doubt that Riesterer proved that	lack foundation, and constitute improper opinion testimony of a lay
28	he composed the "guitar twang sequence"	improper opinion testiniony of a fay

1		
1	Pringle Declaration	Evidentiary Objections
2	of "I Gotta Feeling." He so opines,	person.
3	however, without any effort to address,	
4	explain or refute, these various	
	contradictions by the Defendants. Given that Geluso also opines that Riesterer could	
5	not re-create the musical sound settings	
6	used to compose the "guitar twang	
7	sequence" as it is heard in "I Gotta Feeling,"	
	his statement as to the origin of the "guitar"	
8	twang sequence" lacks sufficient objectivity	
9	and credibility to form the basis of any	
10	determination that there are no material	
	facts still in dispute.	E 1 D E :1 401 402 402 602
11	213. Geluso's most recent assertion	Fed. R. Evid. 401, 402, 403, 602,
12	in his Declaration, that the sound could not have been reproduced without substantial	701, 702 The statements are argumentative,
13	"layering" and "sound processing"	lack foundation, and constitute
	manipulation, is another new and incredible	improper opinion testimony of a lay
14	version of what Riesterer now claims to has	person.
15	to be done in order to create the "guitar	
16	twang sequence" in the accused song.	
	214. Only after the manual	Fed. R. Evid. 401, 402, 403, 602,
17	manipulation of the stock Plugsound: "Strat	<u>701, 702, 1002</u>
18	With SM57 Stereo Spread" preset was	The statements are argumentative,
19	Geluso able to recreate the "guitar twang	lack foundation, violate the best
	sequence" heard in "I Gotta Feeling." This manual manipulation of the stock	evidence rule, offer improper legal argument and constitute improper
20	Plugsound: "Strat With SM57 Stereo	opinion testimony of a lay person.
21	Spread" preset, by Geluso, in producing the	J was produced to the second s
22	"guitar twang sequence" that he heard in "I	
22	Gotta Feeling," is tantamount to intentional	
23	"doctoring" of the evidence, on behalf of	
24	Defendant Riesterer. Geluso's actions also	
	show that through layering and sound	
25	effects processing manipulation of an electric guitar sound, that it is possible to re-	
26	create the "guitar twang sequence" that is	
27	also heard in my song "Take A Dive"	
	(Dance Version). A song which was on a	
28	, ,	

1	Pringle Declaration	Evidentiary Objections
2	Demo CD, given to Guetta and the other	
3	Defendants.	
4	215. I also advised the Defendants' counsel in my Deposition, on August 24,	Fed. R. Evid. 401, 402, 403, 602, 701, 702
	2011, that the "guitar twang sequence" was	The statements are argumentative,
5	layered. (See, Pringle Dep.)	lack foundation, and constitute
6	"I believe it's a layer in the	improper opinion testimony of a lay
7	'Cruelest Joke' instrument, as well	person.
8	as some other instrument I may	
	have specifically tweaked as well as	
9	a Fender Stratocaster."	
10	Now in support of their Motion for Summary Judgment, the Defendants	
11	suddenly assert for the first time that	
	through manipulation of a stock electric	
12	guitar sound through "layering" and "sound	
13	effects" processing, they can re-create the	
14	"guitar twang sequence" as it is heard in	
	their offending song. They make this brand	
15	new assertion in a Declaration from an audio expert, on November 14, 2011, which	
16	happens to coincidentally state that there are	
17	"layers" and "sound processing"	
18	manipulation (which I refer to as	
	"tweaking" in my Deposition) in the "guitar	
19	twang sequence", months after I identify	
20	"layering" and "sound effects" processing ("tweaking") as a sound ingredient to	
21	creating the "guitar twang sequence". If I	
22	didn't create the original "guitar twang	
	sequence", then how would I have known	
23	that there were "layers" and "sound effects"	
24	processing (tweaking) manipulation involved in creating the "guitar twang	
25	sequence"?	
26	216. The simple truth is that I	Fed. R. Evid. 401, 402, 403, 602,
	wouldn't know that fact. Only the individual	<u>701, 702</u>
27	who originally created the "guitar twang	The statements are argumentative,
28	sequence" would know that fact. I released	speculative, lack foundation, and

1	Pringle Declaration	Evidentiary Objections
2	my song "Take A Dive" (Dance Version) in	constitute improper opinion
3	1999, so even if the Defendants didn't have	testimony of a lay person.
4	the samples for the "guitar twang sequence" that I delivered and sent via mail, to Guetta	
5	and Garraud back around 1999 to 2003,	
3	they still had a full 10 years from the time I	
6	released my song in 1999, until the time	
7	they released "I Gotta Feeling" in 2009, to	
8	figure out how to reverse-engineer my	
	"guitar twang sequence". 217. Geluso demonstrates that it was	Fed. R. Evid. 401, 402, 403, 602,
9	possible to reverse-engineer my "guitar	701, 702
10	twang sequence"; because he did it.	The statements are argumentative,
11	Additionally, any qualified and experienced	lack foundation, and constitute
12	audio engineer can re-produce the "guitar	improper opinion testimony of a lay
	twang sequence" with substantial layering and sound processing manipulation, just as	person.
13	Geluso did. All that is needed is a clean	
14	electric guitar sample, which doesn't even	
15	have to be a "Fender Stratocaster," because	
16	all electric guitars have a basic guitar-like	
	sound and they are all substantially similar	
17	in their basic design; and are in fact, "guitars".	
18	218. Geluso's statement that	Fed. R. Evid. 401, 402, 403, 602,
19	Riesterer used a distortion sound processing	701, 702
20	effect in the creation of the "guitar twang	The statements are argumentative,
	sequence" is misleading and troubling. A	lack foundation, and constitute
21	distortion sound processing effect does exactly what it states, it distorts. The end	improper opinion testimony of a lay person.
22	result of processing a signal through	person.
23	distortion can be anywhere from a minor	
24	distortion of the sound, to a distortion which	
	makes the original fidelity and	
25	characteristics of the sound being processed through it, almost impossible to identify. An	
26	audio signal that is passed through a	
27	distortion sound processing effect tends to	
28	take on the characteristics of that particular	
20		

1	Pringle Declaration	Evidentiary Objections
2	distortion effect.	
3	219. Various electric guitars may	Fed. R. Evid. 401, 402, 403, 602,
4	sound completely different when played without any sound processing effects, but	701, 702 The statements are argumentative
5	those same guitars may all sound	The statements are argumentative, lack foundation, and constitute
	substantially similar when played through	improper opinion testimony of a lay
6	the exact same distortion sound processing	person.
7	effect. This is due to the fact that distortion	
8	substantially colors the signal being	
	processed through it. By newly claiming that Riesterer used distortion in the creation	
9	of the "guitar twang sequence" of "I Gotta	
10	Feeling," the Defendants make it difficult, if	
11	not nearly impossible, to identify and	
12	establish what sound Riesterer actually	
	allegedly used in creation of his offending	
13	"guitar twang sequence". 220. The footnotes of the Riesterer	Fod P Evid 401 402 403 602
14	Declaration are misleading and are	Fed. R. Evid. 401, 402, 403, 602 The statements are argumentative,
15	obviously placed so as to be seen as	lack foundation, do not appear to be
	insignificant. The footnotes located at the	based on the witness' personal
16	bottom of the pages in the Riesterer	knowledge, and offer improper legal
17	Declaration are presented in smaller type	argument.
18	than the substantive portions of the Declaration and appear to be placed in a	
19	manner that are intentionally deceptive.	
	(Dckt. #166, pp. 2-3.)	
20	221. Only after learning how I	Fed. R. Evid. 401, 402, 403, 602
21	composed the "guitar twang sequence" in	The statements are argumentative,
22	"Take A Dive" (Dance Version), did this	lack foundation, do not appear to be
23	new version of Riesterer's song creation allegations come to light. Certainly this	based on the witness' personal knowledge, and offer improper legal
	"footnote" contained in Riesterer's new	argument.
24	Declaration is an admission by him that at	
25	least two prior sworn statements he made,	
26	were false and misleading. At the very least,	
	these contradictory statements raise	
27	questions of material fact regarding what musical equipment and instrumental sounds	
28	musical equipment and instrumental sounds	

1	Pringle Declaration	Evidentiary Objections
2	were actually used by Riesterer in the	
3	creation of his "guitar twang sequence", and	
4	how that musical equipment and those instrumental sounds he used, parallel what I	
5	used in 1999.	
	222. Geluso's Declaration (Dckt.	Fed. R. Evid. 401, 402, 403, 602
6	#162) also contradicts Riesterer (see, Dckt.	The statement is argumentative,
7	#22-3, p. 2).	lacks foundation, does not appear to
8		be based on the witness' personal
		knowledge, and offers improper legal argument.
9	223. Riesterer states that there are	Fed. R. Evid. 401, 402, 403, 602
10	"four notes" in "I Gotta Feeling's" "guitar	The statements are argumentative,
11	twang sequence" in his sworn Declaration	lack foundation, do not appear to be
12	in November of 2010. Geluso, however,	based on the witness' personal
	states that there are in fact "eight" notes that make up the "guitar twang sequence" in "I	knowledge, and offer improper legal argument.
13	Gotta Feeling."	argument.
14	224. Apparently, the alleged	Fed. R. Evid. 401, 402, 403, 602
15	composer of this song doesn't even know	The statements are argumentative,
16	how many notes comprise the "guitar twang	lack foundation, do not appear to be
17	sequence" in "I Gotta Feeling." Riesterer's confusion and inaccurate recollection makes	based on the witness' personal knowledge, and offer improper legal
	sense, especially since I am the one who	argument.
18	actually wrote and recorded the "guitar	urgument.
19	twang sequence" in 1999, not him.	
20	225. The Geluso suggestions that (a)	Fed. R. Evid. 401, 402, 403, 602,
21	the three sampled guitar chords in my .NRG	701, 702 The statements are argumentative
	file were not independently created using the ASR-10, but were sampled from another	The statements are argumentative, lack foundation, and constitute
22	source; and (b) the separate, unprocessed	improper opinion testimony of a lay
23	'clean' notes that make up each chord of the	person.
24	guitar twang sequence do not exist in Mr.	
25	Pringle's NRG file as they do in Riesterer's Logic Session files which indicates that the	
	three sampled guitar chords in Mr. Pringle's	
26	NRG file were not independently created	
27	using the ASR-10, are both false and	
28	misleading.	

1	Pringle Declaration	Evidentiary Objections
2	I say this for several reasons: (i) there isn't	
3	one sample for each of the three chords of	
3	the "guitar twang sequence" in "Take A	
4	Dive" (Dance Version), but rather 2	
5	wavesamples, on 2 separate layers, for each	
6	of the 3 chords of the "guitar twang	
	sequence" in "Take A Dive" (Dance	
7	Version); meaning that there a total of 6 wave samples contained in the guitar twang	
8	sequence; (ii) Geluso has no idea as to	
9	which base guitar sound I used in 1999, to	
	create the "guitar twang sequence" heard in	
10	"Take A Dive" (Dance Version), and as a	
11	consequence, his statement is simple	
12	unsubstantiated conjecture; (iii) suggesting	
	that because a separate unprocessed clean	
13	note doesn't make up each chord of my "guitar twang sequence", means that "Take	
14	A Dive" (Dance Version) was not	
15	independently created, is utterly ridiculous	
	and devoid of any evidentiary support; (iv) I	
16	may have simply used a fully processed	
17	original guitar sound without any sound	
18	effects processing to create the "guitar	
10	twang sequence" in "Take A Dive" (Dance Version); and (v) the Ensoniq ASR- 10	
19	allows only one stereo or mono sound effect	
20	preset to be used at a time, to process a	
21	wavesample, so therefore I had to have	
22	fused together "layers" for the multi-	
	sampled "guitar twang sequence" chords	
23	which exist with the respective sound	
24	effects processing. 226. Therefore, to process the	Fed. R. Evid. 401, 402, 403, 602,
25	"guitar twang sequence" with four different	701, 702
	sound effects, the "guitar twang sequence"	The statements are argumentative,
26	has to be re-sampled at least four different	lack foundation, and constitute
27	times internally with the Ensoniq ASR-10's	improper opinion testimony of a lay
28	sound effects processing chip. Thus, the	person.

1	D. L. D. L	
	Pringle Declaration	Evidentiary Objections
2	sound effects and any layers stacked on top	
3	of a stereo layer, will all become fused	
4	together in at most, a stereo wavesample. To address the limited "16 megabytes" of RAM	
5	on the Ensoniq ASR-10, I purposely fused	
	together multiple layers of stacked	
6	wavesamples. The Ensoniq ASR-10 had a	
7	maximum of 16 megabytes of RAM	
8	memory space. The typical amount of	
	available RAM space that I would use if I composed a song on my computer today, is	
9	roughly around 8 to 10 gigabytes. "1"	
10	gigabyte, is equal to "1000" megabytes. So	
11	today, I typically use "8,000" to "10,000"	
12	megabytes of space to compose a song; as	
	compared to the extremely meager "16"	
13	megabytes of available RAM space, that	
14	was available on the Ensoniq ASR-10, when I composed "Take A Dive" (Dance	
15	Version), back in 1999.	
	227. Another reason why I	Fed. R. Evid. 401, 402, 403, 602,
16	purposely fused together multiple stacked	<u>701, 702</u>
17	layers of wavesamples together, such as the	The statements are argumentative,
18	individual piano keys which contained the	lack foundation, and constitute
19	chorded notes of the "guitar twang sequence" of "Take A Dive" (Dance	improper opinion testimony of a lay person.
	Version), is due to the severe limitation on	person.
20	the amount of multiple voices that can be	
21	played at once, within the song sequencer of	
22	the Ensoniq ASR-10. The amount of	
	multiple voices that can be played at one	
23	time is referred to as polyphony (multiple voices being played at once). The Ensoniq	
24	ASR-10 only allows a maximum of "31"	
25	voices of polyphony to be played at one	
26	time (or "51/2" stereo voices can be played	
	at one time). "One" stereo voice (usually a	
27	panned left wavesample and a panned right	
28	wavesample) would consume "2" voices of	

1	Pringle Declaration	Evidentiary Objections
2	polyphony. This becomes an extremely	
3	crucial issue when constructing entire songs	
	for playback all at once, on the Ensoniq	
4	ASR-10; as is the case with "Take A Dive"	
5	(Dance Version). Therefore, the only way to	
6	conserve available RAM memory space and polyphony, was to fuse multiple stacked	
7	layers of wavesamples down to a single	
8	stereo or mono wavesample. This is why the 3 two-note chords which comprise the	
9	"guitar twang sequence" of "Take Dive"	
10	(Dance Version), appear to be fused together with the sound effects. Finally,	
11	"Take A Dive" (Dance Version) was only	
12	one of the many derivative versions of "Take A Dive" that contained the "guitar	
13	twang sequence", and as previously stated,	
14	the original "guitar twang sequence" chord layers were on another hard disk that was	
15	stolen out of my storage locker, back in the	
16	year 2000.	
	228. Geluso states: "I compared the	Fed. R. Evid. 401, 402, 403, 602,
17	Beatport guitar twang sequence stem with Pringle's isolated guitar twang sequence	701, 702 The statements are argumentative
18	that was submitted with Mr. Rubel's report.	The statements are argumentative, lack foundation, and constitute
19	The results of my waveform analysis are	improper opinion testimony of a lay
20	depicted in Figure 7 below. The waveforms match so closely that I believe that they are	person.
21	electronic copies of one another, meaning	
22	that they could have only come from the same source 8." Under footnote 8, at the	
23	bottom of page 15 in Dckt. # 162, it states:	
24	"I understand Pringle has acknowledged	
	that he downloaded certain re-mixes of "I	
25	Gotta Feeling" created as part of the	
26	Beatport Re-mix competition, which contain	
27	the guitar twang sequence in the clear. Analysis of those re-mixes could provide	
28	further evidence as to the origin of the	

1	Pringle De	claration	Evidentiary Objections
2		g sequence in 'Take A Dive'	
3	(Dance Ver	rsion), including additional	
4		on that Mr. Pringle copied the	
5	guitar twan (Dckt. #162	g sequence the Beatport stems."	
		The vocal track to which	Fed. R. Evid. 401, 402, 403, 602
6		rs is from one of the completed	The statements are argumentative,
7		ersions which actually used the rack posted on <u>Beatport.com</u> . In	speculative, and lack foundation.
8	my Deposit	ion, on page 180, starting at line	
9	16, the follo	owing conversation occurred:	
10	Q:	All right. 'The Song: "Take A	
11		Dive" vs. I Gotta Feeling'	
12		that was posted and uploaded there (BroadJam.com), did	
13		you do that?	
14	A:	Yes, I believe so.	
15	Q:	All right. Where did you get	
16	•	the vocals for 'I Gotta	
17		Feeling' in this posting?	
18	A:	From – I think it was one of	
		the remix versions there was — like I said previously, there	
19		was like 1200 different	
20		versions. Some	
21	Q:	I'm sorry. What remix	
22		version?	
23	A:	I don't recall exactly.	
24	Q:	Were these the remix	
25	۷٠	versions that you were	
26		referring to from	
27		Beatport.com?	
28	A:	I can't recall specifically, but	

1	Pringle Declaration	Evidentiary Objections
2	G	Evidentially Objections
	yes, I believe so, from what I recollect	
3	230. In Plaintiff's Response To	Fed. R. Evid. 401, 402, 403, 602
4	Headphone Junkie, LLC's First Set Of	The statements are argumentative,
5	Interrogatories, in Interrogatory No. 3, I also	speculative, and lack foundation.
6	set out the circumstances in obtaining, and	
	the purpose in using, the remixed version of "I Gotta Feeling." (Please reference Exhibit	
7	34 - Headphone Junkie Interrogatory	
8	Response):	
9	Interrogatory No. 3: Identify	
10	with specificity where Plaintiff	
	Bryan Pringle obtained a copy of the	
11	Black Eyed Peas' a capella for I Gotta Feeling and when it was	
12	obtained.	
13	Answer: Plaintiff states that to	
14	the best of his recollection at this	
	time, he used a remixed version of "I	
15	Gotta Feeling" with less	
16	instrumentation and "EQ'ed" the	
17	instrumentation out of the song, to the best of his ability, to make the	
18	vocals more easily heard.	
	231. The vocals I used originated	Fed. R. Evid. 401, 402, 403, 602
19	from a finished re-mix version that someone	The statements are argumentative,
20	created of "I Gotta Feeling." There are	speculative, and lack foundation.
21	literally thousands of these re-mixed versions that flooded the internet and	
22	YouTube.com; long after the Beatport Re-	
	mix Contest closed. However, I never had	
23	access to the individual "guitar twang	
24	sequence" mp3 posted by the Defendants	
25	and offered for a limited time period. It is	
26	also my understanding that everyone who accessed the posted individual "I Gotta	
	Feeling" mp3 tracks in order to participate	
27	in the Re-mix Contest had to register with	
28	Beatport.com, by leaving valid contact	

1	Pringle Declaration	Evidentiary Objections
2	information.	
3	232. I have never inserted the	Fed. R. Evid. 401, 402, 403, 602
4	individual track containing the "guitar	The statements are argumentative,
	twang sequence" mp3 posted by the Defendants to Beatport.com, for use in the	speculative, and lack foundation.
5	Re-mix Contest website, into my "Take A	
6	Dive" (Dance Version) song. This is due to	
7	the fact that; (1) "I Gotta Feeling" wasn't	
0	created until 2009; and (2) I created the	
8	"guitar twang sequence" in "Take A Dive"	
9	(Dance Version) in 1999 (which is 10 years	
10	prior to the creation of "I Gotta Feeling").	End D Evid 401 402 402 502
11	233. The significance of the Defendants' failure to provide the original	Fed. R. Evid. 401, 402, 403, 602, 701, 702
	musical files and data allegedly created by	The statements are argumentative,
12	Riesterer and relied upon by Geluso and	lack foundation, and constitute
13	others, lies in the simple fact that that	improper opinion testimony of a lay
1.4	Riesterer independently cannot re-create the	person.
14	"guitar twang sequence" as it is heard on "I	
15	Gotta Feeling" (Dckt. #162, ftn at page 8).	F 1 P F 11 401 402 402 602
16	234. I have had an opportunity to examine what Geluso claims is Riesterer's	Fed. R. Evid. 401, 402, 403, 602, 701, 702
17	"Logic Session File" for the "David Pop	The statements are argumentative,
	Guitar" song file, the alleged initial name	lack foundation, and constitute
18	for "I Gotta Feeling" (Dckt, p. 6) [sic]. I	improper opinion testimony of a lay
19	have found many inconsistencies between	person.
20	the sworn testimony of Riesterer and the	
	actual evidence contained in the "David Pop	
21	Guitar" song files, which Riesterer turned	
22	over to the Plaintiff's Counsel, around June of 2011, marked highly confidential	
23	"attorneys' eyes only."	
	235. First, Riesterer stated in his	Fed. R. Evid. 401, 402, 403, 602,
24	Deposition on page 193, line 3, taken on	701, 702
25	June 23, 2011, that he had given away his	The statements are argumentative,
26	computer which contained the original	lack foundation, and constitute
	Logic Session Files used in the creation of	improper opinion testimony of a lay
27	"I Gotta Feeling" (titled "David Pop Guitar," which also contained the original	person.
28	Guitar, which also contained the original	

1	Pringle Declaration	Evidentiary Objections
2		
	"guitar twang sequence" for "I Gotta Feeling") (bates Nos. 1-9, 38), to a friend	
3	whose name he didn't know. However,	
4	when I examined Riesterer's "David Pop	
5	Guitar" song files, that were turned over to	
6	the Plaintiff's Counsel, on or about June 5,	
6	2011, I found that the "David Pop Guitar"	
7	song files contained numerous files that had	
8	creation dates which clearly contradicted Riesterer's testimony that he had given	
9	away his computer containing the original	
	"David Pop Guitar" song files. Many of	
10	those "David Pop Guitar" song files have	
11	creation dates which clearly pre-date the	
12	actual date, that Riesterer claims to have	
	given away his computer. For instance, in	
13	the "David Pop Guitar" song folder, the individual file titled "Clave Percussion	
14	Loop 01.caf," has a creation date of	
15	"2/15/2007"; the individual files titled	
	"Guitar Bass 1.aif" and "Guitar Lead 1.aif,"	
16	have creation dates of "10/17/2008"; the	
17	individual file titled "loop kick.aif," has a	
18	creation date of "11/16/2007"; and the	
	individual file titled "0.6s_Snare	
19	Hall.SDIR," has a creation date of "3/22/2007" (Reference Exhibit 3 – David	
20	Pop GTR File Dates 1).	
21	236. Normally, when saving	Fed. R. Evid. 401, 402, 403, 602,
	individual files from one storage device to	701, 702
22	another, the individual files receive new	The statements are argumentative,
23	creation dates, which reflect the actual dates	lack foundation, and constitute
24	on which they were saved to the new	improper opinion testimony of a lay
25	storage device. On page 193, line 18, of his Deposition, Riesterer claims to have backed	person.
	up the original hard drive that contained the	
26	"Dave Pop Guitar" song files, by saving all	
27	the files from that hard drive to a new	
28	storage device, before he gave it away to his	

1	Pringle Declaration	Evidentiary Objections
2	G	Zviacinary especions
	friend. If in fact Riesterer had actually copied all of the individual "David Pop	
3	Guitar" song files he turned over to the	
4	Plaintiff's Counsel, from that new storage	
5	device which contained those files, instead	
	of from the original hard drive, then all of	
6	the individual "David Pop Guitar" song files	
7	would have the exact same creation date.	
8	Their creation date would reflect the date	
	that Riesterer saved the individual "David Pop Guitar" song files from his original	
9	hard drive, to his new storage device.	
10	However, they don't. The majority of the	
11	individual "David Pop Guitar" song files	
	that were turned over to the Plaintiff's	
12	Counsel, have apparently retained their	
13	same original creation dates which were	
14	assigned to them at the time that they were	
	saved to the original hard drive used to	
15	create the original "David Pop Guitar" song	
16	file (Reference Exhibit 4 – David Pop GTR Dates 2). This anomaly clearly indicates that	
17	Riesterer actually copied the majority of the	
	"David Pop Guitar" song files turned over	
18	to the Plaintiff's Counsel in 2011, directly	
19	from the same original hard drive that was	
20	used in the creation of the original "David	
	Pop Guitar" song files. This also means that	
21	Riesterer has been falsely stating under oath	
22	that he gave his hard drive away to a friend, when in fact, he still has possession of that	
23	original hard drive.	
	237. As previously stated, the only	Fed. R. Evid. 401, 402, 403, 602,
24	logical reason why Riesterer would claim to	701, 702
25	no longer possess the original hard drive	The statements are argumentative,
26	that was used in the creation of the "David	lack foundation, and constitute
	Pop Guitar" song files would be in an	improper opinion testimony of a lay
27	attempt to try and avoid having anyone	person.
28	inspect this hard drive, because it contained	

1		
1	Pringle Declaration	Evidentiary Objections
2	damning evidence.	
3	238. Second, the "David Pop	Fed. R. Evid. 401, 402, 403, 602,
4	Guitar" song files turned over by Riesterer	<u>701, 702</u>
	to the Plaintiff's Counsel, that he claims	The statements are argumentative,
5	represents the original song file which was used in the creation of "I Gotta Feeling,"	lack foundation, and constitute improper opinion testimony of a lay
6	have creation dates of files which show that	person.
7	they were created after the original version	person.
.	of "I Gotta Feeling" was recorded and	
8	released, on the Black Eyed Peas' The	
9	E.N.D. album, around June of 2009. For	
10	instance, in the "David Pop Guitar" song	
	folder, the individual file titled ."_VEE	
11	Electro Loop 003.wav," has a creation date of "8/18/2009" and the individual file titled	
12	"_VEH3 Claps 001.way," has a creation	
13	date of "3/25/2010" (Reference Exhibit 5 –	
	David Pop GTR Dates 3). In fact, there are	
14	numerous files contained in the supposed	
15	original "David Pop Guitar" song file, with	
16	creation dates that show that they were	
	created after the original version of "I Gotta	
17	Feeling" was "allegedly" recorded around February of 2009, and then released to the	
18	public around June of 2009 (Reference	
19	Exhibit 6 – <i>The E.N.D.</i> Album Copyright	
	Year 2009).	
20	239. It is impossible for the "David	Fed. R. Evid. 401, 402, 403, 602,
21	Pop Guitar" song file that Riesterer turned	701, 702
22	over to the Plaintiff's Counsel in 2011, to be	The statements are argumentative,
23	the identical original song file from the identical location, used to create the original	lack foundation, and constitute improper opinion testimony of a lay
	version of "I Gotta Feeling," that was	person.
24	recorded in 2008, to early 2009 and then	personi
25	released on the Black Eyed Peas' The	
26	E.N.D. album, around June of 2009. Simply	
	because the aforementioned song files, like	
27	the ."_VEE Electro Loop 003.wav" and	
28	."_VEH3 Claps 001.wav" files, have	

1	Pringle Declaration	Evidentiary Objections
2	creation dates which show that they were	
3	created <u>after</u> the original version of "I Gotta	
4	Feeling" was already recorded and released. 240. Third, the "David Pop Guitar"	Fed. R. Evid. 401, 402, 403, 602,
5	song file that Riesterer claims he used in	701, 702
	2008, to early 2009, to create the original	The statements are argumentative,
6	version of "I Gotta Feeling," which was	lack foundation, and constitute
7	eventually released on the Black Eyed Peas'	improper opinion testimony of a lay
8	The E.N.D. album, around June 2009,	person.
	contains an entry in the "documentData"	
9	Logic File, for an audio device allegedly used in the creation of "I Gotta Feeling,"	
10	that wasn't available in 2008, or 2009.	
11	241. In the Logic Session File	Fed. R. Evid. 401, 402, 403, 602,
12	folder, there is a file titled "documentData"	<u>701, 702</u>
	(Reference Exhibit 7 – Document Data	The statements are argumentative,
13	File). This file contains the "David Pop	lack foundation, and constitute
14	Guitar" song file audio devices that were used and available in the Apple Logic	improper opinion testimony of a lay person.
15	Program used to create the "David Pop	person.
	Guitar" song file allegedly in 2008, to 2009.	
16	When I opened up this document file using	
17	the Notepad document processing program,	
18	found in Windows XP Professional, I was	
	able to view the available audio devices that	
19	were listed in the "David Pop Guitar" song file (Reference Exhibit 7 – Document Data	
20	File, page 2). One of the audio devices	
21	listed in this "documentData" file is the	
22	"828mk3 Hybrid." The "828mk3 Hybrid"	
	listed in the "David Pop Guitar"	
23	"documentData" file, is actually the "Motu	
24	828mk3 Hybrid Firewire/USB Audio	
25	Interface." This device is essentially an audio interface that can plug into a	
	computer via a Firewire or USB port.	
26	Among other things, the "828mk3 Hybrid"	
27	can be used as a mixer; used for advanced	
28	audio analysis; used to record and playback	

1	Pringle Declaration	Evidentiary Objections
2	multiple analog and digital audio signals;	
3	and used to processes sound through effects	
	(Reference Exhibit 8 - Motu 828mk3	
4	Hybrid Audio Interface).	
5	242. The significance of this audio	Fed. R. Evid. 401, 402, 403, 602,
6	device being listed in the "documentData"	701, 702
	file, contained in the alleged original "David	The statements are argumentative,
7	Pop Guitar" song file, is that even though this file has a listed creation date of	lack foundation, and constitute improper opinion testimony of a lay
8	"10/17/2008," the Motu "828mk3 Hybrid,"	person.
9	wasn't released to the public, until 2011	
10	(Reference Exhibit 9 – Motu 828mk3 Hybrid – Debut Press Release). This means	
11	that there is no way possible (unless they	
	were "beta testers" in 2008 and 2009 for	
12	Motu, Incorporated, and given this audio	
13	device, which is highly "doubtful") that	
14	Riesterer or Guetta used this audio device to	
	create the original version of "I Gotta	
15	Feeling," which was eventually released	
16	around June of 2009, because this device wasn't available in 2008 and 2009.	
17	243. Fourth, the "documentData"	Fed. R. Evid. 401, 402, 403, 602,
	file also has an entry of "Disk 1 Tb Litige	701, 702
18	(def) OK: David Pop Guitar: Audio	The statements are argumentative,
19	Files" (Reference Exhibit 7 – Document	lack foundation, and constitute
20	Data File, page 2 highlighted at the top of	improper opinion testimony of a lay
	the page). The French word "Litige," means	person.
21	"Litigation." I can only assume that the	
22	"(def)" in this entry means "Defendant or Defense" and that the "OK" entry, most	
23	likely means that someone went through	
	this file, "vetted" it, then "removed" any	
24	evidence that may have "incriminated"	
25	Riesterer, Guetta, or any of the other	
26	Defendants (so now the song file is "okay,"	
	to show to the Plaintiff). There is really no	
27	other logical explanation for these entries. I	
28	find it absolutely impossible to believe that	

in 2008 and 2009, Riesterer and Guetta knew that they would become Defendants in "Litigation" and made such relevant "entries" into their song file. These entries in the "documentData" file clearly show that somebody (probably Riesterer) went through this original song file and intentionally altered it. This is clearly evidence tampering. This is also clearly not the original un-altered "David Pop Guitar" song file used in 2008 and 2009, to create the original version of "I Gotta Feeling," which was released around June of 2009. There is absolutely no doubt in my mind, that Riesterer and Guetta engaged in intentional "spoliation" of evidence pursuant to the "David Pop Guitar" song file. 244. Fifth, there is a file contained in the "David Pop Guitar" song file, titled "0.6s_Snare Hall.SDIR." This file has been produced by the Defense Counsel, to the Plaintiff's Counsel, on two separate occasions. This file is an "Impulse Response" preset, for a reverberation sound effects plug-in, which is alleged to have originated from the original "David Pop Guitar" song file. This exact same file has been produced one time with a creation date of "9/4/2004"; and it was produced a second time, with a creation date of "9/4/2004"; and it was produced a second time, with a creation date of "9/4/2004"; and it was produced a second time, with a creation date of "9/4/2004"; and it was produced a second time, with a creation date of "9/4/2004"; and it was produced a second time, with a creation date of "9/4/2004"; and it was produced a second time, with a creation date of "9/4/2004"; and it was produced to the exact source for the "David Pop Guitar" song file, to have two completely different creation dates. Therefore, these reflect production from two difference sources or an intentional "alteration" of the "creation	1	Pringle Declaration	Evidentiary Objections
"Litigation" and made such relevant "entries" into their song file. These entries in the "documentData" file clearly show that somebody (probably Riesterer) went through this original song file and intentionally altered it. This is clearly evidence tampering. This is also clearly not the original un-altered "David Pop Guitar" song file used in 2008 and 2009, to create the original version of "I Gotta Feeling," which was released around June of 2009. There is absolutely no doubt in my mind, that Riesterer and Guetta engaged in intentional "spoliation" of evidence pursuant to the "David Pop Guitar" song file. 244. Fifth, there is a file contained in the "David Pop Guitar" song file, time "Os. S. Snare Hall.SDIR." This file has been produced by the Defense Counsel, to the Plaintiff's Counsel, on two separate occasions. This file is an "Impulse Response" preset, for a reverberation sound effects plug-in, which is alleged to have originated from the original "David Pop Guitar" song file. This exact same file has been produced one time with a creation date of "9/4/2004"; and it was produced a second time, with a creation date of "3/22/2007" (Reference Exhibit 45 – Impulse Response Contradiction). It is impossible for two files which were produced from the exact source for the "David Pop Guitar" song file, to have two completely different creation dates. Therefore, these reflect production from two difference sources or an intentional "alteration" of the treation from two difference sources or an intentional "alteration" of the treation from two difference sources or an intentional "alteration" of the carety the original uncare." Fed. R. Evid. 401, 402, 403, 602, 701, 702 The statements are argumentative, lack foundation, and constitute improper opinion testimony of a lay person.	2	in 2008 and 2009, Riesterer and Guetta	
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27 from two difference sources or an intentional "alteration" of the "creation	26		
intentional "alteration" of the "creation	27	-	
/ \	28	intentional "alteration" of the "creation	

1	Pringle Declaration	Evidentiary Objections
2	date" of this file.	
3	245. Accordingly, it would appear	Fed. R. Evid. 401, 402, 403, 602,
	from the evidence contained in the	701, 702
4	Defendants' own "David Pop Guitar" song	The statements are argumentative,
5	file, that there has been tampering,	lack foundation, and constitute
6	alteration and fabrication of the evidence How can one be expected to rely on any of	improper opinion testimony of a lay
7	the Defendants' representations regarding	person.
	their claims in the creation of "I Gotta	
8	Feeling," when the evidence contained in	
9	their own original song files (that they	
10	themselves have turned over), contradicts	
	their sworn testimony, testimony that has	
11	repeatedly been misleading, contradictory, and false.	
12	246. At the time I returned my non-	Fed. R. Evid. 401, 402, 403, 602,
13	working and defective hard drive to	701, 702
14	Western Digital for warranty repair or	The statements are argumentative,
	replacement in late summer of 2011, it did	lack foundation, and constitute
15	not contain any non-attorney-client	improper opinion testimony of a lay
16	privileged music files or data relating to the creation of "Take A Dive," "Take A Dive"	person.
17	(Dance Version), or any re-mix of "I Gotta	
	Feeling." The only reference on that hard	
18	drive to any of those 3 items was contained	
19	in direct communications with my attorneys	
20	at the time; Ryan Greely and Ira Gould.	
	247. As of July 2011, I had no	Fed. R. Evid. 401, 402, 403, 602,
21	reason to believe that there was anything on	701, 702 The statements are argumentative
22	my defective hard drive which contained any relevant evidence for my case, as I	The statements are argumentative, lack foundation, offer improper
23	believed that I had previously delivered all	legal argument, and constitute
	such relevant evidence in my possession, to	improper opinion testimony of a lay
24	Gallant, in 2010.	person.
25	249. As all of the relevant non-	Fed. R. Evid. 401, 402, 403, 602,
26	attorney-client privileged evidence available	701, 702
27	in this case was already in the possession of	The statements are argumentative,
	Gallant when my hard drive and motherboard became defective and unusable	lack foundation, offer improper legal argument, and constitute
28	momerovard became defective and unusable	regar argument, and constitute

1		
1	Pringle Declaration	Evidentiary Objections
2	around July of 2011, I did not advise anyone	improper opinion testimony of a lay
3	that my computer was not operable until	person.
4	after I returned it to the manufacturer for warranty repair or replacement.	
5	256. I feel that it is important to	Fed. R. Evid. 401, 402, 403, 602
	reiterate that the hard drives used in the	The statements are argumentative,
6	creation of "Take A Dive" and "Take A	speculative, and lack foundation.
7	Dive" (Dance Version), were stolen from	
8	my storage locker, years earlier (in the year	
	2000) (<i>see</i> , Exhibit 31 - Theft - Police Report). The particular hard drive at issue,	
9	in connection with the alleged "spoliation"	
10	claim, was purchased by me in 2010, along	
11	with another identical hard drive, but wasn't	
12	installed or used in my computer until	
	around January of 2011; and was returned to Western Digital, having never been used in	
13	the creation of any of the songs involved in	
14	this lawsuit or the remix discussed above.	
15	257. Since the installation and use	Fe Fed. R. Evid. 401, 402, 403, 602,
16	of the hard drive in question, took place	701, 702
	after the lawsuit commenced; and after the .NRG files were deposited with Gallant; this	The statements are argumentative,
17	corrupted hard drive simply could not have	lack foundation, and constitute improper opinion testimony of a lay
18	contained any relevant non-attorney-client	person.
19	privileged information relating to the	
20	Defendants' ridiculous and baseless	
	allegations regarding their Beatport.com	
21	"scheme." 258. The simple fact is that hard	Fed. R. Evid. 401, 402, 403, 602,
22	drives can and do, fail. This particular hard	701, 702
23	drive became defective and I did what any	The statements are argumentative,
24	normal consumer would do: I sent it back to	lack foundation, and constitute
	the manufacturer for warranty repair or	improper opinion testimony of a lay
25	replacement, after backing up all of the non- corrupted data files. The backed-up data	person.
26	files have been provided to the Defendants.	
27	There was never any attempt on my part to	
28	spoil any evidence. In fact, I didn't even	

1		
1	Pringle Declaration	Evidentiary Objections
2	know what that word meant until I looked it	
3	up in the dictionary. As I now understand	
4	the word in the context of this case, I am	
	extremely offended by the Defense Counsel's continued rhetoric of baseless	
5	allegations and can state unequivocally, that	
6	I never "spoliated" any relevant evidence,	
7	either intentionally or inadvertently.	
·	259. Additionally, I turned over to	Fed. R. Evid. 401, 402, 403, 602,
8	the Defense Counsel in Texas, on August 8,	<u>701, 702</u>
9	2011, all of the non-attorney-client	The statements are argumentative,
10	privileged backed-up files that I had saved	lack foundation, and constitute
	from the 2011 defective hard drive, which	improper opinion testimony of a lay
11	was returned to Western Digital. The backed-up hard drive data files saved to the	person.
12	DVD-Rom Disk, contained roughly about	
13	2,500 total files, with a size of about 8	
	gigabytes. Also, many of these backed-up	
14	data files turned over to the Defense	
15	Counsel were originally created many years	
16	prior to the institution of this lawsuit, in	
17	2010. So their allegations that I intentionally "spoliated" evidence from years prior to	
	2011 (mainly the year 2009), is simply not	
18	true, because the DVD-Rom Disk that was	
19	given to the Defense Counsel with the	
20	backed-up 2011 hard drive data files,	
	contained data files with creation dates that	
21	go back as far as the year 2002. I feel that the Defense Counsel is simply attempting	
22	once again, to try and create an issue, where	
23	none exists.	
	260. The Defense Counsel and their	Fed. R. Evid. 401, 402, 403, 602
24	computer expert examined the files from the	The statements are argumentative
25	backed-up DVD-Rom Disk that was given	and lack foundation.
26	to them on August 8, 2011, and found no	
27	relevant information that would assist in	
	their defense. 261. The timeline of events supports	Fed. R. Evid. 401, 402, 403, 602
28	201. The unionite of events supports	1 Cu. N. Lviu. 401, 402, 403, 002

1	Pringle Declaration		Evidentiary Objections	
2	my statements that I never intentional		The statements are argumentative and lack foundation.	
3	discarded, destroyed otherwise manipany evidence.	puiated	and lack foundation.	
4				
5	Dated: January 9, 2012	LOEB &	& LOEB LLP	
6		Dv: /6/	Tal F. Diekstein	
7	By: /s/ Tal E. Dickstein Donald A. Miller Barry I. Slotnick			
8	Barry I. Slotnick Tal E. Dickstein			
9	Attorneys for Defendants SHAPIRO, BERNSTEIN & CO., INC., FREDERIC RIESTERER and DAVID			
10	FREDERIC RIESTERER and DAVID GUETTA			
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