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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION

BRYAN PRINGLE, an individual,

Plaintiff,

v.

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

Defendants.

Case No. SACV 10-1656 JST(RZx)

Hon. Josephine Staton Tucker
 Courtroom 10A

**EVIDENTIARY OBJECTIONS TO
 THE DECLARATION OF JEFFREY
 PRINGLE [DOC. 190] 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 Frederic Riesterer and David Guetta (collectively, “Defendants”) respectfully
4 submit these Evidentiary Objections to the Declaration of Jeffrey Pringle in
5 Opposition to Defendants’ Motion for Summary Judgment (Doc. 190) (“Jeffrey
6 Pringle Decl.”).

7 **GENERAL OBJECTIONS**

8 **A. Jeffrey Pringle’s Declaration Should be Stricken Because Plaintiff Failed**
9 **To Disclose Him As A Witness With Discoverable Information**

10 Rule 26 provides that “a party **must**, without awaiting a discovery request,
11 provide to the other parties [] the name and, if known, the address and telephone
12 number of each individual likely to have discoverable information—along with the
13 subjects of that information—that the disclosing party may use to support its claims
14 or defenses, unless the use would be solely for impeachment.” Fed. R. Civ. P.
15 26(a)(1)(A) (emphasis added). Rule 37, in turn, provides that if a party fails to
16 comply with Rule 26(a), “the party is not allowed to use that [] witness to supply
17 evidence on a motion, at a hearing, or at a trial, unless the failure was substantially
18 justified or is harmless.” Fed. R. Civ. P. 37(c)(1).

19 Plaintiff violated Rule 26(a) by failing to disclose his brother, Jeffrey Pringle,
20 as a witness with discoverable information. Plaintiff never included Jeffrey Pringle
21 in any of his disclosures or discovery responses, and Jeffrey Pringle’s name was
22 never mentioned at all until Plaintiff’s own deposition—and then only in the briefest
23 passing. Moreover, Plaintiff never provided Jeffrey Pringle’s contact information—
24 which, given that Jeffrey Pringle has filed a declaration in this case, Plaintiff
25 unquestionably has in his possession.

1 Jeffrey's Pringle's Declaration is, quite literally, the only purported
2 "evidence" Plaintiff has to "corroborate" his own self-serving testimony as to
3 whether any Defendant had access to Plaintiff's allegedly infringed work. Jeffrey
4 Pringle's Declaration therefore goes to the heart of Plaintiff's claim. But by failing
5 to disclose Jeffrey Pringle as an affirmative fact witness and failing to provide any
6 contact information for him, Defendants were unable to depose Jeffrey Pringle
7 regarding some of the most fundamental issues in the case. This failure cannot be
8 deemed "harmless," and Jeffrey Pringle's testimony must be excluded. *See, e.g.,*
9 *Brady v. Potter*, 476 F.Supp.2d 745, 749 (N.D. Ohio 2007) (disregarding testimony
10 of undisclosed witness on summary judgment).

11 **INDIVIDUAL OBJECTIONS**

12 Evidence submitted in opposition to a motion for summary judgment must
13 meet the same requirements for admissibility as evidence offered at trial. *See*
14 *Beyene v. Coleman Sec. Services, Inc.*, 854 F.2d 1179, 1181-1182 (9th Cir. 1988)
15 ("It is well settled that only admissible evidence may be considered by the trial court
16 in ruling on a motion for summary judgment."); *Travelers Cas. & Sur. Co. of Am. v.*
17 *Telstar Const. Co., Inc.*, 252 F. Supp. 2d 917, 923 (D. Ariz. 2003) (same re. Rule 12
18 motions). In particular, testimonial evidence must be based on the personal
19 knowledge of the witness offering the evidence (Fed. R. Evid. 602, 701) and
20 relevant to the claims and defenses of the case. Fed. R. Evid. 401, 403; *McCormick*
21 *v. City of Lawrence, Kan.*, 2007 WL 38400, at *3 (D. Kan. Jan. 5, 2007). Hearsay
22 evidence is inadmissible unless it has been defined as non-hearsay, or the proponent
23 establishes that one or more exceptions apply. Fed. R. Evid. 801-804. Testimony
24 requiring scientific, technical, or other specialized knowledge may be given only by
25 an expert witness with the requisite knowledge, skill, experience, training, or
26 education, and opinion testimony is not permitted of a lay person. Fed. R. Evid.

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1 701, 702. Even if this Court does not disregard the entirety of the Jeffrey Pringle
 2 Declaration, several portions are patently inadmissible as specified below:

Pringle Declaration	Evidentiary Objections
4 4. More specifically I DJ'd, hosted other 5 radio programs where music was played, 6 and provided music to other DJ's in 7 Amsterdam, the Netherlands from June 8 1993 until June 1996; Paris, France from 9 September 1996 to April 1999; and 10 Toronto, Canada from August 1999 to June 11 2002.	Fed. R. Evid. 401, 402, 403, 602, <u>701</u> The statements are speculative and lack foundation and specificity as to what music Jeffrey Pringle himself actually played (FRE 403), and are speculative, lack foundation, and do not appear to be based on the witness' personal knowledge as to what <i>other</i> DJ's actually played (FRE 602, 701, 403).
12 5. During the period June 1993 to June 13 1996 while I was in the Netherlands, a 14 fellow professional and part-time DJ and 15 former co-worker, Mr. Michael Scott 16 Brown played various songs written by 17 Bryan Pringle on the radio in Germany. I 18 originally provided Bryan's music directly 19 to Mr. Brown, but Bryan Pringle also 20 provided additional music during 21 subsequent visits to Europe.	Fed. R. Evid. 401, 402, 403, 602, <u>701</u> The statements lack personal knowledge (FRE 602, 701) and specificity (FRE 403) as to what music Michael Scott Brown played on the radio in Germany while Jeffrey Pringle was in Netherlands. The statements lack personal knowledge (FRE 602, 701, 403) as to what Bryan Pringle provided to Michael Scott Brown during subsequent visits in Europe.
22 6. From September 1996 to April 1999, I 23 passed Bryan Pringle's music CD's to radio 24 stations, clubs, bars, and others connected 25 to the music industry in order to get it 26 played on the radio, in clubs, in bars, and 27 be heard by someone willing to sign him. 28 As I lived near Porte Maillot (Paris), I would frequent bars and clubs around la Hotel Concorde LaFayette, along the Champs d'Elysses, and many other popular areas of Paris. Additionally, Mr. Michael Scott Brown played Bryan's music	Fed. R. Evid. 401, 402, 403, 602, <u>701</u> The statements lack specificity (FRE 403) as to what songs were on the "music CDs" Jeffrey Pringle allegedly distributed, and to what people "connected to the music industry" those songs were given. The statements lack personal knowledge (FRE 602, 701) as to what Michael Scott Brown played on the radio. The statements lack

Pringle Declaration	Evidentiary Objections
<p>including cuts from the 1998 “Dead Beat Club” copyrighted CD on Armed Forces Network radio as well as Dutch and German radio that broadcast in numerous Western European countries, including France, and on the Internet.</p>	<p>specificity (FRE 403) as to what specific “cuts” were played on the radio, and where and when those radio programs were broadcast or where on the Internet, and during what time period.</p>
<p>7. During the period August 1999 to June 2002 while performing as a professional and part-time DJ and spoken-word radio host, I personally played Bryan Pringle’s music, including his song “Take a Dive” (Dance Version) during numerous programs on CHRY radio, during my shows. These shows were broadcast live in Toronto, Canada and via the Internet.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements lack specificity (FRE 403) as to when these “numerous” radio shows took place and where the Toronto radio station was allegedly broadcast on the Internet.</p>
<p>8. I am familiar with both the Black Eyed Peas song “I Gotta Feeling” and Bryan Pringle’s song “Take a Dive” (Dance Version). Having performed as professional and part-time DJ for years, it is my professional opinion that “I Gotta Feeling” and “Take a Dive” (Dance Version) are strikingly similar.</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702</u> These statements constitute blatantly improper opinion testimony of a lay person as to what is or is not “strikingly similar.” Jeffrey Pringle has not been designated as an expert witness in this case, nor has he presented a sufficient foundation to support any claimed expertise in musicological analysis. <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>9. I can also attest to the fact that Bryan Pringle delivered his Demo CDs, which included songs that contained the “guitar twang sequence” used in his song “Take a Dive” (Dance Version), to several DJs at various night clubs in Paris, France. This included night clubs at locations in Paris where David Guetta worked as a DJ, that</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements lack personal knowledge (FRE 602, 701) as to what CDs Bryan Pringle delivered or to whom, and as to Mr. Guetta’s professional and performing history. The statements lack specificity</p>

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Pringle Declaration	Evidentiary Objections
were known by the names of “Rex Club,” “Le Queen,” and “Le Palace”. On several occasions, Bryan Pringle and I, along with other friends, visited these same clubs.	(FRE 403) as to what “songs” were on the alleged Demo CDs, and the identities of the “several DJs” these CDs were allegedly given to.

Dated: January 9, 2012

LOEB & LOEB LLP

By: /s/ Tal E. Dickstein
Donald A. Miller
Barry I. Slotnick
Tal E. Dickstein

Attorneys for Defendants
SHAPIRO, BERNSTEIN & CO., INC.,
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