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 8 RIESTERER, AND DAVID GUETTA

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10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 SOUTHERN DIVISION

13 BRYAN PRINGLE, an individual,

14 Plaintiff,

15 v.

16 WILLIAM ADAMS, JR.; STACY
 FERGUSON; ALLAN PINEDA; and
 17 JAIME GOMEZ, all individually and
 collectively as the music group The
 18 Black Eyed Peas, et al.,

19 Defendants.

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Case No. SACV 10-1656 JST(RZx)

Hon. Josephine Staton Tucker
Courtroom 10A

**EVIDENTIARY OBJECTIONS TO
 THE DECLARATION OF BRYAN
 PRINGLE [DOC. 198] IN
 OPPOSITION TO MOTION FOR
 SUMMARY JUDGMENT BY
 DEFENDANTS SHAPIRO,
 BERNSTEIN & CO, INC.,
 FREDERIC RIESTERER AND
 DAVID GUETTA**

Complaint Filed: October 28, 2010
Trial Date: March 27, 2012

Hearing Date: January 30, 2012
10:00 AM

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

12 GENERAL OBJECTIONS

13 **A. Rather Than Declaring to Factual Matters, the Pringle Declaration** 14 **Includes Improper Legal Arguments, Speculation, and Personal** 15 **Opinions**

16 A declaration offered in opposition to a summary judgment motion “must be
17 made on personal knowledge, set out facts that would be admissible in evidence,
18 and show that the affiant or declarant is competent to testify on the matters stated”
19 Fed. R. Civ. P. 56(c)(4), and “[a] party may object that the material cited to support
20 or dispute a fact cannot be presented in a form that would be admissible in
21 evidence.” Fed. R. Civ. P. 56(c)(2). A party may not defeat summary judgment by
22 relying on conclusory allegations and speculation. Instead, declarations must be
23 based on facts known to the declarant and set forth concrete particulars in order to
24 satisfy Rule 56. *See, e.g., Hisle v. Arevalo*, 2011 WL 3961894, at *4 (C.D. Cal. July
25 22, 2011); *Bickerstaff v. Vassar College*, 196 F.3d 435, 451-52 (2d Cir. 1999), *cert.*
26 *denied*, 530 U.S. 1242 (2000). Similarly, a declaration may not set forth legal
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1 argument. *See King County v. Rasmussen*, 299 F.3d 1077, 1082 (9th Cir. 2002)
2 (“Declarations, which are supposed to ‘set forth facts as would be admissible in
3 evidence,’ should not be used to make an end-run around the page limitations of
4 Rule 7 by including legal arguments outside of the briefs.”); *Silver v. Exec. Car
5 Leasing Long Term Disability Plan*, 466 F.3d 727, 732 (9th Cir. 2006).

6 Little of the Pringle Declaration could be classified as statements of fact
7 based on personal knowledge. Instead, the Pringle Declaration largely is comprised
8 of speculation and improper opinion testimony as to various technical aspects of
9 sound recordings, conjecture as to what Defendants may or may not have done,
10 Pringle’s own personal interpretations of various uncontested factual matters, and
11 legal argument on ultimate issues in the case. The Pringle Declaration is
12 argumentative and speculative, and at nearly 70 pages in length, it constitutes
13 additional briefing from Pringle in violation of the page limitations established by
14 Local Rule 11-6, rather than a proper Rule 56 declaration. *King County*, 299 F.3d at
15 1082. It is wholly improper and should be stricken.

16 **B. Pringle Is Not Qualified To Present Purported “Expert” Testimony On**
17 **Any Issue In This Case.**

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

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

1 and other relevant material involved in the original creative process for
2 ‘I Gotta Feeling.’”)

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

10 It is, at best, highly unusual for a party to serve as his own “expert” witness, and
11 impermissible where, as here, the party (i) fails to disclose himself as an “expert”
12 witness under Fed. R. Civ. P. 26(a)(2), and (ii) in any event lacks the requisite
13 “scientific, technical, or other specialized knowledge” to do so. Fed. R. Evid.
14 702(a); *Johnson v. Gordon*, 409 F.3d 12, 25 (1st Cir. 2005) (affirming district
15 court’s rejection of proposed expert testimony regarding sound recordings when the
16 expert, *inter alia*, “had not performed a technical analysis of the type used by
17 musicologists to detect samples in sound recordings”); *Daubert v. Merrell Dow*
18 *Pharms., Inc.*, 509 U.S. 579, 591 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S.
19 137, 147-48 (1999).

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

22 In order to prove the contents of a writing or recording, the proponent must
23 provide an original copy. Fed. R. Evid. 1001, 1002. Other proof of the contents of
24 a recording is only permissible in certain limited circumstances—for example, when
25 the recording is “not closely related to a controlling issue.” Fed. R. Evid. 1003,
26 1004. Although Pringle previously claimed that Defendants copied the recording(s)
27 of “Take a Dive” (Dance Version) that he has produced in discovery and/or
28 provided to the Court, Pringle now alleges that Defendants copied a *different*

1 recording (or recordings) contained in alleged demo CDs allegedly distributed in
2 France to unidentified individuals at unidentified times. (*See, e.g.*, Pringle Decl.
3 ¶¶ 5, 64, 70-73, 76, 96, 101, 214). Pringle does not, however, possess a copy of this
4 alleged recording (or recordings), even though their contents go to the heart of
5 Pringle’s infringement claim. His testimony on the contents of these alleged demo
6 CDs is a clear violation of Rule 1002, and Pringle has not—and cannot—show that
7 any of the exceptions in Rules 1003 and 1004 apply. In the circumstances of this
8 case, Pringle’s failure to present an original copy of this alleged demo CD renders
9 his testimony on its alleged contents inadmissible.

10 **D. Pringle’s Declaration is Inadmissible As A Result Of His Spoliation of**
11 **Evidence.**

12 Pringle offers extensive testimony to try to authenticate certain computer files
13 that purportedly show that he created “Take a Dive” (Dance Version) in 1999.
14 However, because Pringle spoliated computer evidence that would directly undercut
15 that authenticity, Pringle’s incomplete, self-serving, and necessarily unreliable
16 testimony must be stricken. A Court may impose sanctions under its inherent power
17 to manage its own affairs so as to achieve the orderly and expeditious disposition of
18 its cases. *See Ruben Perez v. Vezzer Industrial Professionals*, 2011 US Dist. LEXIS
19 136827 (E.D. Cal. Nov. 29, 2011). If a party breaches its duty to preserve evidence,
20 the opposing party may move the court for an appropriate sanction. *Id.* (citing *In*
21 *Re. Napster, Inc. Copyright Litigation*, 462 F. Supp.2d 1060, 1066 (N.D. Cal.
22 2006)). It cannot seriously be questioned that Pringle spoliated crucial electronic
23 evidence during the pendency of this litigation, and long after Defendants’ provided
24 express notice to preserve, by destroying multiple hard drives. (*See* Defendants’
25 MSJ Br. [Doc. 159-2] 24-25; Defendants’ Reply Br. 18-25.) This severely
26 prejudiced Defendants by denying them access to critical evidence of Pringle’s
27 back-dating and manipulation of his music files. (*Id.*). Pringle’s misconduct
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1 undercuts the integrity of the evidence central to his claim—i.e., his testimony
2 regarding when he created “Take a Dive” (Dance Version). Such testimony must be
3 excluded.

4 INDIVIDUAL OBJECTIONS

5 Evidence submitted to the Court in opposition to a summary judgment motion
6 must meet all requirements for admissibility of evidence if offered at the time of
7 trial. *See Beyene v. Coleman Sec. Services, Inc.*, 854 F.2d 1179, 1181-1182 (9th
8 Cir. 1988); *Travelers Cas. & Sur. Co. of Am. v. Telstar Const. Co., Inc.*, 252 F.
9 Supp. 2d 917, 923 (D. Ariz. 2003); Fed. R. Evid. 101, 1101. Such evidence must be
10 relevant to the claims and defenses of the case. Fed. R. Evid. 401; 403; *McCormick*
11 *v. City of Lawrence, Kan.*, 2007 WL 38400, at *3 (D. Kan. Jan. 5, 2007).

12 Testimonial evidence must be based on the personal knowledge of the witness
13 offering the evidence. Fed. R. Evid. 602. Documentary evidence must be properly
14 authenticated, and an original of a writing or recording is required to prove its
15 contents. Fed. R. Evid. 901, 1001, 1002. Hearsay evidence is inadmissible unless it
16 has been defined as non-hearsay or the proponent establishes eligibility for one or
17 more exceptions under the Rules. Fed. R. Evid. 801-804. Testimony requiring
18 scientific, technical, or other specialized knowledge may be given only by an expert
19 witness with the requisite knowledge, skill, experience, training or education, and
20 opinion testimony is not permitted of a lay person. Fed. R. Evid. 701, 702. Even if
21 this Court does not disregard the entirety of the Pringle Declaration, various portions
22 are inadmissible as specified below.

Pringle Declaration	Evidentiary Objections
24 1. I have read the Defendants’ 25 Motion for Summary Judgment together 26 with the various exhibits and statement of 27 allegedly uncontested facts. I have also read 28 the Declarations filed by various individuals in support of Defendants Shapiro, Bernstein	Fed. R. Evid. 401, 402, 403, 602, 701, 702 The statements in the bolded sentence (“ Based upon ... by the Defendants. ”) are argumentative, speculative, lack foundation, do not

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Pringle Declaration	Evidentiary Objections
<p>and Co., Inc., Frederic Riesterer (“Riesterer”) and David Guetta’s (“Guetta”) Motion For Summary Judgment. These Declarations are referred to by the Court’s Document number and pertinent page. Based upon my review of those materials, numerous controverted facts exist regarding: (a) the origin of “I Gotta Feeling”; (b) whether I composed “Take A Dive” and “Take A Dive” (Dance Version) in 1999, as alleged in the First Amended Complaint; and (c) whether the striking similarity of the “guitar twang sequence” in the parties’ respective two songs constitutes copyright infringement by the Defendants. I have also reviewed the prior Declarations of Riesterer and Guetta from November 2010 and certain portions of the deposition testimony of the Defendants. [emphasis added].</p>	<p>appear to be based on the witness’ personal knowledge, offer improper legal argument, and constitute improper opinion testimony of a lay witness.</p>
<p>3. Paul Geluso (“Geluso”), an audio expert proffered by the Defendants, opines in his Declaration that I copied the Black Eyed Peas song “I Gotta Feeling.” He is dead wrong as I independently created and copyrighted the song “Take A Dive” as part of a collection of works which I wrote, recorded and registered with the United States Copyright office in 1998, under the name of “Dead Beat Club.” (See Certified copy of original Dead Beat Club registration, Exhibit M to Declaration of Dean A. Dickie (“Dickie Decl.”) filed contemporaneously herewith.) Sometime prior to September 1, 1999, I wrote and recorded the dance version of “Take A Dive.” (See Exhibit M, 1998 Copyright Registration; Deposition of Bryan Pringle, Exhibit A to Dickie Decl. (“Pringle Dep.”),</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702, 1002</u> The statements lack foundation, violate the best evidence rule, 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 sufficient to address Paul Geluso’s findings. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>

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Pringle Declaration	Evidentiary Objections
and Expert Report of David Gallant, Exhibit 1 hereto.)	
4. I did not sample the isolated guitar twang in the Black Eyed Peas song “I Gotta Feeling” from the Beatport.com website between August 21, 2009 and September 8, 2009 as Geluso speculates. Moreover, I never copied any music of the Black Eyed Peas in order to assert this copyright infringement claim; I have never back dated any CD containing NRG files of my music, including the NRG files that contains “Take A Dive” (Dance Version); I have never stockpiled or saved 1999 blank CDs from Verbatim in anticipation of being able to download the music of the Black Eyed Peas and manipulate it to make a copyright infringement claim over “I Gotta Feeling.”	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative and lack foundation.
5. As appears hereinafter in greater detail, many years before “I Gotta Feeling” was created independently by the Defendants, I provided copies and samples of my copyrighted music, including the derivative dance version of “Take A Dive” and isolated versions to Messrs. Joachim Garraud (“Garraud”) and Guetta in France, sometime around March 1999. In addition, sometime around January 1, 2001 and December 31, 2003, Gum Productions LLC (“Gum Productions”), a Guetta entity, wrote to me acknowledging receipt of the samples of my music, including “Take A Dive” (Dance Version). Subsequent to my receipt of that communication, at its request, I provided additional samples of my music to Gum Productions and Guetta. Once Gum Productions advised me that it was not interested in publishing my music or	<u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> The statements are argumentative, speculative, lack foundation, and violate the best evidence rule.

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Pringle Declaration	Evidentiary Objections
<p>negotiating any recording agreement, I did not take any special care to preserve or save that 8 year old correspondence and most probably discarded it as I did not anticipate any further need for it. I continue, however, to search various locations for additional documentation "Take A Dive."</p>	
<p>6. Geluso has no personal knowledge of what I did to compose the original "Take A Dive" or any of the several derivative versions of that song, which I composed, recorded, self published and played prior to August 1999.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> The statements are argumentative, speculative, lack foundation, and violate the best evidence rule.</p>
<p>7. For the last 25 years I have been an active songwriter. In that time period, I have written all kinds of contemporary popular music. My songwriting career began around 1986 and over those 25 years, I have acquired substantial knowledge about and experience in producing, writing, arranging and recording all kinds of music. I studied drums at Mann Middle School in Abilene, Texas and took piano lessons as a young boy.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation and provide no basis to offer expert opinion testimony. 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>8. I have also acquired substantial knowledge of and experience with computer- based musical composition including, without limitation, computer software, building and repairing of computers, analog and digital sound recording systems and signal processing, music production, sound mixing, and specialized computer-based music software; which includes musical instrumentation software, sound processing software and virtual sound production studios.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation and provide no basis to offer expert opinion testimony. 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993);</p>

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Pringle Declaration	Evidentiary Objections
9. In the last 10 to 15 years, I have acquired a particular expertise in loading, using and operating the Ensoniq-ASR-10 instrument and as a consequence, am quite conversant with its functions, capabilities and availability.	<i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999). <u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation and provide no basis to offer expert opinion testimony. 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
10. I attended Austin Community College and took classes regarding sound recording, songwriting, the physics of sound, studio productions and fundamentals of music. Besides formal instruction, I acquired substantial knowledge and skill in connection with producing, writing, arranging and recording music through self instruction and the kind of experience which comes from hands-on involvement and performance. I have written hundreds, if not thousands of songs, in a wide variety of musical genres including, but not limited to, rock, dance, heavy metal, romantic ballads, experimental electronic and techno dance.	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation and provide no basis to offer expert opinion testimony. 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
11. Based on this experience and training, I am able to analyze any musical composition with which I have been involved, regardless of whether I wrote, arranged, performed, recorded or mixed the beats or lyrics. I can also comment upon and offer opinions related to the fact statements offered by Geluso in his Declaration, as	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation and provide no basis to offer expert opinion testimony. Pringle has not been designated as an expert witness in this case, nor has he presented a sufficient foundation to

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Pringle Declaration	Evidentiary Objections
well as respond to various other declarations used to support the Defendants’ Motion for Summary Judgment.	support any claimed technical expertise in the referenced subjects sufficient to address the declarations filed in support of Defendants’ Motion for Summary Judgment. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
13. Given my personal involvement in the creation of “Take A Dive” and “Take A Dive” (Dance Version) plus my extensive personal musical experience over the last 25 years, I have been asked to review, analyze, comment upon and to the extent appropriate rebut the factual statements and opinions of Geluso, Riesterer, Guetta, Garraud, and others using such information of which I am aware and information obtained through discovery in this case.	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation and provide no basis to offer expert opinion testimony. 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 sufficient to address the declarations filed in support of Defendants’ Motion for Summary Judgment. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
14. Important to this analysis is the fact that numerous materials were not made available to me or otherwise provided with inappropriate “attorneys eyes only” designations to my attorneys, which impact directly on my ability to address completely the Geluso, Riesterer, Guetta and Erik Laykin declarations and the arguments of counsel for the Defendants. For example, I was not provided with the discontinued “authorized and unlocked” instrumentation called: “Plugsound Box” with the “Plugsound: Fretted Instruments.” This	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, 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. <i>Daubert v. Merrell Dow Pharms.,</i>

Pringle Declaration	Evidentiary Objections
<p>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.</p>	<p><i>Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>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 create the “guitar twang sequence” at issue here. What is significant about the failure of the Defendants to provide access to this discontinued instrumentation is that it was nonetheless available for use by Geluso. Why wasn’t it available to me or my counsel for a similar purpose? The withholding of such instrumentation creates serious factual questions as to what one skilled in the use of such discontinued instrumentation, like myself, would uncover if the equipment had been turned over for inspection and analysis. This is particularly so given the situation discussed below regarding the original “David Pop Guitar” original files.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>16. Finally, I was also not provided with all of the original “David Pop Guitar” midi files, instrument files, sound effect plug-ins, instrumental plug-ins, wave samples, or any of the files that were directly related to the creation of the “guitar twang sequence” as it is heard in “I Gotta Feeling.” With an opportunity to inspect, investigate and analyze those specific files, I would be able to demonstrate further how and why the Geluso opinion is inaccurate,</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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</p>

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Pringle Declaration	Evidentiary Objections
<p>intentionally misleading and not credible. Furthermore, Geluso admits that he has no personal knowledge that I downloaded anything from Beatport.com Re-Mix Contest and then back-dated any files from that Contest as part of a scheme to create a claim of copyright infringement against the Black Eyed Peas. I reiterate that at no time did I sample or copy “I Gotta Feeling” in order to create the dance version of “Take A Dive” and then manipulate that sampled version manually so that I could assert that I composed “Take a Dive” (Dance Version) in 1999. (See Deposition of Paul Geluso, Exhibit F to Dickie Decl. (“Geluso Dep.”), pp. 134-137).</p>	<p>sufficient foundation to support any claimed technical expertise in the referenced subjects. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>17. Geluso opines that it is common for songwriters and musicians not to save all the precise sound settings used when creating the “final” musical sequence. (Dckt. #162, ftn. 7, p. 8). He uses this statement to support his conclusion that the music creation files produced by Riesterer show that Riesterer created the final guitar “twang” sound and composed the chords that make up the “guitar twang sequence” in the song “I Gotta Feeling.” (Dckt. #162, pp. 4, 8). Geluso’s conclusion is incorrect. 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.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>18. It is not common for legitimate music composers to fail to save the precise sound effect settings used when creating the</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation, do</p>

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Pringle Declaration	Evidentiary Objections
final musical sequences. Failing to save such settings makes it very difficult to replicate the identical musical sound effects used in the creation of the original music later.	not appear to be based on the witness' personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
19. It is not common for legitimate music composers to fail to save the precise sound effect settings used when creating the final musical sequences. Failing to save such settings makes it very difficult to replicate the identical musical sound effects used in the creation of the original music later.	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation, do not appear to be based on the witness' personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
20. Absent the original musical settings used for the "guitar twang sequence," the Geluso analysis does not resolve any disputed material fact at issue here.	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements 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

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	presented a sufficient foundation to support any claimed technical expertise in the referenced subjects. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
21. That Geluso is speculating here as to what Riesterer did appears from two points: (a) his concession that Riesterer did not save the sound effect settings he used and (b) he had to manipulate the sound effects settings manually to create the sound he heard on “I Gotta Feeling” from scratch. (See Dckt. #162, p. 5). The need to manipulate the sound effects settings manually to create the “guitar twang sequence” does not eliminate or foreclose factual inquiry into what Riesterer actually did do, if anything, to “create” the allegedly infringing music.	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
22. Only through the manual manipulation of the Logic Session Song File he received from Riesterer was Geluso able to reproduce the sound of the “guitar twang sequence” which is heard in both “Take A Dive” (Dance Version) and “I Gotta Feeling.” That file in its original, unaltered state has never been provided so it is impossible to determine what one might have discovered from its examination. Geluso’s representation that Riesterer files bates Nos. 1-9, 38 are the “I Gotta Feeling” original creation files is false. (See and compare, Dckt. #162, p. 3, #5 with Exhibits 2, 3, 4, 5, 6, 7, 8 and 9.)	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509

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	U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
<p>23. Significantly, Geluso does not state how, when, and with what precise sound effect settings Riesterer composed the original “guitar twang sequence.” How Geluso did the manipulation likewise is unstated and the need to do so is important in light of Riesterer’s failure to save any of the precise sound effects settings he used to create the “guitar twang sequence” heard in “I Gotta Feeling.” The conclusion that Riesterer created the final “guitar twang sequence” is made without the benefit of any real factual support and as such, is entitled to little weight.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>24. It stands to reason that since Geluso was able to adjust the sound effects settings manually to replicate the “guitar twang sequence” found in “I Gotta Feeling,” that if any of the Defendants were previously provided with a sample or CD containing a version of “Take A Dive” (Dance Version) containing the “guitar twang sequence” with or without vocals, any one of them could have done exactly what Geluso did – namely, manipulate the sample or song from the CD, to produce a “guitar twang sequence” strikingly similar to mine.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>

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<p>25. Certainly the manual manipulation of a music file to achieve a strikingly similar sound is evidence that the Defendants themselves could have done the same thing with (i) the samples and instrumentation of “Take A Dive” (Dance Version) that I provided to Garraud, Guetta, and Gum Productions around 1999-2003 or (ii) from instrumentation and samples I provided to other DJs, publishing companies, record companies, radio stations and other artists, from the 1990’s to around 2008.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>26. The fact that Riesterer does not know the precise sound effects settings he used to create the alleged sound effects used to create the “guitar twang sequence” heard in “I Gotta Feeling” and the fact that Geluso had to manipulate the instrument samples and the alleged sound effects settings manually in order to recreate the “guitar twang sequence” heard in “I Gotta Feeling” is circumstantial evidence from which any reasonable person could conclude that Riesterer did not create the original “guitar twang sequence,” but simply manipulated the music files he obtained from someone else to create the “guitar twang sequence.”</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>27. To demonstrate how important saving the precise sound processing settings is to musicians and songwriters alike, I have</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative,</p>

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<p>attached an advertisement for a device called a “locking security cover” (<i>see</i>, Exhibit 10). This device covers the front control panel of rack-mountable sound processing devices and was invented to prevent unwanted adjustments to the composer’s musical sound effects settings. These locking security devices have been around for decades. I can personally attest to the fact that saving the precise sound processing settings for a song is of paramount importance to all musicians, songwriters and audio engineers. To suggest otherwise, as Geluso does, is false and misleading.</p>	<p>speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>28. As it takes considerable time to adjust the actual sound effects processing settings, musicians and composers take great care in securing the actual settings. It also takes a long time to adjust just one sound effect processor setting, let alone trying to reproduce 4 sound effect processor settings, as Geluso alleges Riesterer used to create the “guitar twang sequence” heard in “I Gotta Feeling.” Thus, the suggestion that Riesterer did not save and does not know the actual sound effects processor settings for the “guitar twang sequence” heard in “I Gotta Feeling” is neither credible nor dispositive of whether or not I created “Take A Dive” (Dance Version) in 1999 with the original “guitar twang sequence.”</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>29. Geluso tells us that he “was able to manually recreate the “guitar twang sequence” from scratch.” Regardless, it is irrelevant that Geluso’s ability to recreate the guitar twang sound proves that I did not create “Take A Dive” (Dance Version) in</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, and constitute</p>

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<p>1999 as I have alleged and established through the work of forensic expert David Gallant (“Gallant”) (Exhibit 1-Gallant Report). Although Geluso’s opinion is an invalid conclusion, it does suggest that the Defendants could have recreated the “guitar twang sequence” heard in my song “Take A Dive” (Dance Version) from scratch, too. After all, the “guitar twang sequence” is simply a guitar that has been manipulated through various commonly available sound effects and simple layering.</p>	<p>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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>30. Geluso’s re-creation through manual manipulation of Riesterer’s music files does not exonerate any of the Defendants from having copied my work. Indeed, Geluso’s stated ability to recreate the “guitar twang sequence” from scratch is neither incredible nor miraculous. This re-creation of the “guitar twang sequence” by Geluso simply points out the ease with which sophisticated samplers and high-tech computer-based musical software can replicate or easily sample parts of my song and its “guitar twang sequence” from the CDs and instrumental soloed tracks that I provided to the Defendants. Given the access to my song which I provided to several Defendants prior to 2008, Geluso’s representation that he could reproduce the “guitar twang sequence” from scratch, serves only to expose the ease with which the alleged copyright infringement could have, and ultimately did occur.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>31. If Riesterer actually used reverberation, distortion, equalization, and compression in creating “I Gotta Feeling,” it is incredulous to suggest that the precise sound effect processor settings that give the</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’</p>

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<p>“guitar twang sequence” its “unique character” could not be recreated by the original composer without having to hire an audio expert to “manipulate” the sound effect processor settings and instrumentation manually. It is only logical that the creator of one of the most recognizable musical “hook-lines” in recent songwriting history would have saved the precise sound effect processor settings for the “guitar twang sequence”: (i) on his computer, (ii) in his “I Gotta Feeling - Logic Session Song File,” or (iii) on some scrap of paper just like thousands of musicians, songwriters and audio engineers do everyday.</p>	<p>personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>32. Without knowing the precise sound effect processor settings that were used to create the parts of “I Gotta Feeling,” neither Riesterer nor Geluso can establish as a matter of law that it was Riesterer, and not me, who produced the original “guitar twang sequence” found in “I Gotta Feeling.”</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>33. Unlike Riesterer, I can explain how the sounds on “Take A Dive” (Dance Version) were made and can actually demonstrate how those sounds are played on an Ensoniq ASR-10. I can also show</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’</p>

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where the actual notes and instrumentation for the “guitar twang sequence” were derived from, in songs that were registered and on deposit with the Copyright Office since 1998.	personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
34. To prove that it was Riesterer, not me, that produced the original “guitar twang sequence,” Riesterer, not Geluso, must demonstrate how and identify the specific sound effect processor settings he used to create the parts of “I Gotta Feeling.” If summary judgment is to be granted, Riesterer must eliminate the existence of any material fact in dispute with respect to his original creative efforts. He has not done so. Geluso’s manual manipulation of the sound effect processor settings and instrumentation files does not eliminate the existence of a factual dispute as to the origin of the music in question or establish conclusively what Riesterer did to compose all the parts of “I Gotta Feeling.”	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
35. Geluso’s manual manipulation of the music files is, in effect, nothing more than a sophisticated “doctoring” of the evidence for the purpose of creating a misimpression as to the origin of the “guitar twang sequence.” Having Geluso manually create the alleged sound effect processor settings and instrumentation, to reproduce the sound which is created from such	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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

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<p>manipulation, does not establish who originally created the “guitar twang sequence” found in both “Take A Dive” (Dance Version) and “I Gotta Feeling”; or whether there was copyright infringement by the Defendants.</p>	<p>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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>36. The original “Logic Session Song File” has been repeatedly requested, but actually never provided.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>37. An unaltered Logic Session Song File should include all of the midi files, sound effects, instrumentation, mixdown volumes, and other relevant material involved in the original creative process for “I Gotta Feeling.” Riesterer files bates Nos. 1-9, 38 do not constitute the original “I Gotta Feeling” creation files.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v.</i></p>

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	<i>Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
<p>38. In lieu of the alleged creator of the “guitar twang sequence,” providing detailed information as to how he created the song, what settings he used and how he did it, the Defendants rely upon the work of an audio expert and student protégé of Defendants’ musicologist brought into the case to manipulate the sound effect processor settings and instrumentation manually to achieve a sound he heard in “I Gotta Feeling,” which is a musical sequence that I created in 1999. (<i>See Geluso Dep.</i>, p. 137.)</p>	<p>Fed. R. Evid. 401, 402, 403, 602, <u>701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>39. If Riesterer had been the originator of the “guitar twang sequence” in “I Gotta Feeling,” one would assume that it would be he who would have detailed the creative information, including the specific instrumental “layering” and precise sound effect processor settings that he used, along with a detailed discussion of how he selected the specific musical sound effects present in the “guitar twang sequence” and why the reverberation, distortion, equalization, and compression one hears in “I Gotta Feeling” was selected. The fact that he was not able to do so supports my assertion that he did not create the “guitar twang sequence,” but merely layered samples from my “guitar twang sequence,”</p>	<p>Fed. R. Evid. 401, 402, 403, 602, <u>701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>

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which was provided to Guetta, years prior to the creation of “I Gotta Feeling.”	
40. Since Riesterer didn’t turn over all of his original Logic Session Song Files used in the creation of “I Gotta Feeling” when originally requested, and before that file was manually manipulated by Geluso, we can now never know whether or not Riesterer could have actually produced the “guitar twang sequence” as it is heard in “I Gotta Feeling” all by himself.	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
41. Since Geluso concedes that Riesterer himself wasn’t able to identify the correct sound effect processor settings and exact instrumental layering, Geluso can only speculate as to what, if anything, Riesterer actually did to create the “guitar twang sequence” heard in “I Gotta Feeling.” Given the fact that Riesterer himself cannot identify the sound effect processor settings and instrumental layering used in the “guitar twang sequence” heard in “I Gotta Feeling,” Geluso certainly is not in a position to render any credible opinion as to what Riesterer actually created.	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
42. All computer-based programs	<u>Fed. R. Evid. 401, 402, 403, 602,</u>

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<p>save files to the hard drive in a specific location. If one re-opens the Logic Session Song File that Geluso claims is “identical” to the original creation song file for “I Gotta Feeling” without the exact same computer used to create the file, one would receive an error message.</p>	<p><u>701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>43. The original Logic Session Song File would be searching for the exact same files in the exact same location, on the original hard drive that Riesterer “gave away.” Geluso is being less than candid and is intentionally misleading the reader of his Declaration when suggesting what the Logic Session Song File in his possession shows. He omits to state rather conspicuously that Riesterer’s original Logic Session Song File for “I Gotta Feeling” has actually been altered. Since Riesterer gave away the original computer used to create “I Gotta Feeling” to a friend whose name he doesn’t know, the only way now to re-load the original “I Gotta Feeling” Logic Session Song File in order to have the same instruments, midi files, sound effects settings, and the like, in the same locations as in the original song creation file, is to alter the Logic Session Song File itself, to reflect the new locations of the saved files on the new hard drive, or other storage</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>

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<p>media. However, by doing this, the original Logic Session Song File becomes permanently altered and no longer identical to the original Logic Session Song File for “I Gotta Feeling.”</p>	
<p>44. Thus, the Logic Session Song File upon which Geluso relied was not the original song file and any re-creation of that Logic Session Song File is not a re-creation of what is represented by Geluso to be the original evidence of his creation of the song files for “I Gotta Feeling.”</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>45. Riesterer refused to turn over the original computer he states was used to compose the music for “I Gotta Feeling.” He also failed to turn over any of the actual files that backed up the original computer he states was used to compose “I Gotta Feeling.” His rationale for not doing so is particularly evasive:</p> <p>Q. Do you still have this computer? A. No. Q. Where is it now? A. I gave it to a friend. Q. Which friend did you give it to? A. I don’t remember, I have a lot</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, lack foundation, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>

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of friends. (See, Deposition of Frederic Riesterer, Exhibit C to Dickie Decl. (“Riesterer Dep.”), pp. 192-193.)	
46. If Riesterer did create all of the musical parts for “I Gotta Feeling,” then there is no legitimate reason for me to be denied access to that computer and the backed-up files from that computer.	Fed. R. Evid. 401, 402, 403, 602, <u>701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
47. Certainly, the failure to turn over the Riesterer computer and backed-up files under the circumstances, suggests that Riesterer was either being purposefully evasive as to the whereabouts of his evidence, or is trying to prevent examination of the contents of that computer and the backed-up files.	Fed. R. Evid. 401, 402, 403, 602, <u>701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137,

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	147-48 (1999).
<p>48. Computers used to create professional-grade music with a “virtual software- based studio” are expensive to build, and not lightly disposed of, because of their specialized software and hardware requirements. (Exhibit 11 - Waves Mercury Sound Processing Ad).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>49. Most virtual software-based studio computers, of which I am aware, have professional-grade software and hardware that can cost anywhere from a few thousand dollars to upwards of one-hundred thousand dollars; and even more.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>50. Riesterer’s act of giving to a friend, whose name is unknown, of the very</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u></p>

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Pringle Declaration	Evidentiary Objections
instruments and files that could prove his independent creation claim, for an unstated reason, is so sufficiently unusual, that serious questions arise as to the nature and circumstances of that particular act and the purpose behind it. These questions, if not answered with an adequate explanation, provide additional circumstantial evidence of a willful intent to prevent me from conducting an appropriate analysis of the device allegedly used to create the original musical work of “I Gotta Feeling.”	The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, and offer improper legal argument.
51. Geluso tells us that the origin of the guitar ‘twang’ sound in “I Gotta Feeling” emanates from “Plugsound: Fretted Instruments” and the instrument preset that Riesterer supposedly used to create the “guitar twang sequence” is called “Strat With SM57 Stereo Spread.” (Dckt. #162, p. 4) He suggests that such instrumentation was not available in 1999 and therefore I did not create the song in 1999. Geluso is incorrect as to what was available to create musical compositions in 1999.	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
52. The actual instrument of the Plugsound: Fretted Instruments “Strat With SM57 Stereo Spread” preset, is a Fender Stratocaster electric guitar that is plugged into a Fender amplifier. The Fender Stratocaster has been available to musicians in the marketplace since 1954 (<i>see</i> , Exhibit 12 - Fender Stratocaster History). Fender amplifiers have been available to musicians since 1945 (Exhibit 13 - Fender Amplifier	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, 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

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<p>History). Thus, anyone could have reproduced the identical sound of the Plugsound: Fretted Instruments “Strat With SM57 Stereo Spread” preset, with an instrument and amplifiers which have been around for over 50 years.</p>	<p>sufficient foundation to support any claimed technical expertise in the referenced subjects. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>53. Geluso concedes these facts as well. Anyone could have reproduced the sound of the “Strat With SM57 Stereo Spread” preset, because that sound is nothing more significant than an indication of the popularity and availability of that instrumentation, both as a guitar and as “stock” sound effects instrumentation found on almost all keyboards, licensed sampled libraries, and producer series music libraries.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>54. Given the general availability of the Fender Stratocaster instrumentation, I had access to and did use, on numerous occasions, the Fender Stratocaster instrumentation around 1999. The Fender Stratocaster is in fact one of my favorite guitars. I have used both the Fender Stratocaster guitar and the substantially similar sounding Fender Telecaster guitar in numerous musical compositions that I have composed throughout the years. I produced the strikingly similar “guitar twang sequence” that is found in “I Gotta Feeling” in 1999. I created the original version of</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, lack foundation, and offer improper legal argument.</p>

Pringle Declaration	Evidentiary Objections
<p>1 “Take A Dive” around 1998, and the 2 derivative version titled “Take a Dive” 3 (Dance Version) in 1999.</p>	
<p>4 55. The “guitar twang sequence” is 5 not musically complex and can be described 6 simply as a layered guitar sound which has 7 been processed through the commonly 8 available sound effects of reverb, distortion, 9 equalization, compression and stereo spread 10 effects.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 701, 702</u> The statements 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>11 56. Most importantly, however, is 12 that all of the sound effects Geluso stats 13 [sic] that were used in composing the 14 “guitar twang sequence” were available to 15 me around 1999 as stock sound processing 16 effects on the Ensoniq ASR-10 Keyboard. 17 These sound processing effects were also 18 available to me via the other sound 19 processing equipment that I owned around 20 1999. The stock sound processing effects 21 which were available in 1999 included the 22 actual “stereo spread” sound effect used on 23 the Plugsound: Fretted Instruments “Strat 24 With SM57 Stereo Spread.” Any suggestion 25 to the contrary by Alain Etchart (“Etchart”) 26 is simply incorrect. Doc. #169, p. 2).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements 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.</p>
<p>27 57. The Plugsound Fretted 28 Instruments “Strat With SM57 Stereo Spread” is commonly referred to as the “EQ+LFO DELAY” sound processing effect in the Ensoniq ASR-10 Musician’s Manual (Exhibit 14 - Ensoniq ASR-10</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation and constitute improper opinion testimony of a lay person. Pringle has not been designated as an expert</p>

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Pringle Declaration	Evidentiary Objections
Effects.)	witness in this case, nor has he presented a sufficient foundation to support any claimed technical expertise in the referenced subjects. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
58. Exhibit 14 contains a listing of all of the stock Ensoniq ASR-10 sound processing effects plus a single listing of the “stereo spread effect” called the EQ+LFO Delay. I believe that I most likely used this stereo spread effect on the “guitar twang sequence” contained in “Take A Dive” (Dance Version).	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are speculative, lack foundation 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
59. I have attached a copy of “Regret,” a song I composed and registered with the Copyright Office in 1998 (<i>see</i> , Exhibit 15 and Exhibit M, 1998 Copyright Registration). In “Regret,” one can hear my use in 1998, of the stereo spread sound effect, called EQ+LFO Delay.	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
60. This sound processing effect was also used on the Univers Sons “Strat	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u>

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Pringle Declaration	Evidentiary Objections
<p>With SM57 Stereo Spread” preset.</p>	<p>The statements lack foundation 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>61. The sound processing effects which appear on “Regret” in 1998, are direct evidence that as early as 1998, I was using the same sound processing effects in my own musical compositions, more than 10 years before the Black Eyed Peas published “I Gotta Feeling.”</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>62. Geluso used commonly available “sound processing effects” and commonly available instrumentation to recreate the “guitar twang sequence” heard in “I Gotta Feeling. Both the instrumentation and the sound processing effects that Geluso allegedly used in recreating the “guitar twang sequence” of “I Gotta Feeling,” were all available to the general public, in 1999.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526</p>

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Pringle Declaration	Evidentiary Objections
<p>63. As the “guitar twang sequence” is a relatively easy sequence to recreate once it is heard, the ability to replicate it from scratch as Geluso did leads inevitably to the conclusion that given the striking similarity of the “guitar twang sequence” makes it more probable than not that the Defendants infringed upon and copied parts from my song, “Take A Dive” (Dance Version).</p>	<p>U.S. 137, 147-48 (1999). <u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>64. Missing from the Geluso analysis, however, is any discussion by him as to whether the Defendants could have recreated the “guitar twang sequence” from the Demo CDs I distributed which contained the solo track versions (and instrumentation, including the individual layers of the “guitar twang sequence”) of “Take A Dive” (Dance Version) which I provided to Guetta around 1999 to 2003.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702, 1002</u> The statements are argumentative, speculative, lack foundation, violate the best evidence rule, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>65. Geluso does not consider the</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602,</u></p>

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<p>possibility that one or more of the Defendants obtained a copy of my song, heard or mixed it during a live performance as a Dj, prior to 2009. He, of course, makes no attempt to analyze what could have been done with such Demo CDs. His failure to opine on what could have been done with one of my soloed samples or the actual instrumentation that was given to Guetta, ignores the possibility that the Black Eyed Peas, Riesterer and/or Guetta manipulated my sample manually to recreate the “guitar twang sequence” they heard in the soloed sample of “Take a Dive” (Dance Version) or in the instrumentation of the “guitar twang sequence,” that I provided prior to 2008 to Guetta and the other Defendants.</p>	<p><u>701, 702, 1002</u> The statements are argumentative, speculative, lack foundation, violate the best evidence rule, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>66. It was intellectually dishonest for an audio expert like Geluso to have ignored my sworn statement that I had delivered and mailed, the actual tracks for “Take A Dive” (Dance Version), which included the instrumentation and individual samples of my “guitar twang sequence” to both Guetta and Garraud, around 1999 to 2003. (<i>See</i>, Pringle Dep.)</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702, 1002</u> The statements are argumentative, speculative, lack foundation, violate the best evidence rule, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>67. The circumstantial conclusion of these facts is undeniable: (i) both Guetta</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative,</p>

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

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<p>1 Geluso ignores the possible consequence of 2 my having done so.</p>	
<p>3 4 71. It is my opinion that Guetta and 5 Garraud also sampled one of the other songs 6 from the same Demo CD they received via 7 mail from me, in around 2001 to 2003. This 8 sample is best heard in the beginning of 9 “Open Your Eyes,” which is found on the 10 album known as “Guetta Blaster” (see, 11 Exhibit 17, Guetta Blaster CD Liner Notes 12 and Exhibit 18 – “Open Your Eyes,” a song 13 that appears as Track 9 on the “Guetta 14 Blaster” album, released in 2004).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702, 1002</u> The statements are argumentative, speculative, lack foundation, violate the best evidence rule, do not appear to be based on the witness’ personal knowledge, offer improper legal argument, and constitute improper opinion testimony of a lay person.</p>
<p>15 72. The sound in the “Open Your 16 Eyes” song, suggests that Guetta was less 17 than candid, when he stated on November 9, 18 2011, that he had never received any music, 19 whether in the form of a Demo CD or 20 otherwise, from anyone named Bryan 21 Pringle (<i>see</i>, Dckt. #167). Guetta does, 22 however, concede that from time to time, he 23 has received unsolicited Demo CDs from 24 individuals, even though he cannot identify 25 the senders. (<i>See</i>, Guetta Dep., <i>see also</i> 26 Declaration of Jeffrey Pringle.)</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702, 1002</u> The statements are argumentative, speculative, lack foundation, violate the best evidence rule, do not appear to be based on the witness’ personal knowledge, offer improper legal argument, and constitute improper opinion testimony of a lay person.</p>
<p>27 73. I received a letter from Gum 28 Productions, sometime around 2001 to 2003, acknowledging receipt of my Demo CD submission and requesting tracks of other songs ,which I provided to Guetta and Garraud. Further, Guetta admits that Gum Productions has corresponded with individuals regarding unsolicited music sent to him. (Guetta Dep.)</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702, 1002</u> The statements are argumentative, speculative, lack foundation, violate the best evidence rule, do not appear to be based on the witness’ personal knowledge, offer improper legal argument, and constitute improper opinion testimony of a lay person.</p>
<p>29 74. It is a common practice in the 30 “Techno-Dance” music genre, for dance 31 artists to give their actual individual 32 instruments and tracks to Dj’s who work at 33 night clubs. Guetta, Garraud and William</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’</p>

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

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

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<p>applied distortion, equalization and reverberation sound processing techniques to create the sound of the “guitar twang sequence” heard in “I Gotta Feeling.” (Dckt. #162, p. 5). His contention is not only speculative, in light of Riesterer’s inability to recall any precise sound processing settings he actually used, it actually contradicts Riesterer’s November 23, 2010, sworn statement, as to what he did to create the final “guitar twang sequence” heard in “I Gotta Feeling.” (See, Dckt. #22-3) Further, Geluso admits that sound processing effects settings for reverberation, distortion and equalization are present on the ASR-10. (Dckt. #162.)</p>	<p><u>701, 702</u> 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.</p>
<p>83. When Geluso states that Riesterer used sound effects and layering to achieve the final sound of the “guitar twang sequence” heard in “I Gotta Feeling,” he contradicts Riesterer’s November 23, 2010, sworn statement, that the “guitar twang sequence of ‘Nevermind’ (which was subsequently used in “‘Love Is Gone’ and then in ‘I Gotta Feeling’)” was licensed from a French music library known as Univers Sons.” (See, Dckt. #22-3, p. 2.)</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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.</p>
<p>84. If as Riesterer stated under oath in his Declaration, signed on November 23, 2010, that he only licensed the “guitar twang sequence”; then Riesterer obviously did not create it or otherwise use sound processing manipulation or layering. What then did Riesterer really do? We do not know. That question remains unanswered, notwithstanding the statements made in the several Declarations used to support the request for Summary Judgment. His licensing of the “guitar twang sequence”</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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.</p>

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<p>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.”</p>	
<p>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 Unifers 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.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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.</p>
<p>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, Riesterer Dep., p. 180)</p> <p>Q. So the guitar twang sequence was not in the Plugsound Box, was it?</p> <p>A. No, when you go to the Plugsound system you have the preset, which is called Strat with SM57 Crunchy, the guitar twang, it’s the gimmick.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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.</p>

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<p>Q. And then you take that gimmick and prepare the sequence?</p> <p>A. No, no, no, no.</p> <p>A. Not that too, not that too, I create the gimmick. The gimmick doesn't exist in the Plugsound.</p> <p><i>(See also, Riesterer Dep., p. 184, where gimmick is described by Riesterer as the guitar twang sequence.)</i></p>	
<p>87. Riesterer acknowledges that only single guitar notes were used in order to create the “guitar twang sequence” gimmick that became the hook-line for “I Gotta Feeling.”</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, and constitute improper opinion testimony of a lay person.</p>
<p>88. As Riesterer never mentions his use of any sound effects processing or “layering” of any samples in the creation of the “guitar twang sequence”, it is reasonable to conclude that Geluso is now ascribing substantive creative conduct to Riesterer, which Riesterer himself denied in November 2010.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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.</p>
<p>89. To support the instant request for summary judgment, Riesterer changed his November 2010 declaration and deposition testimony, so that he can now claim that:</p> <p>“In order to create the guitar ‘twang’ sequence of ‘I Gotta Feeling’, I used a different preset from the PlugSound sound library,</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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.</p>

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<p>different musical notes and chords, and different sound processing effects than the ones I used in the ‘Love Is Gone’ sequence of ‘I Gotta Feeling.’ To create the guitar ‘twang’ sequence from ‘I Gotta Feeling’, I selected a guitar preset called ‘Strat With SM57 Stereo Spread’ from the Plugsound sound library, which allowed me to use my keyboard to play music that seemed to come from an electric guitar. After I selected the ‘Strat With SM57 Stereo Spread’ preset, I composed each note and each chord constituting the guitar ‘twang’ sequence by playing them on my keyboard.”</p> <p><i>(See, Geluso Dep.)</i></p> <p>“In my November 2010 Declaration -- which, from what I understood, had to be filed as soon as possible in order to answer an urgent motion from Pringle - I mistakenly declared that I had used the “Strat With SM57 Crunchy” preset for ‘I Gotta Feeling’ and ‘Love Is Gone’ It was only later, when I reviewed my files, that I realized that I had used a slightly different preset, ‘Strat With SM57 Stereo Spread’ in “I Gotta Feeling.””</p> <p>***</p> <p>But see Guetta: “I want to re- -- I want to answer this question precisely. If he said – if Fred Riesterer said he has used the same sound bank with the song ‘Love Is Gone’ and ‘I Gotta Feeling’, then</p>	

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<p>that's correct.” (<i>See</i>, Guetta Dep., p. 150)</p>	
<p>90. If the alleged co-writer of “I Gotta Feeling,” Guetta, confirms Riesterer’s conduct, then Geluso is in no position to credibly substitute his opinion in place of the sworn testimony of the individuals for those who were actually involved in the creation of the “guitar twang sequence”, simply to create a fact scenario from which he can speculate that I copied the “guitar twang sequence” heard in “Take A Dive” (Dance Version) from the Defendants.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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.</p>
<p>91. Given the representation by Guetta that Riesterer independently composed the “guitar twang sequence” that appears in “Love Is Gone” and that the “guitar twang sequence” in “I Gotta Feeling” was created using a different guitar preset, different notes, different chords, and different sound processing effects, than those used in creating the guitar twang sequence in “Love Is Gone,” it is unclear factually whether Riesterer actually used the same instrumentation for both “Love Is Gone” and “I Gotta Feeling,” as he claims.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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.</p>
<p>92. Riesterer initially claimed he used a “Strat With SM57 Crunchy” preset for both “Love Is Gone” and “I Gotta Feeling”; and did so without sound effects processing or layering manipulation, in “I Gotta Feeling” (<i>see</i>, Dckt. #__, p. _). [sic] Now Riesterer states that he used a completely different instrument preset than the “Strat With SM57 Crunchy.” One wonders what instrumentation Riesterer will swear that he used to create the “guitar twang sequence” in “I Gotta Feeling”, when he takes the stand to testify at trial.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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.</p>

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<p>93. In order to have permanent multiple sound processing effects used on a particular musical sequence or “wavesample” originally created within, sampled into, or loaded into the Ensoniq ASR-10 Keyboard, such as the “guitar twang sequence” used in “Take A Dive” (Dance Version), one must re-sample the sequence into a wavesample and then take that re-sampled wavesample and re-record it, with the internal sound processing effects contained within the Ensoniq ASR-10.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>94. This process is true regardless of whether the original wavesample was part of a “midi instrument,” was sampled into the ASR-10 via the audio inputs, loaded in as an instrument via the internal floppy disk drive, loaded in via an attached SCSI Ensoniq-compatible hard disk drive, or loaded in via an SCSI Ensoniq-compatible CD-Rom drive, containing an Ensoniq-formatted CD-Rom disk.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>95. In the context of creating permanent multiple sound processing effects, I use the word “re-sampling” to mean the taking of the same sequence of music that has been recorded from a “mono” or “stereo” wavesample, regardless of whether this wavesample is a midi-track</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation, do not appear to be based on the witness’ personal knowledge, and constitute improper opinion testimony of a lay person. Pringle</p>

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<p>created on the Ensoniq ASR-10 with the corresponding wavesamples being played, a single wavesample played, or multiple instruments with their corresponding wavesamples being played on multiple midi-track sequences at once, and re-recording it over and over again, each time using a different sound processing effect (or no effect at all), until the creating the final mixdown of a mono or stereo wavesample. A final mixdown of the wavesample is simply a wavesample that has incorporated into its final sound, the multiple sound processing effects with which the wavesample was recorded. This re-sampling technique can either be done with a stereo or mono wavesample, at either a 44.1 khz, or a 29.76 khz, sampling rate. A mono wavesample contains 1 wave sample, on 1 layer. A stereo wavesample contains 2 wavesamples, on 2 layers. A stereo wavesample usually has a wavesample panned left and a wavesample panned right.</p>	<p>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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>96. A consequence of providing demo CDs to other artists and Dj's, with the individual tracks and/or individual instrumentation of a song, is that the individual song parts can easily be sampled or reconstructed into other musical compositions by other artists and Dj's, as appears to be the case here, with the Defendants.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation, do not appear to be based on the witness' personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>

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<p>97. Geluso opines that: “The guitar twang chord samples that exist in the clear in Mr. Pringle’s NRG file <u>are essentially identical</u> to the isolated guitar twang stem that the Defendants caused to be posted to Beatport.com.” Geluso does not, however, state that the song files for “Take A Dive” (Dance Version) contained on the “DISK05.NRG” file are identical to the “I Gotta Feeling” song files posted at Beatport.com. He does not so state this fact, because he has no evidence that I downloaded anything from Beatport.com.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>98. Around June of 2010, during the mutually agreed to settlement discussions, I created the “Take A Dive vs I Gotta Feeling” comparison mp3, which contained the manipulated vocals from one of the Beatport.com “I Gotta Feeling” remixes, for the sole purpose of demonstrating to the Defendants and their attorneys, the clearly obvious fact that the Black Eyed Peas members had sung their vocals to “I Gotta Feeling” along to the music for “Take A Dive.” In addition to being provided a copy of this mp3 comparison by my former attorney, Ira Gould, the Defense Counsel was well aware of the exact reason and circumstances surrounding the creation of this mp3 comparison and no attempts have ever been made on my part to contest the fact that I created this mp3 comparison. I find their “newly manufactured” accusations that I downloaded the individual mp3 tracks for “I Gotta Feeling” from Beatport.com, to be intentionally</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements 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.</p>

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<p>misleading, given the fact that they were well aware of the source of the Black Eyed Peas’ vocal track used in the creation of this comparison mp3.</p>	
<p>99. I did not at any time download any sample or any individual mp3 track of “I Gotta Feeling” from Beatport.com. I did not pay for any complete version of the song, nor did I download any partial sample or any partial individual track of “I Gotta Feeling,” and thereafter manipulate that downloaded sample or mp3 to create “Take A Dive” (Dance Version). I created “Take A Dive” (Dance Version) around 1999, which is roughly 10 years prior to the release and publication of “I Gotta Feeling.”</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements lack foundation.</p>
<p>100. Geluso attempts to explain that the only apparent explanation for this identity between the two songs is that Mr. Pringle sampled the isolated guitar twang sound file from Beatport.com (or from one of the re-mixes that sampled the Beatport.com mp3 sound files and inserted it into “Take A Dive” (Dance Version).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative and lack foundation.</p>
<p>101. Geluso’s conclusion is wrong and his explanation ignores several equally viable alternative explanations, including the possibility that my original soloed version of “Take A Dive” (Dance Version) with the individual layered instrumentation, provided by me, to Guetta and Garraud, around 1999 to 2003, was sampled and then manipulated manually to arrive at the “guitar twang sequence” at issue here. It is also possible that Guetta, Garraud or Riesterer heard and recorded a version of “Take A Dive” (Dance Version) that played on the radio in France around 1999 to 2003 (<i>see</i> Declaration of Jeffrey Pringle). It is</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702, 1002</u> The statements are argumentative, speculative, lack foundation, violate the best evidence rule, 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. <i>Daubert v. Merrell Dow</i></p>

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also possible that someone other than me provided one of my widely distributed Demo CDs to Guetta or Garraud at a DJ event, which one of them used and saved. Indeed, Geluso’s statement that the only possible explanation for the “striking similarity” between the “guitar twang sequence” heard in “Take A Dive” (Dance Version) and the “guitar twang sequence” heard in “I Gotta Feeling,” is that I copied the song from Beatport.com , is patently false and absolutely incorrect.	<i>Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
102. The Geluso conclusion that the only explanation for the “strikingly similar” sound of the two works, is my having copied the song from the Beatport.com website, is sophomoric in that Geluso refuses to analyze the possibility of the Defendants having copied, replicated, sampled or manually manipulated a version of my song. He has no knowledge of whether I downloaded anything from Beatport.com during the August 21, 2009 and September 8, 2009 download phase, of that Remix Contest. (Exhibits 18, 21).	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
103. Nothing that Geluso states in his Declaration establishes a factual basis that supports the one and only conclusion he suggests. Nowhere does he state that he searched the files of Guetta, Garraud, Riesterer or any of the Black Eyed Peas, to see if there was a copy of any of my music in their possession. Nor does Geluso state anywhere that he interviewed each of the	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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

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<p>1 Defendants and asked probing questions 2 about their access to the music of Bryan 3 Pringle. He simply relies upon the 4 constantly changing misleading, 5 contradictory and false statements of those 6 charged with copyright infringement, that 7 they never had any of my music in their 8 possession. He then proceeds from that 9 assumption as if the alleged infringer's 10 statement is dispositive, of all disputed facts 11 on this issue.</p>	<p>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. <i>Daubert v.</i> <i>Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire</i> <i>Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>104. The sound files for the “I Gotta 11 Feeling” Remix Contest containing the 12 “guitar twang sequence” as posted on 13 Beatport.com, were only available from 14 August 21, 2009, to September 8, 2009. I 15 did not access Beatport.com with any 16 computer during that period of time. No 17 objective evidence has been presented that I 18 did so. Geluso fails to identify just how and 19 when I accessed the Beatport.com website, 20 or refer to any documentation from 21 Beatport.com, containing such proof. 22 Apparently, Geluso believes that repeating 23 that proposition many times, is tantamount 24 to proving it.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602,</u> <u>701, 702</u> 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.</p>
<p>105. I was unaware of any potential 21 infringement claim arising against these 22 Defendants for “I Gotta Feeling”, until 23 around February of 2010, at which time it 24 was impossible for me to have accessed any 25 sample, individual track, or complete 26 version of “I Gotta Feeling,” posted on the 27 Beatport.com website, for the “I Gotta 28 Feeling” Remix Contest.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602,</u> <u>701, 702</u> 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.</p>
<p>106. More specifically, I never 26 downloaded any version of I Gotta Feeling 27 from Beatport.com, purchased a complete 28 version of “I Gotta Feeling” from</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative and lack foundation.</p>

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

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<p>113. The musical equipment used to create the Ensoniq-formatted instrumentation and song files for “Take A Dive” (Dance Version) which contains the “guitar twang sequence” that I created in 1999, is an Ensoniq ASR-10 Keyboard. The Ensoniq ASR-10 Keyboard, pre-dates the popular use of the mp3 in computer-based musical production software studios and electronic music equipment (<i>See</i>, Exhibit 14- ASR-10 Specifications Brochure, p. 2).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>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, which is the audio format that the Defendants claim to have had their isolated guitar twang sequence in and available for download, on Beatport.com between August 21, 2009, to September 8, 2009. (<i>See</i>, Exhibit 24 - Beatport Isolated Guitar Twang Sequence Mp3, which is the same file, filed with the Court, along with the Defendants’ Motion For Summary Judgment, on November 17, 2011, as the Audio Exhibit referenced in Exhibit 1 and identified by Geluso as the isolated guitar twang sound file).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>115. The “isolated guitar twang sound file mp3” which was supposedly</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u></p>

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<p>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).</p>	<p>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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>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:</p> <p>(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</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u></p> <p>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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137,</p>

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<p>me by the Defendants, to a working wave file (which the Ensoniq ASR-10 recognizes and can play).</p> <p>(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;</p> <p>(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”.</p> <p>(iv) However, the Ensoniq ASR-10 only has a maximum amount of “16 megabytes” of available RAM (Random Access Memory). Consequently, I was unable to the import the converted mp3 into the</p>	<p>147-48 (1999).</p>

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<p>Ensoniq ASR-10. (See, Exhibit 27 - ASR-10 Specifications Brochure).</p> <p>(v) The significance of this exercise in respect to Geluso’s theory as applied to an Ensoniq ASR-10, is that Geluso’s opinion and conclusions are factually incorrect and simply not possible with the equipment which I used to create “Take A Dive” (Dance Version), in 1999.</p>	
<p>118. Geluso’s opinion that: “The guitar twang chord samples that exist in the clear in Mr. Pringle’s NRG file are essentially identical to the isolated guitar twang stem that the Defendants caused to be posted to Beatport.com.” is a technological impossibility, as it relates to me. I say this because the Ensoniq ASR-10, which I used to create the “guitar twang sequence” of “Take A Dive” (Dance Version) doesn’t recognize or work with mp3’s; and any mp3 from Beatport.com of the isolated guitar twang sequence converted into a wave file, is too big to sample or import into the Ensoniq ASR-10, because of its limitation on RAM (Random Access Memory). Thus, it is impossible to have an “identical” encoded or converted mp3, used in my song “Take A Dive” (Dance Version), from Beatport.com.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u></p> <p>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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>119. Once the mp3 is converted from an en-coded mp3 file, to an un-encoded wave file, there is significant “idelity” loss, which changes the quality or “truthfulness” of the actual sound. Significantly, however, Geluso states in his</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u></p> <p>The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, offer improper</p>

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<p>Declaration, that there is no “fidelity” loss and my samples of the “guitar twang sequence” in “Take A Dive” (Dance Version), are “essentially identical.” This means that both samples of the “guitar twang sequence” in “Take A Dive” (Dance Version) and the samples of the Defendants’ “guitar twang sequence”, would have to have come from the same “identical” source for his statement to be correct. Given the impossibility of my having used an Ensoniq ASR-10 to record and produce a song containing the same “essentially identical guitar twang sequence” of “I Gotta Feeling,” Geluso’s conclusion is direct evidence which supports my contention that the Defendants used versions of the instrumentation and samples of “Take A Dive” (Dance Version), which I provided to them around the early 2000’s, in order to create “I Gotta Feeling”, in 2009.</p>	<p>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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>120. I am not now and was not so, technologically equipped in 1999, to be able to import the Beatport.com isolated guitar twang sequence mp3 samples into the Ensoniq ASR-10, without “fidelity” loss.” There is no “fidelity loss” to the “guitar twang sequence” which appears in my song “Take A Dive” (Dance Version). Thus, I did not copy the isolated “guitar twang sequence” mp3 from Beatport.com.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>

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Pringle Declaration	Evidentiary Objections
<p>121. Geluso recognizes that the four lowest notes that appear on bars 153, 155 157 and 159 of “I Gotta Feeling” are muted on the “guitar twang sequence”, thereby leaving a sequence consisting of three 2-note guitar chords. While these lowest notes appear in “I Gotta Feeling” as a variation to the basic guitar twang sequence, these same low notes do not appear in “Take A Dive” (Dance Version).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>122. These “extra notes” in the “I Gotta Feeling” “guitar twang sequence”, which my “guitar twang sequence” on the “DISK05.NRG” does not have, is factually significant. The absence of these “extra notes” is direct evidence that I did not copy the Defendants’ song as Geluso would have us believe.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>123. Since December of 2010, the “DISK05.NRG file”, which contains “Take A Dive” (Dance Version), has been in the</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative,</p>

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<p>possession of my hired forensic expert, Gallant. Gallant has determined that the “DISK05.NRG” has a creation date of not later than August of 1999. Gallant has also been able to determine that in addition to “DISK05.NRG” having a creation date in August of 1999, that the actual CD-Rom disk that contains the “DISK05.NRG”, was also manufactured in February of 1999. Other than rank speculation, the Defendants cannot and have not been able to dispute these facts. (See, Exhibit 1 – Gallant Report, p. 3).</p>	<p>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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>124. Given the absence of these 4 lower notes, I couldn’t have sampled the Defendants’ “guitar twang sequence” directly, because it is technologically impossible for me to remove “extra notes” that were allegedly fused together in the “guitar twang sequence” of “I Gotta Feeling,” in 2009.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>125. Just as it would have been impossible for the Defendants to sample my guitar twang sequence out of the full sound recording of “Take A Dive” (Dance Version) with all the instrumentation playing; I, too, cannot just simply remove</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> Defendants do not object to the statement in un-bolded text: “Just as it would have been impossible for the Defendants</p>

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<p>extra notes from their “guitar twang sequence” and import the manipulated version into my “guitar twang sequence” of “Take A Dive” (Dance Version). Given the technological impossibility stated above, a substantial question of fact exists as to whether or not, it was even possible for me to use the “guitar twang sequence” from even the isolated individual guitar twang mp3 track of “I Gotta Feeling,” available at Beatport.com, because the “extra notes” would still be present, a fact which is conceded by Geluso. [emphasis added]</p>	<p>to sample my guitar twang sequence out of the full sound recording of ‘Take A Dive’ (Dance Version) with all the instrumentation playing.”</p> <p>Defendants object to the statement in bolded text:</p> <p>“I, too, cannot just simply remove extra notes from their ‘guitar twang sequence’ and import the manipulated version into my ‘guitar twang sequence’ of ‘Take A Dive’ (Dance Version)”</p> <p>on the ground that it lacks foundation, constitutes improper opinion testimony of a lay person, and is contradicted by uncontroverted testimony from a qualified expert.</p> <p>Defendants further object to the statement in bolded text:</p> <p>“a substantial question of fact exists as to whether or not, it was even possible for me to use the ‘guitar twang sequence’ from even the isolated individual guitar twang mp3 track of ‘I Gotta Feeling,’ available at Beatport.com, because the ‘extra notes’ would still be present, a fact which is conceded by Geluso”</p> <p>on the ground that it lacks foundation, offers improper legal argument, constitutes improper</p>

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	opinion testimony of a lay person, and is contradicted by uncontroverted testimony from a qualified expert.
<p>126. Moreover, as my song does not contain “extra notes” found in the Defendants’ “guitar twang sequence” of “I Gotta Feeling,” a question of fact remains as to whether I copied anything from the Defendants when I wrote “Take A Dive” (Dance Version) in 1999, without those “extra notes”.</p>	<p>Fed. R. Evid. 401, 402, 403, 602, 701, 702</p> <p>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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>127. The statement by Geluso that “... in a number of instances in “I Gotta Feeling” (particularly at 0:31-0:33) the guitar twang sequence appears with no other sound elements (often referred to as ‘artifacts’ or ‘ghosts’) which one would expect to find if the guitar twang sequence had been sampled from ‘Take A Dive’ (Dance Version)” is misleading.</p>	<p>Fed. R. Evid. 401, 402, 403, 602, 701, 702</p> <p>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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137,</p>

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Pringle Declaration	Evidentiary Objections
<p>128. The reference to ghosts or artifacts suggests that “I Gotta Feeling,” has an additional “layering” of instrumentation that my “guitar twang sequence” does not have. The Defendants call this “extra layering” the “Guitar Brut (Cycle)” (<i>see</i>, Exhibit 28 - Guitar Brut (Cycle), which was turned over on November 17, 2011, by the Defendants along with their Motion For Summary Judgment, as an Audio Exhibit, titled “I Gotta Feeling - Guitar Brut (Cycle) - Original Part.mp3.”</p>	<p>147-48 (1999). <u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>129. Given the nature and extent of the equipment available to me at the time the Beatport.com Remix Contest was open to the public, it was technologically impossible to have been able to remove a fused “extra layer” of instrumentation from my “guitar twang sequence”. Had I sampled from “I Gotta Feeling,” or used the posted Beatport.com downloadable isolated guitar twang sequence, these ghosts or artifacts would have been present in my “guitar twang sequence”, but are not.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>130. As “Take A Dive” (Dance Version) does not have either the “extra</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702, 1002</u></p>

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<p>notes” which appear in the “I Gotta Feeling’s” “guitar twang sequence”, or the “extra Guitar Brut (Cycle) layer”, a fair conclusion that can be drawn from this evidence is that the Defendants copied, replicated, or sampled a version of my song “Take A Dive” (Dance Version), which was provided to them along with the actual instrumentation for the “guitar twang sequence”, long before any work on “I Gotta Feeling” commenced.</p>	<p>The statements are argumentative, speculative, lack foundation, violate the best evidence rule, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>131. My “guitar twang sequence” has been forensically determined to have been created on or before September 1999. It has also been determined to have been recorded on a CD-Rom disk manufactured in 1999, by Verbatim. The original non-derivative version of “Take A Dive” was registered and a copy of the sound recording on file with the Copyright Office, since 1998 (<i>see</i>, Exhibit M - 1998 Copyright Registration).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>132. Additional support for my independent creation of “Take A Dive” (Dance Version) appears from the fact that it would have been impossible for me to</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not</p>

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<p>change the “guitar twang sequence” made in 1999, to fit a song which hasn’t been changed since 1998, except for the addition of the “guitar twang sequence” and the slight changing of the placement of the bass drum, in the last two-thirds of the song.</p>	<p>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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>133. The “guitar twang sequence” of notes was originally created for, and is based upon, the vocal notes of another song I composed titled “Faith,” which was registered and a copy of the sound recording on file with the Copyright Office, since 1998 (<i>see</i>, Exhibit 29 - “Faith” 1998).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, lack foundation, and offer improper legal argument.</p>
<p>134. Further, the “guitar twang sequence” instrumentation in “Take A Dive” (Dance Version), was inspired by, and layered with, instrumentation from a song titled “Cruellest Joke,” which was registered and a copy of the sound recording on file with the Copyright Office, since 1998 (<i>see</i>, Exhibit 30 – “Cruellest Joke” 1998).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, lack foundation, and offer improper legal argument.</p>
<p>135. I have included an original copy of “Faith” with the “guitar twang sequence” (<i>see</i>, Exhibit 31 - Faith With Guitar Twang). This is simply a re-creation of what “Faith” originally sounded like with the original “guitar twang sequence”, when I first created it around 1996-1999; before I decided to place the “guitar twang sequence” into “Take A Dive” (Dance</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, lack foundation, and offer improper legal argument.</p>

Pringle Declaration	Evidentiary Objections
Version).	
136. “Take A Dive” (Dance Version) is a derivative of the 1998 version of “Take A Dive,” which was one of the tracks on the Registered CD titled “Dead Beat Club.”	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, lack foundation, and offer improper legal argument.
137. Further, the Defendants’ own computer forensics expert, Erik Laykin, cannot and has not, refuted the evidence I provided, that shows that I created “Take A Dive” (Dance Version) with the “guitar twang sequence”, back in 1999. In fact, he concedes at his Deposition, that there is evidence of an earlier creation of my song “Take A Dive” (Dance Version). (<i>See</i> Deposition of Erik Laykin, Exhibit E to Dickie Decl. (“Laykin Dep.”)).	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
138. On page 6, line 6, Section 14 of Dckt. #162, Geluso sets forth a musical notation of a particular section of “David Pop Guitar” midi file version of the “guitar twang sequence”. As discussed earlier, this musical notation shows that there is an “extra note” on the lowest notes of bars 153, 155, 157, and 159 of “I Gotta Feeling’s” “guitar twang sequence”.	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
139. These “extra notes” and “extra layer” of the “Guitar Brut (Cycle)” do not	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u>

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<p>significantly change the musical sound or timbre of the “guitar twang sequence” in “I Gotta Feeling” at all. From these facts, there would appear to be no other reasonable explanation as why these “extra notes and “extra Guitar Brut (Cycle) layer” were added over the top of the “guitar twang sequence” in “I Gotta Feeling.” Certainly a fair question exists as to why Riesterer would have added “extra notes and an “extra Guitar Brut (Cycle) layer” of instrumentation, which provides nothing to the timbre of the sound of the “guitar twang sequence” itself. It is an equally fair conclusion that those “extra notes” and “extra layer” were added in an attempt to disguise the “guitar twang sequence” samples that were underneath these “extra notes” and “extra layer” of instrumentation.</p>	<p>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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>140. It would certainly appear that the “extra Guitar Brut (Cycle) layer” over top of my “guitar twang sequence” samples represents a willful and intentional action on the part of Riesterer to try and hide the true fidelity and timbre of the “guitar twang sequence”, in an attempt to avoid any copyright infringement legal claims, that could be brought by me.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>141. Geluso engages in rank, unprofessional speculation when he boldly</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u></p>

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proclaims that it is “technologically impossible for the creators of ‘I Gotta Feeling’ to have sampled the ‘guitar twang sequence’ from ‘Take A Dive’ (Dance Version) as Pringle claims.”	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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
142. I do not contend, nor have I ever contended , that the Defendants sampled the “guitar twang sequence” for “I Gotta Feeling” directly out of the fully played version of “Take A Dive” (Dance Version) presented to the Court. Rather my claim, is that the Defendants had access to my music and manipulated the samples to which they had access, to achieve the “guitar twang sequence” that is heard in the finished version of “I Gotta Feeling.” [emphasis added]	<u>Fed. R. Evid. 401, 402, 403, 602</u> Defendants do not object to the statements in the un-bolded text. Defendants do object to the statement in bolded text: “my claim, is that the Defendants had access to my music and manipulated the samples to which they had access, to achieve the ‘guitar twang sequence’ that is heard in the finished version of ‘I Gotta Feeling’” on the ground that it lacks foundation and offers improper legal argument. Moreover, to the extent the statement suggests that Pringle has “[n]ever contended[] that Defendants sampled the ‘guitar twang sequence’ for ‘I Gotta

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	<p>Feeling’ directly out of the fully played version of ‘Take A Dive’ (Dance Version) presented to the Court,” it is directly contradicted by numerous prior statements from Pringle—<i>e.g.</i>, Complaint ¶ 4 (Defendants “directly copied Plaintiff’s song”); FAC ¶ 4 (same); Pringle PI Motion at 2 (“Defendants [] copied [] the sound recording of the derivative version of Pringle’s song “Take a Dive” <i>by directly sampling</i> it”) (emphasis added); Rubel PI Decl. ¶ 3 (same).</p>
<p>143. I had many derivative versions of “Take A Dive” which contained the “guitar twang sequence” soloed out in the song, and provided samples of the same directly to. [sic] Guetta and Garraud, at least as far back as 1999 to 2003.</p>	<p>Fed. R. Evid. 401, 402, 403, 602, <u>1002</u> The statements lack foundation and violate the best evidence rule.</p>
<p>144. The crucial difference between my song and the Defendants’ “I Gotta Feeling,” lies in the fact that “Take A Dive” (Dance Version) does not contain “extra notes” and an “extra layer” in my “guitar twang sequence”. Had I sampled the Defendants’ musical work or used the isolated guitar twang sequence that they posted at Beatport.com, then those “extra notes” and “extra layer” would appear in “Take A Dive” (Dance Version), which it doesn’t. As previously discussed, it was technologically impossible for me to remove a single fused “extra layer” of instrumentation. Therefore, the “guitar twang sequence” which is heard in “Take A Dive” (Dance Version) simply could not</p>	<p>Fed. R. Evid. 401, 402, 403, 602, <u>701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137,</p>

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<p>1 have been created by me by downloading a 2 version of “I Gotta Feeling’s” “guitar twang 3 sequence” from Beatport.com, as Geluso 4 speculates and opines in support of the 5 Defendants’ Motion for Summary 6 Judgment.</p>	<p>147-48 (1999).</p>
<p>7 145. Given the “striking similarity” 8 of the two works, I understand that the law 9 presumes access. Thus, it is not a quantum 10 leap for anyone to conclude that this “guitar 11 twang sequence” was shared with and 12 utilized by the Defendants in the creation of 13 “I Gotta Feeling.” Certainly, the credibility 14 of the various songwriters is at issue and the 15 issue of whose version came first can only 16 be resolved through the presentation of 17 evidence and cross examination at trial.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i>, 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i>, 526 U.S. 137, 147-48 (1999).</p>
<p>18 146. “Take A Dive” was inspired by 19 and created in part, with instrumentation 20 from “Cruellest Joke,” another song created 21 by me and registered with the Copyright 22 Office in 1998; “Take A Dive” (Dance 23 Version) was also inspired by, the vocal 24 notes from “Faith,” which was registered 25 with the Copyright Office in 1998. Thus, 26 there are a number of pre-1999 songs I 27 wrote, which form the basis of the music 28 which is heard in “Take A Dive” (Dance Version).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, speculative, and lack foundation.</p>
<p>147. Unlike Riesterer, who gave his computer with the original composition to a friend whose name he does not know,</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, speculative, lack foundation, do not</p>

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

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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 samples, not three as Geluso states.	<u>701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
152. These 6 wave samples that comprise the “guitar twang sequence” chords used in “Take A Dive” (Dance Version), are located within the instrument labeled as the “Delay SMPL,” which is indexed as “FILE 6” in Directory 7 (“Dir 7”), located on “Track 6,” when “Take A Dive” (Dance Version) is played back in its entirety.	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, 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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
153. Geluso’s opinion that the guitar ‘twang’ sequence in Pringle’s NRG file are three separate recordings is rank speculation, as he sets forth no facts which address the manner in which I recorded the “guitar twang sequence”. Absent such facts,	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, speculative, lack foundation, do not appear to be based on the witness’ personal knowledge, offer improper

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any suggestion as to how I composed “Take A Dive” (Dance Version), is a meaningless exercise in futility.	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. <i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579, 591 (1993); <i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137, 147-48 (1999).
154. I have never spoken with Geluso, nor was he present when I created the “guitar twang sequence” used in “Take A Dive” (Dance Version). Therefore, it is impossible for him to have concluded that I made three separate recordings, back in 1999. I may have recorded the “guitar twang sequence” in one recording through effects and then copied the entire identical wavesample to three separate piano keys; then dissected them, by cutting and truncating them, into only one chord per piano key.	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, speculative, and lack foundation.
155. Geluso misleads again when he suggests that there are simply stored instructions to playback the chords in the “guitar twang sequence” and that somehow I only have haphazardly written instructions to playback the “guitar twang sequence” of “Take A Dive” (Dance Version), located on the “DISK05.NRG” file. That contention is untrue.	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> 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. <i>Daubert v.</i>

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

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

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

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

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<p>167. The Ensoniq ASR-10 can be likened to the “reel-to-reel tape recorder” machine that was invented in the 1940’s (see, Exhibit 33 - Reel-To-Reel Tape Recorder History).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation and constitute improper opinion testimony of a lay person.</p>
<p>168. The reel-to-reel tape recorder machine records the actual “sound recording” and imprints it onto a magnetic tape that is spun around a circular metal or sometimes plastic reel (referred to as a “tape reel”). After recording the sound recording onto this tape reel, the tape reel contains the magnetic imprint of the sound recording. These sound recording tape reels can then be placed into storage. When taken out of storage, one cannot simply hear the sound recording on the tape reel, unless one has a reel-to-reel tape recorder machine that can play back the tape reel. Once the tape reel is properly re-loaded onto the reel-to-reel tape recorder machine, the tape reel containing the sound recording can be heard, but only after pressing “play” on the reel-to-reel tape recorder machine.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation and constitute improper opinion testimony of a lay person.</p>
<p>169. The same concept applies with the Ensoniq ASR-10 when trying to play the “sound recording” created on that equipment. To play the original “sound recording” for “Take A Dive” (Dance Version), on the Ensoniq ASR-10, one simply re-loads all the “Take A Dive” (Dance Version) saved files from the “DISK05.NRG”, into the Ensoniq ASR-10 and pushes the “play” button, just as one did when seeking to hear the “sound recording” saved onto the magnetic tape reel of a reel-to-reel tape recorder machine.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation and constitute improper opinion testimony of a lay person.</p>
<p>170. The sound recording of “Take A Dive” (Dance Version) was saved as files</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u></p>

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on a magnetic hard disk, instead of being saved as imprints on a magnetic tape reel. The magnetic hard disk contains all the saved files (the instruments, the individual samples, and the midi song file) needed to play back the original “sound recording” of the song. When all of these files that are saved on the magnetic hard disk or .NRG file are properly re-loaded into the Ensoniq ASR-10, from the .NRG file, the song will play the identical original “sound recording” through the audio outputs of the Ensoniq ASR-10 every time, just like the reel-to-reel tape recorder machine plays the original sound recording that was saved as a magnetic imprint onto the tape reel.	The statements lack foundation and constitute improper opinion testimony of a lay person.
171. The “DISK05.NRG” is a “sound recording”. By suggesting that there is no “stereo-mixed sound recording” for “Take A Dive” (Dance Version), Geluso simply lacks the requisite working knowledge of how to load the song with all of the instrument tracks into an Ensoniq ASR-10, and then cause the device to play the original “sound recording”.	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation and constitute improper opinion testimony of a lay person.
172. Geluso demonstrates his lack of knowledge regarding the use and operation of an Ensoniq ASR-10, by stating that creating a stereo-mixed sound recording from the instrumental parts contained in the .NRG file is not a simple one step process. He compounds his lack of knowledge when he states: “In order to hear a stereo-mix, such as the sound file on the deposit copy of ‘Take A Dive’ (Dance Version) submitted to the Copyright Office, it is	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements lack foundation and constitute improper opinion testimony of a lay person.

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

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

Pringle Declaration	Evidentiary Objections
<p>Form).</p> <p>177. Obviously, if he could not get the song to play, Geluso did not properly load up and play the entire “Take A Dive” (Dance Version) song files on the Ensoniq ASR-10. If he was unable to hear the song, it was not because there was any impediment in the recording, but rather because he lacked sufficient experience with and understanding of the device, to make it work or he simply chose not to be able to make it work, so that he could render an opinion that it was difficult or impossible to generate any sound recording from the “DISK05.NRG” file, through an Ensoniq ASR-10 device.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u></p> <p>The statements lack foundation and constitute improper opinion testimony of a lay person.</p>
<p>178. Consequently, Geluso did not investigate or analyze the entirety of the materials I created in 1999, with the Ensoniq ASR-10, thoroughly. He also did not apparently investigate and validate whether I saved all of the files needed to reconstruct and play back the entirety of “Take A Dive” (Dance Version) from the “DISK05.NRG” on the Ensoniq ASR-10; and he didn’t investigate and validate whether, the “Take A Dive” (Dance Version) song files (including the “guitar twang sequence”) could have been created in the year 1999.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u></p> <p>The statements lack foundation and constitute improper opinion testimony of a lay person.</p>
<p>179. Riesterer’s statement that he created the “guitar twang sequence” and wrote the music for “I Gotta Feeling,” is disputed by Defendant Adams.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u></p> <p>The statement lacks foundation and offers improper legal argument.</p>
<p>180. Adams has represented that he wrote the music to “I Gotta Feeling,” both to <i>Rolling Stone Magazine</i> and in the liner notes for “I Gotta Feeling,” on <i>The E.N.D.</i> album. (See, Exhibits 38 and 39.)</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 801, 802</u></p> <p>The statement is argumentative, lacks foundation, does not appear to be based on the witness’ personal</p>

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

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Pringle Declaration	Evidentiary Objections
<p>Exhibit D to Dickie Decl. (“Adams Dep.).</p> <p>185. Adams claims to have written the synths for “I Gotta Feeling.” (<i>See</i>, Exhibit 39, the liner notes for “I Gotta Feeling” on <i>The E.N.D.</i> album). Yet he has no idea as to what Guetta contributed to “I Gotta Feeling.”</p> <p>Q. What did David Guetta do?</p> <p>A. I don’t know.</p> <p>Q. So as of right now, you don’t know if David Guetta wrote a beat for ‘I Gotta Feeling’?</p> <p>A. I have no idea.</p> <p>Q. You have no idea whether Fred Riesterer wrote a beat for I Gotta Feeling’?</p> <p>A. I have no idea.</p> <p>Q. Did you write a beat?</p> <p>A. Nope, sure didn’t.</p> <p>Q. Did you have anything to do with the music?</p> <p>A. I had nothing to do with the music, just the lyrical portion.</p> <p>Q. Just the lyrical portion?</p> <p>A. Just the lyrical portion, that’s it.</p> <p>Q. Okay, can you tell me why David Guetta received royalties for I Gotta Feeling, if you don’t know what his relationship to the song is?</p> <p>A. Because he presented that as something he composed.</p> <p>(Adams Dep., p. 75). If Adams is receiving the major songwriting credit and commensurate royalty payments reflecting his contribution for writing the “Synths,” but has no idea as to who wrote “I Gotta</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u></p> <p>The statement is argumentative, lacks foundation, does not appear to be based on the witness’ personal knowledge, and offers improper legal argument.</p>

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

Pringle Declaration	Evidentiary Objections
<p>1 communications between himself, Riesterer 2 and Adams regarding the exchange of music 3 files.</p>	<p>legal argument.</p>
<p>4 190. Guetta knows that these 5 specific email addresses are needed to 6 validate the alleged email communications 7 between Guetta, Riesterer and Adams (<i>see</i>, 8 Exhibit 44 - Guetta Redacted Email 9 Addresses). Without these email addresses, 10 one cannot validate whether these email 11 communications even occurred, let alone 12 establish the substance of the 13 communications which occurred between 14 these individuals over time.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statement is argumentative, lacks foundation, does not appear to be based on the witness' personal knowledge, and offers improper legal argument.</p>
<p>15 191. In the Guetta interview 16 referenced above, he states that the "Peas 17 were there" in the studio, in Los Angeles.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602,</u> <u>801, 802</u> The statement does not appear to be based on the witness' personal knowledge, and contains inadmissible hearsay.</p>
<p>18 192. Jaime Gomez ("Gomez"), 19 another Black Eyed Peas member, 20 corroborates the Guetta statement that 21 Adams was in the studio in Los Angeles, 22 working on the "I Gotta Feeling" tracks. 23 <i>See</i>, Deposition of Jaime Gomez, Exhibit G 24 to Dickie Decl. ("Gomez Dep."), p. 176, 25 lines 1-24: 26 27 Q. Do you know David Guetta? 28 Q. Do you know him? A. Yes. Q. And when did you first meet him? A. I don't know the exact date. Q. Where did you meet him?</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statement does not appear to be based on the witness' personal knowledge.</p>

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Pringle Declaration	Evidentiary Objections
<p>A. The studio.</p> <p>Q. What studio?</p> <p>A. Record Planet.</p> <p>Q. And where is that located?</p> <p>A. In Hollywood.</p> <p>Q. In what year did you meet him?</p> <p>A. Don't remember.</p> <p>Q. Did you meet him before or after the album which is identified on Exhibit 5 – before the masters were completed?</p> <p>A. Before.</p> <p>Q. Who else was present when you met David Guetta and the masters had yet to be completed?</p> <p>A. William Adams.</p>	
<p>193. Allan Pineda (“Pineda”) also contradicts Guetta when he testified that he had no idea as to what Guetta did because he was not present when he produced it (“I Gotta Feeling”) (<i>see</i>, Deposition of Allan Pineda, Exhibit H to Dickie Decl. (“Pineda Dep.”), p. 145). Pineda testified on July 25, 2011, starting on page 145, line 14, as follows:</p> <p>Q. And can you tell me what David Guetta did to produce</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statement does not appear to be based on the witness’ personal knowledge.</p>

Pringle Declaration	Evidentiary Objections
<p>1 'I Gotta Feeling'?</p> <p>2</p> <p>3 A. No, I don't know. I wasn't</p> <p>4 present when he produced it.</p>	
<p>5 194. Pineda was in fact present, at</p> <p>6 least at some point in the production of "I</p> <p>7 Gotta Feeling," according to Guetta.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u></p> <p>The statement does not appear to be based on the witness' personal knowledge.</p>
<p>8 195. Gomez also contradicts</p> <p>9 Adams' testimony that Guetta finished the</p> <p>10 final production of the musical tracks for "I</p> <p>11 Gotta Feeling" at Square Production Studios</p> <p>12 in Paris, France (with only Guetta and</p> <p>13 Riesterer being present).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u></p> <p>The statement is argumentative and does not appear to be based on the witness' personal knowledge.</p>
<p>14 196. Actually, Gomez also confirms</p> <p>15 that the accused song and the album were</p> <p>16 not completed in France, as suggested by</p> <p>17 Adams:</p> <p>18 Q. Sure. Were the master tracks</p> <p>19 completed at the London</p> <p>20 studio?</p> <p>21 A. No.</p> <p>22 Q. Were they completed at the</p> <p>23 Paris, France studio?</p> <p>24 A. No.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u></p> <p>The statement is argumentative and, does not appear to be based on the witness' personal knowledge.</p>
<p>25 197. Accordingly there are serious</p> <p>26 questions of fact, as to where and when the</p> <p>27 master tracks to "I Gotta Feeling" were</p> <p>28 finished and who participated in that</p> <p>process.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u></p> <p>The statement is argumentative, lacks foundation, does not appear to be based on the witness' personal knowledge, and offers improper legal argument.</p>
<p>198. Gomez acknowledges that the</p> <p>master tracks for "I Gotta Feeling" were not</p> <p>finished in Paris, France, and that at least</p> <p>Adams, himself and Guetta, were all present</p> <p>at the "Record Planet" studio, in Los</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u></p> <p>The statement is argumentative and does not appear to be based on the witness' personal knowledge.</p>

Pringle Declaration	Evidentiary Objections
<p>1 Angeles, working on the musical tracks for 2 “I Gotta Feeling.” (Gomez Dep.)</p>	
<p>3 4 199. This fact is corroborated by 5 Guetta, in his January 31, 2010, interview at 6 the 52nd Grammy Awards, in Los Angeles, 7 in which he stated that: “The Peas were 8 there and everybody was there in the 9 studio.” (Exhibit 40).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statement is argumentative and does not appear to be based on the witness’ personal knowledge.</p>
<p>10 200. The “I Gotta Feeling” liner 11 notes specifically state that “I Gotta 12 Feeling” was “Recorded at Square Prod in 13 Paris, France and Metropolis Studios in 14 London, England.” (Exhibit 39).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statement does not appear to be based on the witness’ personal knowledge.</p>
<p>15 201. Gomez and Stacy Ferguson 16 (“Ferguson”) both state they were present in 17 the recording sessions at Metropolis Studios 18 in London, England. Gomez stated in his 19 Deposition, on page 183, starting on line 5:</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statement does not appear to be based on the witness’ personal knowledge.</p>
<p>20 Q. Did you work on the tracks in 21 ‘The E.N.D.’ album at the 22 English Studio?</p>	
<p>23 A. Yes. 24 Ferguson stated in her Deposition (Exhibit 25 N to Dickie Decl. (“Ferguson Dep.”), on 26 page 164, starting on line 15:</p>	
<p>27 Q. Now, did you participate in 28 the recording of any tracks on the album ‘The E.N.D.’ in any studio outside – recording studio outside the United States?</p>	
<p>A. Did I – did I participate on any recordings? I participated on recordings for the album ‘The E.N.D.’ in London at Metropolis Studio.</p>	

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Pringle Declaration	Evidentiary Objections
202. Gomez stated that he worked on the tracks of “I Gotta Feeling.” (Gomez Dep., p. 183).	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statement does not appear to be based on the witness’ personal knowledge.
203. Ferguson admits she worked on the <i>The E.N.D.</i> album, at Metropolis Studios, where the “I Gotta Feeling” tracks were recorded.	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statement is argumentative and does not appear to be based on the witness’ personal knowledge.
204. In fact, every single one of the Black Eyed Peas was present, at least at some stage in the recording of the actual music tracks for “I Gotta Feeling,” because they were all present in the Metropolis Studios in London, England, where Guetta was recording, at least a portion of the musical tracks for “I Gotta Feeling.”	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statement is argumentative and does not appear to be based on the witness’ personal knowledge.
205. Even though every single one of the Black Eyed Peas members has stated at their Depositions that they were not present and didn’t know what involvement Guetta had in the creation and recording of the musical tracks for “I Gotta Feeling”; and that testimony is further belied by the public record.	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statement is argumentative and does not appear to be based on the witness’ personal knowledge.
206. For example Adams states in his deposition, on page 74, line 11: Q. What did David Guetta do? A. I don’t know. Q. So as of right now, you don’t know if he wrote a beat for ‘I Gotta Feeling?’ A. I have no idea. Gomez states in his Deposition, on page 184, line 6: Q. And can you tell me what	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statement is argumentative and does not appear to be based on the witness’ personal knowledge.

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Pringle Declaration	Evidentiary Objections
<p style="text-align: center;">specific aspect of ‘I Gotta Feeling’ David Guetta wrote?</p> <p>A. I don’t know.</p> <p>Ferguson states in her deposition regarding Guetta’s involvement in the creation of “I Gotta Feeling,” on page 169, starting on line 21:</p> <p>Q. And what did he (David Guetta) produce?</p> <p>A. I don’t know.</p> <p>Pineda states in his deposition, on page 145, line 14:</p> <p>Q. And can you tell me what David Guetta did to produce ‘I Gotta Feeling’?</p> <p>A. No, I don’t know. I wasn’t present when he produced it.</p> <p>(Exhibits G and H.)</p>	
<p>207. Each member of the Black Eyed Peas was less than candid about Guetta’s involvement in the production and creation of “I Gotta Feeling,” as it appears that all were present during the creation of the musical tracks of “I Gotta Feeling,” at both Metropolis Studios in London and the Record Planet, in Los Angeles.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statement is argumentative and does not appear to be based on the witness’ personal knowledge.</p>
<p>208. The Defendants assert that Adams wrote “I Gotta Feeling” and receives a substantial portion of the royalties for “I Gotta Feeling.” But Adams claims that he did not write any of the music, just the lyrics. Even though the liner notes of “I Gotta Feeling” clearly indicate “Synths: Will.i.am”; and he has stated publically that</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 801, 802</u> The statement is argumentative, does not appear to be based on the witness’ personal knowledge, and contains inadmissible hearsay.</p>

Pringle Declaration	Evidentiary Objections
<p>1 he wrote “I Gotta Feeling.”</p>	
<p>2 3 209. We also now know that Adams 4 and Pineda, who claimed under oath not to 5 be present during the creation of “I Gotta 6 Feeling,” made sworn statements that they 7 were in fact present during some or all of 8 the recording and finishing of “I Gotta 9 Feeling.” (Exhibits D and H).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statement is argumentative and does not appear to be based on the witness’ personal knowledge.</p>
<p>10 11 210. Finally, as every member of the 12 Black Eyed Peas was present in the studio 13 while Guetta was working on the production 14 and creation of “I Gotta Feeling,” the 15 suggestion that the Black Eyed Peas have no 16 knowledge of how the song was created, is 17 simply not credible. At the very least, these 18 contradictory positions create questions of 19 fact which cannot be resolved through a 20 summary disposition.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statement is argumentative and does not appear to be based on the witness’ personal knowledge.</p>
<p>21 22 211. In addition to Riesterer 23 assisting in the development and creation of 24 instrumentation for Univers Sons, Guetta, 25 has also worked with Univers Sons and their 26 cofounder, Etchart, in the development and 27 creation of instrumentation. Guetta and 28 Univers Sons released a computer-based software instrument called “Electrobeats” (Reference – Exhibit 43 –Guetta Electrobeats and Exhibit 44 – Electrobeats – Advertisement). Etchart conspicuously fails to mention this fact, anywhere in his Declaration. Clearly the relationship between Univers Sons and the Defendants Riesterer and Guetta is far more intimate than they let on.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statement is argumentative and does not appear to be based on the witness’ personal knowledge.</p>
<p>29 30 212. Despite these conflicting 31 statements, Geluso opines that I copied the 32 music of the Black Eyed Peas, because there 33 can be no doubt that Riesterer proved that 34 he composed the “guitar twang sequence”</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602,</u> <u>701, 702</u> The statements are argumentative, lack foundation, and constitute improper opinion testimony of a lay</p>

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

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

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

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

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<p>were actually used by Riesterer in the creation of his “guitar twang sequence”, and how that musical equipment and those instrumental sounds he used, parallel what I used in 1999.</p>	
<p>222. Geluso’s Declaration (Dckt. #162) also contradicts Riesterer (<i>see</i>, Dckt. #22-3, p. 2).</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statement is argumentative, lacks foundation, does not appear to be based on the witness’ personal knowledge, and offers improper legal argument.</p>
<p>223. Riesterer states that there are “four notes” in “I Gotta Feeling’s” “guitar twang sequence” in his sworn Declaration in November of 2010. Geluso, however, states that there are in fact “eight” notes that make up the “guitar twang sequence” in “I Gotta Feeling.”</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, lack foundation, do not appear to be based on the witness’ personal knowledge, and offer improper legal argument.</p>
<p>224. Apparently, the alleged composer of this song doesn’t even know how many notes comprise the “guitar twang sequence” in “I Gotta Feeling.” Riesterer’s confusion and inaccurate recollection makes sense, especially since I am the one who actually wrote and recorded the “guitar twang sequence” in 1999, not him.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, lack foundation, do not appear to be based on the witness’ personal knowledge, and offer improper legal argument.</p>
<p>225. The Geluso suggestions that (a) the three sampled guitar chords in my .NRG file were not independently created using the ASR-10, but were sampled from another source; and (b) the separate, unprocessed ‘clean’ notes that make up each chord of the guitar twang sequence do not exist in Mr. 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 NRG file were not independently created using the ASR-10, are both false and misleading.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, lack foundation, and constitute improper opinion testimony of a lay person.</p>

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

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

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

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guitar twang sequence in ‘Take A Dive’ (Dance Version), including additional confirmation that Mr. Pringle copied the guitar twang sequence the Beatport stems.” (Dckt. #162, p. 15)	
<p>229. The vocal track to which Geluso refers is from one of the completed re-mixed versions which actually used the individual track posted on Beatport.com. In my Deposition, on page 180, starting at line 16, the following conversation occurred:</p> <p>Q: All right. ‘The Song: “Take A Dive” vs. I Gotta Feeling’ that was posted and uploaded there (BroadJam.com), did you do that?</p> <p>A: Yes, I believe so.</p> <p>Q: All right. Where did you get the vocals for ‘I Gotta Feeling’ in this posting?</p> <p>A: From – I think it was one of the remix versions there was – like I said previously, there was like 1200 different versions. Some...</p> <p>Q: I’m sorry. What remix version?</p> <p>A: I don’t recall exactly.</p> <p>Q: Were these the remix versions that you were referring to from Beatport.com?</p> <p>A: I can’t recall specifically, but</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, speculative, and lack foundation.</p>

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Pringle Declaration	Evidentiary Objections
<p style="text-align: center;">yes, I believe so, from what I recollect...</p>	
<p>230. In Plaintiff’s Response To Headphone Junkie, LLC’s First Set Of Interrogatories, in Interrogatory No. 3, I also set out the circumstances in obtaining, and the purpose in using, the remixed version of “I Gotta Feeling.” (Please reference Exhibit 34 - Headphone Junkie Interrogatory Response):</p> <p style="text-align: center;"><u>Interrogatory No. 3:</u> Identify with specificity where Plaintiff Bryan Pringle obtained a copy of the Black Eyed Peas’ a capella for I Gotta Feeling and when it was obtained.</p> <p style="text-align: center;"><u>Answer:</u> Plaintiff states that to the best of his recollection at this time, he used a remixed version of “I Gotta Feeling” with less instrumentation and “EQ’ed” the instrumentation out of the song, to the best of his ability, to make the vocals more easily heard.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, speculative, and lack foundation.</p>
<p>231. The vocals I used originated from a finished re-mix version that someone created of “I Gotta Feeling.” There are literally thousands of these re-mixed versions that flooded the internet and YouTube.com; long after the Beatport Re-mix Contest closed. However, I never had access to the individual “guitar twang sequence” mp3 posted by the Defendants and offered for a limited time period. It is also my understanding that everyone who accessed the posted individual “I Gotta Feeling” mp3 tracks in order to participate in the Re-mix Contest had to register with Beatport.com, by leaving valid contact</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, speculative, and lack foundation.</p>

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

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

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<p>friend. If in fact Riesterer had actually copied all of the individual “David Pop Guitar” song files he turned over to the Plaintiff’s Counsel, from that new storage device which contained those files, instead of from the original hard drive, then all of the individual “David Pop Guitar” song files would have the exact same creation date. Their creation date would reflect the date that Riesterer saved the individual “David Pop Guitar” song files from his original hard drive, to his new storage device. However, they don’t. The majority of the individual “David Pop Guitar” song files that were turned over to the Plaintiff’s Counsel, have apparently retained their same original creation dates which were assigned to them at the time that they were saved to the original hard drive used to create the original “David Pop Guitar” song file (Reference Exhibit 4 – David Pop GTR Dates 2). This anomaly clearly indicates that Riesterer actually copied the majority of the “David Pop Guitar” song files turned over to the Plaintiff’s Counsel in 2011, directly from the same original hard drive that was used in the creation of the original “David Pop Guitar” song files. This also means that Riesterer has been falsely stating under oath that he gave his hard drive away to a friend, when in fact, he still has possession of that original hard drive.</p>	
<p>237. As previously stated, the only logical reason why Riesterer would claim to no longer possess the original hard drive that was used in the creation of the “David Pop Guitar” song files would be in an attempt to try and avoid having anyone inspect this hard drive, because it contained</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, lack foundation, and constitute improper opinion testimony of a lay person.</p>

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

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

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

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<p>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.</p>	
<p>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 “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 “creation</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, lack foundation, and constitute improper opinion testimony of a lay person.</p>

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date” of this file.	
<p>245. Accordingly, it would appear from the evidence contained in the Defendants’ own “David Pop Guitar” song file, that there has been tampering, alteration and fabrication of the evidence. How can one be expected to rely on any of the Defendants’ representations regarding their claims in the creation of “I Gotta Feeling,” when the evidence contained in their own original song files (that they themselves have turned over), contradicts their sworn testimony, testimony that has repeatedly been misleading, contradictory, and false.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, lack foundation, and constitute improper opinion testimony of a lay person.</p>
<p>246. At the time I returned my non-working and defective hard drive to Western Digital for warranty repair or replacement in late summer of 2011, it did not contain any non-attorney-client privileged music files or data relating to the creation of “Take A Dive,” “Take A Dive” (Dance Version), or any re-mix of “I Gotta Feeling.” The only reference on that hard drive to any of those 3 items was contained in direct communications with my attorneys at the time; Ryan Greely and Ira Gould.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, lack foundation, and constitute improper opinion testimony of a lay person.</p>
<p>247. As of July 2011, I had no reason to believe that there was anything on my defective hard drive which contained any relevant evidence for my case, as I believed that I had previously delivered all such relevant evidence in my possession, to Gallant, in 2010.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, lack foundation, offer improper legal argument, and constitute improper opinion testimony of a lay person.</p>
<p>249. As all of the relevant non-attorney-client privileged evidence available in this case was already in the possession of Gallant when my hard drive and motherboard became defective and unusable</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> The statements are argumentative, lack foundation, offer improper legal argument, and constitute</p>

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

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

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my statements that I never intentionally discarded, destroyed otherwise manipulated any evidence.	The statements are argumentative and lack foundation.

Dated: January 9, 2012

LOEB & LOEB LLP

By: /s/ Tal E. Dickstein
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