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9						
10	UNITED STATES	DISTRICT COURT				
11	CENTRAL DISTRIC	CT OF CALIFORNIA				
12	SOUTHER	N DIVISION				
13	BRYAN PRINGLE, an individual,)	Case No. SACV 10-1656 JST(RZx)				
14	Plaintiff,	Hon. Josephine Staton Tucker Courtroom 10A				
15	v. {	Courtiooni IOA				
16	WILLIAM ADAMS, JR.; STACY	RESPONSE TO PLAINTIFF'S STATEMENT OF GENUINE				
17	FERGUSON; ALLAN PINEDA; and JAIME GOMEZ, all individually and Jackson The	DISPUTES IN OPPOSITION TO MOTION FOR SUMMARY				
18	collectively as the music group The Black Eyed Peas, et al.,	JUDGMENT [DOC. 196] BY DEFENDANTS SHAPIRO,				
19	Defendants.	BERNSTEIN & CO, INC., FREDERIC RIESTERER AND				
20		DAVID GUETTA				
21		Complaint Filed: October 28, 2010				
22		Trial Date: March 27, 2012				
23		Hearing Date: January 30, 2012 10:00 AM				
24						
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28		DEADONAL TO OTATE TO THE				
	NY989977.5 217131-10001	RESPONSE TO STATEMENT OF GENUINE DISPUTES				

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Central District of California Local Rule 56-1, and the Court's Initial Standing Order at 11(c)(i), Defendants Shapiro, Bernstein & Co, Inc. ("Shapiro Bernstein"), Frederic Riesterer and David Guetta (collectively, "Defendants") respectfully submit this Response to Plaintiff's Statement of Genuine Disputes in Opposition to Motion for Summary Judgment (Doc. 196). Plaintiff Bryan Pringle contends that the following alleged material facts create genuine issues preventing summary judgment in favor of Defendants. For the reasons set forth below, such facts are either undisputed, or disputed but immaterial to Defendants' Motion for Summary Judgment (Doc. 159).

	ADDITIONAL FACT AND PURPORTED SUPPORTING EVIDENCE	DEFENDANTS' RESPONSE
	Pringle's Musical Bac	kground
112.	Plaintiff Bryan Pringle is a songwriter with many years of traditional and non-traditional music training. Pringle Decl. at ¶ 7	Disputed, but immaterial. The only "music training" Pringle identifies is studying drums in middle school, taking "piano lessons as a young boy" and music classes at a community college (Pringle Decl. ¶ 7) and Pringle has only ever earned "beer money" (i.e. \$2,000) from his music. (Pringle Tr. 338:21-339:4) ²

¹ Pursuant to Local Rules and the procedures of this Court, this document responds only to the additional "facts" presented by Pringle, and does not respond to Pringle's responses to Defendants' own asserted uncontroverted facts. Defendants reserve all rights to address Pringle's responses, and to demonstrate that none of Pringle's responses establish any dispute of material fact requiring trial in this matter.

² All Declarations cited herein have been filed on the public docket in this matter. All other cited documents, including deposition testimony, have been filed as exhibits to the Declaration of Tal. E. Dickstein (Doc. 161), the Declaration of Tal E.

1		113.	He has been writing contemporary	Disputed, but immaterial.
2			popular music since 1986 and since	Undisputed that Pringle has
			that time written hundreds of songs	pursued music as a hobby at
3			that span a wide variety of musical	various times, but disputed that
4			genres. Pringle Decl. at ¶ 7	such music "span[s] a wide
5	_	111	His topining and experience have also	variety of musical genres."
		114.	His training and experience have also helped him to develop a substantial	Disputed, but immaterial. The only "music training" Pringle
6			amount of knowledge of and	identifies is studying drums in
7			experience with computer based	middle school, "piano lessons
8			musical composition. Pringle Decl. at	as a young boy" and music
			¶ 8	classes at a community college
9				(Pringle Decl. ¶ 7), and Pringle
10				has only ever earned "beer
11				money" from his music.
				(Pringle Tr. 338:21-339:4).
12				Further disputed to the extent
13				Pringle proffers himself as an expert witness on the subject
14				of "computer based musical
14				composition," for which he is
15				not qualified. (Pringle Decl.
16				¶ 8).
		P	ringle Composes "Take a Dive" And It	s Derivative Dance Version
17		115.	In 1998 Pringle wrote and recorded	Undisputed to the extent
18			"Take a Dive", a cathartic ode to a	Pringle refers to the original
19			failed relationship. Pringle Dep at:	version of "Take a Dive."
			101-102.	Disputed, but immaterial, to
20				the extent Pringle refers to any other versions of the song.
21				(Pringle Tr. 100:24-101:8,
22				201:15-23, 202:13-18)
23				

Dickstein in Further Support of Defendants' Motion for Summary Judgment (filed concurrently), and/or the Declaration of Dean A. Dickie (Doc. 197).

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1	116.	He created the song using a stand	Undisputed to the extent
2		alone Ensoniq ASR-10 keyboard.	Pringle refers to the original
		Pringle Decl. at ¶ 161	version of "Take a Dive."
3			Disputed, but immaterial, to
4			the extent Pringle refers to any
5			other versions of the song. Disputed insofar as Pringle
			testified he also used computer
6			equipment to create the song.
7			(Pringle Tr. 100:24-101:8,
8			201:15-23, 202:13-18)
	117.	He registered a claim for "Take a	Undisputed as to the original
9		Dive" and several other original songs	version of "Take a Dive."
10		he wrote and recorded by submitting a	Disputed, but immaterial, as to
11		CD entitled <i>Dead Beat Club: 1998</i> to the United States Copyright Office.	any other unidentified "original songs," which are not
12		Copyright Registration attached as	at issue in this litigation.
		Exhibit M to Dickie Decl.	at issue in this hagadon.
13	118.	The Register of Copyrights issued a	Undisputed.
14		Certificate of Registration for <i>Dead</i>	
15		Beat Club: 1998 on April 29, 1998,	
		identified as SRu 387-433 ("Take a	
16		Dive" is referred to on the Certificate	
17		as "Dive"). Copyright Registration attached as Exhibit M to Dickie Decl.	
18	119.	Mr. Pringle made several derivative	Disputed, but immaterial.
		variations of "Take a Dive" including	Pringle provides no evidence
19		the "Dance Version" that is central to	that he created any version of
20		this case. Pringle Decl. at ¶ 55	"Take a Dive" other than the
21			"Dance Version," and no
22			version that any of the Defendants had access to or
			copied. (Pringle Dep. Tr.
23			17:1-19:7, 69:5- 71:6, 72:20-
24			73:13, 76:3-6, 100:24-101:8,
25			124:2-20, 201:15-23, 375:22-
			377:22)
26			

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1	12	20.	He was not particularly enamored with	Disputed, but immaterial.
2			the vocals in the original "Take a	Uncontroverted evidence
			Dive" so, for the Dance Version, he	shows that Defendants, not
3			replaced the vocals with a repeating	Mr. Pringle, composed the
4			eight-bar melody using a "guitar	"guitar twang sequence"
			twang" instrument that he had	(Riesterer Decl. ¶¶ 4-7;
5			previously recorded in 1997 for his	Riesterer Tr. 165:19-166:21,
6			song "Faith." Pringle Decl. at ¶ 70	179:10-181:8). Mr. Pringle
				has also testified that he
7				recorded the "guitar twang"
8				sequence in 1999 rather than
				1997, and that it was "modeled
9				after 'Take a Dive's'
10				progression of notes in the
1.1				chorus vocals of the original
11				version, which [he] sang,"
12				rather than recorded for the
				song "Faith." (Pringle TRO
13				Decl. ¶ 4; Pringle PI Decl. ¶ 4)
14	12	21.	He used this instrument to play a total	Disputed, but immaterial.
1.5			of four notes (D4, C4, B3 AND G3),	Uncontroverted evidence
15			in the following progression: D4-C4-	shows that Defendants, not
16			B3-C4-B3-C4, and in the key of G3	Mr. Pringle, composed the
17			(the "guitar twang sequence"). Pringle	"guitar twang sequence"
1 /			Jan 3 2011 Decl. ("Pringle TRO	(Riesterer Decl. ¶¶ 4-7;
18			Decl.") at ¶ 4. (Dck. 71a)	Riesterer Tr. 165:19-166:21,
19				179:10-181:8). Further
				disputed on the ground that the
20				cited evidence demonstrates
21				that the "guitar twang
				sequence" consists of only
22				three chords.
23				
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Version was very much the same song. Declaration of Dr. Alex Norris ("Norris Decl.") at ¶ 6 ("Norris Decl.") at ¶ 6 many respect version of "removes the "guitar twar also change certain drun Decl. ¶¶ 4-5 Pringle now Defendants version of the did not regist have. (Pringlate) have. (Pringlate) have identical keyboard motifs at :09 seconds, identical bass parts, identical chord progression, identical sonic sweeps at similar points in time of both tracks, identical changes in the bass parts at similar points in each track, identical key, identical tempo, Version was very much the same song. (Dance Version of "removes the "guitar twar also change in the bass parts at similar points in each track, identical key, identical tempo, also change	
Declaration of Dr. Alex Norris ("Norris Decl.") at ¶ 6 Declaration of Dr. Alex Norris ("Norris Decl.") at ¶ 6 Declaration of Dr. Alex Norris ("Norris Decl.") at ¶ 6 Declaration of Dr. Alex Norris (Dance Vershas presente many respective version of "removes the "guitar twar also change certain drun Decl. ¶ 4-5 Pringle now Defendants version of the did not regist have. (Pringlate) 123. It had the exact same ambient sounds at the beginning of both versions, identical keyboard motifs at :09 seconds, identical bass parts, identical chord progression, identical sonic sweeps at similar points in time of both tracks, identical changes in the bass parts at similar points in each track, identical key, identical tempo, and identical timbre's with regard to all of the aforementioned similarities. Norris Decl. at ¶ 6 Disputed, breecording of (Dance Versions of "removes the "guitar twar also change certain drun Decl. ¶ 4-5 Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Poefendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version of the did not regist have. (Pringle now Defendants version	at immaterial. The
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version of "removes the "guitar twar also change certain drun Decl. ¶¶ 4-5 10 11 12 13 14 15 16 17 18 18 19 10 11 12 12 13 14 15 16 17 18 18 19 19 20 21 21 22 23 23 24 25 25 26 27 28 28 28 28 28 28 28 28 28	ed is similar in
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also change certain drum Decl. ¶¶ 4-5 Pringle now Defendants version of the did not regist have. (Pringle now 122 13	ig sequence," and
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12	ster and does not
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at the beginning of both versions, identical keyboard motifs at :09 seconds, identical bass parts, identical chord progression, identical sonic sweeps at similar points in time of both tracks, identical changes in the bass parts at similar points in each track, identical key, identical tempo, and identical timbre's with regard to all of the aforementioned similarities. Norris Decl. at ¶ 6 at the beginning of both versions, identical of that presente many respect version of "removes the "guitar twar also change certain drun Decl. ¶¶ 4-5 Pringle now Defendants version of the did not regis have. (Pringle 142)	
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chord progression, identical sonic sweeps at similar points in time of both tracks, identical changes in the bass parts at similar points in each track, identical key, identical tempo, and identical timbre's with regard to all of the aforementioned similarities. Norris Decl. at ¶ 6 Pringle now Defendants version of the did not regist have. (Pring	sion) that Pringle
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track, identical key, identical tempo, and identical timbre's with regard to all of the aforementioned similarities. Norris Decl. at ¶ 6 Pringle now Defendants version of the did not regist have. (Pringle 142)	vocals, adds the
and identical timbre's with regard to all of the aforementioned similarities. Norris Decl. at ¶ 6 Pringle now Defendants version of the did not regist have. (Pringle 142)	ig sequence," and
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Defendants version of the did not regist have. (Pring 142)	
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have. (Pring 142)	_
23 142)	
142)	gie Deci. 125,
/4 II	

1	124.	Mr. Pringle created "Take a Dive"	Disputed, but immaterial.
2		Dance Version using an Ensoniq ASR-	Uncontroverted evidence
		10 keyboard. Pringle Decl. ¶ 161	shows that Defendants, not
3			Mr. Pringle, composed the
4			"guitar twang sequence"
5			(Riesterer Decl. ¶¶ 4-7;
5			Riesterer Tr. 165:19-166:21,
6			179:10-181:8). Moreover,
7			Pringle now alleges that
			Defendants copied a different version of the song from the
8			one he has presented, which
9			different version he did not
10			register and does not have.
			(Pringle Decl. ¶¶ 125, 142). In
11			addition, Pringle admits that he
12			used pre-existing sample
			library disks in creating "Take
13			a Dive" (Dance Version).
14			(Pl.'s Opp. 14; Pringle Tr.
15			230:7-231:2, 235:20-236:20)
13	125.	The ASR-10 is a complete digital	Undisputed, but immaterial.
16		music production studio that allows a	
17		user to upload instruments, sounds,	
		and other audio samples from external	
18		third-party sources into the keyboard. Pringle Decl. ¶ 161	
19	126.	These samples are then sequenced and	Undisputed, but immaterial.
20	120.	arranged by the user to create and	Ondisputed, but immaterial.
		record songs. Pringle Decl. ¶ 161	
21	127.	A song, its component parts, and the	Undisputed, but immaterial.
22		sequencing and arrangement	Mr. Pringle testified that
		information can then be saved on an	various instrument files and
23		external disc drive as a "creation file."	other sound processing effects
24		[BPX] Pringle Decl. ¶ 161	must be loaded "properly" in
25			order to play back a mixed
			sound recording from his
26			alleged "creation file."
27			(Pringle Tr. 254:21-256:18)

128.

In 1999, after Mr. Pringle created and recorded "Take a Dive" Dance Version, he backed up his creation file onto an NRG image file he titled "DISK05.NRG"2. Pringle Decl. at ¶ 161; See also, Declaration of David Gallant ("Gallant Decl.") at ¶ 9.

Disputed, but immaterial. Uncontroverted evidence shows that Defendants, not Mr. Pringle, composed the "guitar twang sequence" (Riesterer Decl. ¶¶ 4-7; Riesterer Tr. 165:19-166:21, 179:10-181:8). Moreover, Pringle now alleges that Defendants copied a different version of the song from the one he has presented, which different version he did not register and does not have. (Pringle Decl. ¶¶ 125, 142). Pringle's NRG file does not contain a mix of "Take a Dive" (Dance Version). (Pringle Tr. 254:21-256:18; Geluso Decl. ¶ 27)

"Take a Dive" Dance Version Is Sent To Defendants

Mr. Pringle endeavored to promote his music so that he could either sign on with a major record label or sell his music to publishing companies and other artists. In 1999 he began to regularly submit demo cd's, including the "Take a Dive" Dance Version, to record labels, artists, publishing companies and many others. Pringle TRO Decl. at ¶ 7. (Dck. 71a)

Disputed but immaterial, on the grounds that Pringle has failed to provide any evidence that "Take a Dive" (Dance Version) was submitted to anyone in the music industry, via demo CD or otherwise, at any time. (Pringle Dep. Tr. 17:1-19:7, 69:5-71:6, 72:20-73:13, 76:3-6, 124:2-20, 375:22-377:22)

1	130.	He sent copies of this work by mail to	Disputed but immaterial, on
2		Defendants UMG, Interscope and	the grounds that Pringle has
		EMI, as partially evidenced by the	failed to provide any evidence
3		USPS postal receipts produced during	that "Take a Dive" (Dance
4		discovery. Pringle TRO Decl. at ¶ 7.	Version) was submitted to
5		(Dck. 71a).	anyone in the music industry,
3			via demo CD or otherwise, at
6			any time. (Pringle Dep. Tr.
7			17:1-19:7, 69:5-71:6, 72:20-
-			73:13, 76:3-6, 124:2-20,
8			375:22-377:22). Moreover,
9			Pringle has admitted that Defendant Adams did not
			change any of the music he
10			received from Mr. Guetta; thus
11			any alleged access through
12			UMG, Interscope, and/or EMI
			is immaterial. (Pl.'s Resp. to
13			SMF ¶ 21)
14	131.	He also sent a copy to Gum	Disputed, but immaterial. Mr.
15		Productions, a music production	Guetta, Mr. Garraud, and Mr.
13		company co-owned by Defendant	Carre never received any such
16		David Guetta, Joachim Garraud, and	alleged correspondence
17		Jean Charles Carre. Pringle Decl. at	(Garraud Decl. at ¶¶ 2-3;
		¶ 5; Guetta Dep. at pp 20-22.	Riesterer Decl. at ¶ 3-4, 8-9;
18			Guetta Decl. at ¶¶ 2-7; Carre Decl. ¶¶ 5-8), and Mr. Pringle
19			has no evidence that any such
20			correspondence existed.
			(Pringle Tr. 90:5-23, 93:9-
21			94:9, 113:1-11). Moreover,
22			Mr. Guetta testified that he has
			never corresponded with
23			Pringle in any form at any
24			time. (Guetta Tr. 20:4-22:7,
25			68:16-69:9, 165:24-168:14;
			Guetta Decl. ¶¶ 5-6)
26			

1	132.	Mr. Pringle distributed his demo cd's	Disputed, but immaterial.
2		in France at various times in 1999 and	Jeffrey Pringle's Declaration
3		between 2001 and 2003 and enlisted	(Doc. 190) fails to show that
		the help of his brother Jeffrey, a	Defendants ever had access to "Take a Dive"
4		professional and part time disc jockey, to assist with promotions. Jeffrey	"Take a Dive," "Take a Dive" (Dance Version), or any of
5		Pringle Decl. ¶ 7, 9.	Pringle's music. (Pringle Tr.
6			90:5-23, 93:9-94:9, 113:1-11,
			Garraud Decl. at ¶¶ 2-3;
7			Riesterer Decl. at ¶ 3-4, 8-9;
8			Guetta Decl. at ¶¶ 2-7; Carre
9	122	I CC D' 1 1 1 1 M D' 1 4	Decl. ¶¶ 5-8)
	133.	Jeffrey Pringle brought Mr. Pringle to several night clubs in France,	Disputed, but immaterial. Jeffrey Pringle's Declaration
10		including "Rex Club", "Le Queen"	(Doc. 190) fails to show that
11		and "Le Palace", where he distributed	Defendants ever had access to
12		his demo cd to the local disc jockeys.	"Take a Dive," "Take a Dive"
13		Jeffrey Pringle Decl. at ¶¶ 9.	(Dance Version), or any of
			Pringle's music. (Pringle Tr.
14			90:5-23, 93:9-94:9, 113:1-11,
15			Garraud Decl. at ¶¶ 2-3; Riesterer Decl. at ¶ 3-4, 8-9;
16			Guetta Decl. at ¶¶ 2-7; Carre
			Decl. ¶¶ 5-8). Pringle
17			provides no evidence that any
18			of the Defendants worked at
19	101	1.66	any of these night clubs.
	134.	Jeffrey Pringle also hosted radio and	Disputed, but immaterial.
20		internet programs that were broadcast in the Netherlands, France and	Jeffrey Pringle's Declaration (Doc. 190) fails to show that
21		Canada. He played Mr. Pringle's	Defendants ever had access to
22		music, including "Take a Dive" Dance	"Take a Dive," "Take a Dive"
23		Version on these programs. Jeffrey	(Dance Version), or any of
		Pringle Decl. at ¶ 6, 7	Pringle's music. (Pringle Tr.
24			90:5-23, 93:9-94:9, 113:1-11,
25			Garraud Decl. at ¶¶ 2-3; Riesterer Decl. at ¶ 3-4, 8-9;
26			Guetta Decl. at ¶¶ 2-7; Carre
			Decl. ¶¶ 5-8). The cited
27			evidence does not support the
28			statement.

1	1	135.	Michael Scott Brown was also a	Disputed, but immaterial.
2			professional and part time disc jockey	Jeffrey Pringle's Declaration
3			in Western Europe. Jeffrey Pringle	(Doc. 190) fails show that
3			Decl. at ¶ 6	Defendants ever had access to
4				"Take a Dive," "Take a Dive"
5				(Dance Version), or any of Pringle's music. (Pringle Tr.
				90:5-23, 93:9-94:9, 113:1-11,
6				Garraud Decl. at ¶¶ 2-3;
7				Riesterer Decl. at ¶ 3-4, 8-9;
8				Guetta Decl. at ¶¶ 2-7; Carre
0				Decl. ¶¶ 5-8)
9	1	136.	He and Jeffrey Pringle served in the	Disputed, but immaterial.
10			U.S. military together. Mr. Brown	Jeffrey Pringle's Declaration
			also played Mr. Pringle's music,	(Doc. 190) fails to show that
11			including cuts from the copyrighted	Defendants ever had access to
12			Dead Beat Club album, regularly on	"Take a Dive," "Take a Dive"
13			the Armed Forces Network radio and	(Dance Version), or any of
			Dutch and German radio stations.	Pringle's music. (Pringle Tr.
14			These stations broadcasted on the	90:5-23, 93:9-94:9, 113:1-11,
15			internet and all over Western Europe, including in France. Jeffrey Pringle	Garraud Decl. at ¶¶ 2-3; Riesterer Decl. at ¶ 3-4, 8-9;
16			Decl. at ¶ 6	Guetta Decl. at ¶¶ 2-7; Carre
10				Decl. ¶¶ 5-8)
17		137.	In addition to these efforts in Europe,	Disputed, but immaterial.
18			Mr. Pringle also made "Take a Dive"	Pringle has failed to show that
10			Dance Version available for sale on	Defendants ever had access to
19			several websites, including	"Take a Dive," "Take a Dive"
20			www.mp3.com, www.gemm.com.	(Dance Version), or any of
21			Pringle Dep. at 132, 133	Pringle's music. (Pringle Tr.
				90:5-23, 93:9-94:9, 113:1-11,
22				Garraud Decl. at ¶¶ 2-3;
23				Riesterer Decl. at ¶ 3-4, 8-9;
				Guetta Decl. at ¶¶ 2-7; Carre
24			Black Eyed Peas Release "I	Decl. ¶¶ 5-8)
25			Diack Lyeu Feas Kelease "I	Gutta reening

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1	138.	In 2009, the Black Eyed Peas released	Undisputed that in 2009, the	
2		"I Gotta Feeling" as the second single	Black Eyed Peas released "I	
2		off their album <i>The E.N.D.</i> "I Gotta	Gotta Feeling" as the second	
3		Feeling" achieved tremendous success	single from their album <i>The</i>	
4		and worldwide acclaim. Pringle TRO	E.N.D. Disputed to the extent	
5		Decl. ¶ 10.	that Pringle relies on the	
3			ambiguous and argumentative	
6			terms "tremendous success"	
7			and "worldwide acclaim"	
	100	Will be Districted to the second	without defining them.	
8	139.	When Mr. Pringle first heard it	Disputed, but immaterial.	
9		however, he knew that "there was a	Uncontroverted evidence	
		problem," he knew that "there was	shows that Defendants, not	
10		intentional, willful infringement" of "Take a Dive" Dance Version. Pringle	Mr. Pringle, composed the "guitar twang sequence," and	
11		Dep. at 63:4-63:19.	that nothing in "I Gotta	
10		Dep. at 03.4-03.19.	Feeling" infringes any of	
12			Pringle's works. (Riesterer	
13			Decl. ¶¶ 4-7; Riesterer Tr.	
14			165:19-166:21, 179:10-181:8)	
	140.	There were numerous and undeniable	Disputed, but immaterial.	
15		similarities between the songs. Norris	There are no meaningful	
16		Decl. at ¶, [sic] Declaration of Alex	similarities of original	
17		Stewart ("Stewart Decl.") at ¶ 3, 5	expression common to "Take a	
17			Dive" and "I Gotta Feeling,"	
18			and, setting aside the "guitar	
19			twang sequence," there are no	
			such similarities between	
20			"Take a Dive" (Dance	
21			Version) and "I Gotta	
			Feeling." (Ferrara Decl. ¶ 4-5,	
22			65, 91-97; Ferrara Rebuttal	
23			Report; Norris Tr. 80:22-81:3,	
24			249:24-250:16; Stewart Tr. 281:10-284:19)	
		Alleged Creation of "I Go	,	
25		Antigen Creation of T Gotta recting		

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1		141.	David Guetta and Joachim Garraud,	Disputed, but immaterial.
2			the two recipients of Mr. Pringle's	Pringle has no evidence that he
3			submission to Gum Production, collaborated with Defendant Riesterer	ever submitted anything to Gum Productions (Garraud
			in the selection of the instrumental	Decl. at ¶¶ 2-3; Riesterer Decl.
4			portion of "I Gotta Feeling." Riesterer	at ¶ 3-4, 8-9; Guetta Decl. at
5			Dep. 125:11-129:21.	¶¶ 2-7; Carre Decl. ¶¶ 5-8;
6				Pringle Tr. 90:5-23, 93:9-94:9,
7				113:1-11). Moreover, Mr. Riesterer and Mr. Guetta
·				composed the instrumental
8				portion of "I Gotta Feeling,"
9				and Mr. Garraud was not
10				involved. (Riesterer Decl.
11				¶¶ 4-7; Riesterer Tr. 165:19-
				166:21, 179:10-181:8). Mr. Riesterer composed and
12				created the "guitar twang
13				sequence." (Riesterer Decl.
14				¶¶ 4-7)
15		142.	Joachim Garraud first met Defendant	Undisputed.
			Riesterer in 1989. Deposition of	
16			Frederick Riesterer at p. 78 ("Riesterer Dep.") attached as Exhibit C to Dickie	
17			Decl.	
18	•	143.	They worked together at a French	Undisputed.
19			radio station called "Maximum" where	
			Garraud was a producer and Riesterer	
20			was a disc jockey. Riesterer Dep. at pp. 75-76.	
21	-	144.	Garraud and Riesterer shared an	Undisputed that Mr. Garraud
22		1111	interest in music, became close	and Mr. Riesterer are
23			friends, and then "naturally" began to	musicians and that Mr.
			make music together in the early	Riesterer has, at times in the
24			1990's. Riesterer Dep. at p. 79.	past, composed music with
25				Mr. Garraud. The remainder of the statement is disputed,
26				though immaterial. (Riesterer
27				Tr. 78:23-82:6)
<i>∠1</i>				

1	145.	They would often exchange ideas and	Undisputed that Mr. Garraud
2		concepts, exchange demo tapes, and	and Mr. Riesterer are
		"put them together" in a sound	musicians and that Mr.
3		sequencer. Riesterer Dep. at p. 88.	Riesterer has, at times in the
4			past, composed music with
5			Mr. Garraud. The remainder
5			of the statement is disputed,
6			though immaterial. (Riesterer
7	146	When Distance 1-6 Mariana in	Tr. 78:23-82:6, 85:2-89-15)
	146.	When Riesterer left Maximum in 1993, he remained close with Garraud	Undisputed that Mr. Garraud and Mr. Riesterer are
8		and they continued to "talk all the	musicians and that Mr.
9		time" about music. Riesterer Dep. at	Riesterer has, at times in the
10		pp. 80, 81, 126	past, composed music with
			Mr. Garraud. Disputed, but
11			immaterial, that Mr. Riesterer
12			"remained close" with Garraud
13			and that the two are in contact
13			regarding music. (Riesterer
14			Tr. 122:21-123:30)
15	147.	In 2001, Garraud, David Guetta and	Undisputed that the purpose of
		Jean Charles Carre founded Gum	Gum Productions is to
16		Productions so that they could "make	facilitate the production of
17		music." Guetta Dep. at p. 21.	music by David Guetta and others, and that it was founded
18			by Garraud, Guetta, and Carre.
			Carre Decl. ¶ 5.
19		1	1 2
20			

1	148.	Gum Productions often recruited and	Disputed, but immaterial.
2		signed artists to perform on albums	Gum Productions has never
		that it produced and it received	had a policy or practice of
3		submissions from prospective artists as	soliciting music from unknown
4		well. Some time between 2001 and	artists, and during the entire
_		2003, Gum Productions received	2001 to 2009 time period,
5		Pringle's demo cd that included the	Gum Productions received, at
6		"Take a Dive" Dance Version. Guetta	most, five promotional tracks
7		Dep. at p. 66-69	of unsolicited music, none of
			which included "Take a Dive"
8			(Dance Version) or was from
9			Bryan Pringle. (Carre Decl.
			¶ 8). In the cited portions of
10			his testimony, Pringle is not even discussed, and Mr.
11			Guetta merely states that, to
10			his knowledge, it is "possible"
12			that Gum Productions and/or
13			Mr. Garraud sought out
14			unidentified artists, and that
			artists may have submitted
15			samples of their work to Gum
16			Productions. (Guetta Tr.
			66:20-70:18). Mr. Guetta
17			testified that he did not believe
18			that Mr. Garraud received such
19			samples (Guetta Tr. 70:12-24),
19			and that he has never
20			corresponded with Pringle in
21			any form at any time. (Guetta
			Tr. 20:4-22:7, 68:16-69:9,
22			165:24-168:14; Guetta Decl.
23			¶ 3-5)
24			
25			

1	149.	After receiving this cd, Gum	Disputed, but immaterial.
2		Productions sent a letter to Pringle in	There is no evidence that Gum
3		which Garraud and Guetta expressed	Productions ever received any
		their approval for Pringle's music.	CD from Bryan Pringle
4		Pringle Decl. at ¶ 5	containing "Take a Dive" (Dance Version) or any other
5			material. (Carre Decl. ¶ 8).
6			Gum Productions, Mr. Guetta,
			and Mr. Garraud have never
7			engaged in any
8			correspondence with Bryan
			Pringle. (Carre Decl. ¶ 7;
9			Guetta Decl. ¶ 5; Garraud
10			Decl. ¶ 3; Guetta Tr. 20:4-
11			22:7, 68:16-69:9, 165:24- 168:14). Furthermore, Pringle
12			has no evidence that such a
12			letter ever existed. (Pringle Tr.
13			90:5-23, 93:9-94:9, 113:1-11)
14	150.	They then asked for and received	Disputed, but immaterial.
15		additional tracks from Pringle,	There is no evidence that Gum
		including the settings instrumentation	Productions ever received any
16		and sound effects for his songs,	CD from Bryan Pringle
17		including "Take a Dive" (Dance	containing "Take a Dive"
18		Version) Pringle Decl. at ¶ 5	(Dance Version) or any other material. (Carre Decl. ¶ 8).
			Gum Productions, Mr. Guetta,
19			and Mr. Garraud have never
20			engaged in any
21			correspondence with Bryan
			Pringle. (Carre Decl. ¶ 7;
22			Guetta Decl. ¶ 5; Garraud
23			Decl. ¶ 3; Guetta Tr. 20:4- 22:7, 68:16-69:9, 165:24-
24			168:14). Furthermore, Pringle
			has no evidence that such
25			correspondence ever existed.
26			(Pringle Tr. 90:5-23, 93:9-
27			94:9, 113:1-11)
_ ,			

1	151.	In 2006, Joachim Garraud called Fred	Undisputed.
2		Riesterer and asked him if he would be	1
3		willing to work on a music project	
		with he and David Guetta. Riesterer Dep. at 125	
4	152.	The three of them worked together	Disputed, but immaterial,
5		collaboratively on a song called "Love	insofar as Mr. Riesterer
6		is Gone" for David Guetta's upcoming	created the guitar part of
		album. Riesterer Dep. at 127-128	"Love is Gone" without any
7			input from Guetta or Garraud.
8			(Riesterer TRO Decl. ¶ 4;
9	1.72		Riesterer Decl. ¶ 6)
	153.	They constantly exchanged "sounds"	Undisputed that, in the course
10		and "advice" in order to have the "best	of creating "Love is Gone,"
11		possible" song. Riesterer Dep. at 129	Mr. Guetta, Mr. Riesterer, and
10			Mr. Garraud exchanged musical sounds and attempted
12			to create the best possible
13			work they could. Disputed
14			that they did so "constantly."
			(Riesterer Tr. 122:11-129:21).
15			Disputed, but immaterial,
16			insofar as Mr. Riesterer
17			created the guitar part of
			"Love is Gone" without any
18			input from Guetta or Garraud.
19			(Riesterer TRO Decl. ¶ 4;
			Riesterer Decl. ¶ 6)
20			
21			

1		154.	It was during this process that they	Disputed, but immaterial. Mr.
2			came upon the "guitar twang	Riesterer has clarified that,
3			sequence" that Riesterer admitted in	while the "guitar twang
			his November 2010 declaration was	sequence" is based on "Love is Gone" the composition's
4			eventually used in "I Gotta Feeling." Declaration of Frederic Riesterer	Gone," the composition's guitar preset and sound effects
5			("Riesterer Nov. 23 Decl.") attached to	are different (Riesterer Tr.
6			Opposition to Motion for Preliminary	191:23-192:23, 202:6-14;
			Injunction (Dckt. No. 22-3) at ¶¶ 4-6.	Riesterer Decl. ¶ 6), and
7				further testified that Mr.
8				Garraud had no role in the
9				creation of the "guitar twang sequence." (Riesterer Tr.
10				194:23-25).
	-	155.	In "his" November 23, 2010	Disputed, but immaterial.
11			declaration, Riesterer claimed that the	Undisputed that, in his TRO
12			entire "guitar twang sequence" was	Declaration—which was
13			recorded by Univers Sons and	obtained on an emergency
			available in its library under the name	basis—Mr. Riesterer stated
14			"Strat with SM57 Crunchy". In his deposition however, Riesterer	that he used a preset titled "Strat with SM57 Crunchy" to
15			admitted that he never reviewed this	create the "guitar twang
16			declaration, did not understand it as	sequence." In his MSJ
			written in English and that that	Declaration, Mr. Riesterer
17			statement was patently false. Riesterer	clarified that he in fact used a
18			Nov. 23 Decl. at ¶ 6; Riesterer Dep. at	very similar preset titled "Strat
19			164-167; 175:11-176:7	with SM57 Stereo Spread." Riesterer Decl. ¶ 7 & n.2.
20				Moreover, Mr. Riesterer
				testified that his "managers
21				would translate for [him]
22				(Riesterer Tr. at 172:1), and
23				that he made the statements
				that ultimately went into his emergency TRO Declaration
24				in French, and for translation
25				by his trusted associates (<i>id.</i> at
26				172:3-5, 177:5-13).
27				

1	156.	Riesterer and Guetta continued to	Undisputed.
2		work together after the release of "Love is Gone." Riesterer Dep.	
3		190:18-191:4.	
4	157.	In October 2008, they began working in Riesterer's studio on an	Undisputed.
5		"instrumental" song called "David Pop	
6		GTR." Riesterer Dep. at 194; Guetta	
7	158.	Dep. at p. 143-144 They "wanted to create a song with the	Undisputed that Mr. Riesterer
8		same guitar as in "Love is Gone" and	worked hard to create the
9		they worked tirelessly "one next to another" in order to get it done.	"guitar twang sequence." Disputed, but immaterial, to
10		Riesterer Dep. at 194:	the extent Pringle claims that
11			the "guitar twang sequence" in "I Gotta Feeling" actually
12			appears in "Love is Gone."
13			Riesterer has clarified that, while the "guitar twang
14			sequence" is based on "Love is
15			Gone," the composition's guitar preset and sound effects
16			are different. (Riesterer Tr.
17			191:23-192:23, 202:6-14; Riesterer Decl. ¶ 6)
18	159.	Around the same time however,	Undisputed that Mr. Adams
19		Defendant Adams reached out to	contacted Mr. Guetta in 2009 to discuss Mr. Guetta
20		David Guetta because he "want[ed] him to produce a song for the Black	producing a song for a Black
21		Eyed Peas." Deposition of William	Eyed Peas album. Disputed
22		Adams ("Adams Dep") at 237, attached to Dickie Decl. as Exhibit	that this was "[a]round the same time" as Mr. Guetta and
23		[sic]	Mr. Riesterer were working on
24			"David Pop GTR" and/or the "guitar twang sequence."
25	160.	Guetta and Adams began discussing a	Undisputed.
26		possible "swap deal" that would see Guetta and the Black Eyed Peas	
27		appear on each others' albums in some	
28		capacity. Guetta Dep. at p. 197	
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161.	Adams specifically asked Guetta to	Undisputed that Mr. Adams
	"produce a song for the Black Eyed	stated, based on his
	Peas that [was] similar to [Love is	recollection of a telephone
	Gone]." Adams Dep. at 237	conversion with Mr. Guetta,
		that he told Mr. Guetta that "I
		love your song 'Now That The
		Love Is Gone.' Can you
		produce a song for The Black
		Eyed Peas that's similar to that?" (Adams Tr. 237:14-16).
162	Adams was particularly attracted to	Undisputed that Mr. Adams
102.	_ = -	requested a song "similar" to
		"Love is Gone," and that he
	1	mentioned a "guitar twang" in
		"Now That The Love Is Gone"
		at his deposition. (Adams Tr.
		237:14-16, 239:1-2).
		Disputed, but immaterial, that
		Mr. Adams testified that he
		"was particularly attracted to
		the 'guitar twang' used in
1.60		Love is Gone." <i>Id</i> .
163.		Undisputed that Mr. Guetta
		sent Mr. Adams a sound file
164	*	containing "David Pop GTR."
104.		Undisputed that Mr. Guetta did not ask for, or need, express
		authorization from Mr.
	- Cacha Dop. at p. 150.	Riesterer before sending
		"David Pop GTR" as a demo
		file to Mr. Adams in 2009.
		(Guetta Tr. 150:10-16)
	161. 162. 163.	"produce a song for the Black Eyed Peas that [was] similar to [Love is Gone]." Adams Dep. at 237 162. Adams was particularly attracted to the "guitar twang" used in Love is Gone. Adams Dep. at 239. 163. Guetta then sent Adams a sound file containing "David Pop GTR." Adams Dep. at 77-78.

1 165. In fact, Guetta and Adams exchanged Undisputed that Mr. Guetta numerous files under a shroud of and Mr. Adams exchanged 2 secrecy, with Adams warning Guetta music files, and that, for 3 to "be very protective of this... You're artistic, commercial and the only one who has this—not competitive reasons, Mr. 4 management, record company, just me Guetta and Mr. Adams did not 5 and you." Guetta Dep. at p. 205; publicize the tracks they were Exhibit L to Dickie Decl. exchanging and took 6 appropriate steps to maintain 7 the confidentiality of their proprietary work. (Guetta Tr. 8 205:25-206:5 ("So it has often 9 happened that music has been leaked on the Internet before 10 the official release of the 11 album. So [Mr. Adams is] obviously asking me to be 12 protective so that a third party 13 does not put this on the Internet."); Riesterer Tr. 14 198:6-18) (generally same)). 15 Disputed, but immaterial, that this practice involved a 16 "shroud of secrecy" or was for 17 any improper purpose. (Guetta Tr. 205:13-208:1) 18 19 20 21 22 23 24 25 26 27 28

1 2	166.	Neither Guetta nor Adams concerned themselves with determining whether	Disputed, but immaterial. In the cited testimony, Mr. Guetta
3		the tracks being exchanged had been	was asked only about "[t]he
		copied or sampled from copyrighted work. Guetta Dep. at p. 110, Adams	lyrics and the vocal melody" of unidentified tracks on
4		Dep. at 111-112	unnamed albums, and simply
5			stated that he did not recall whether he had specifically
6			asked any of the artists he had
7			worked with if their lyrics were "copied." (Guetta Tr.
8			110:5-111:7). Moreover, the
9			statement is immaterial
10			because Mr. Riesterer and Mr. Guetta independently created
11			"David Pop GTR" and the
12			"guitar twang sequence" as original musical works and did
13			not copy or sample from any
14			other work. (Riesterer Decl. ¶¶ 4-7; Riesterer Tr. 165:19-
15			166:21, 179:10-181:8)
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1	167.	When Adams heard "David Pop	Undisputed that Mr. Adams
2		GTR", he said "I love that song I want	stated that he found the "chord
3		it on my album." He thought that the	progression"—not necessarily
		song was "amazing" because of the guitar "chord progression." Riesterer	the "guitar 'chord progression""—in "David Pop
4		Dep. at 195; Adams Dep. at 79	GTR" to be "amazing" and
5		Soprae 190, Haams Soprae 19	that Mr. Adams wanted to, and
6			did, use the music in "David
7			Pop GTR" on a Black Eyed
			Peas album. (Adams Tr.
8			79:18-80:7). Disputed, but immaterial, that "David Pop
9			GTR" is a completed "song."
10			Also disputed, but immaterial,
			that Mr. Adams spoke the
11			specific words "I love that
12			song I want it on my album"—
13			Pringle cites to Mr. Riesterer's testimony rather than Mr.
14			Adams' testimony.
	168.	And so, after he contributed his vocals	Undisputed that portions of the
15		and lyrics, "David Pop GTR" became	music in "David Pop GTR"
16		"I Gotta Feeling." Adams Dep. at 79	became the musical bed for "I
17			Gotta Feeling," and that Mr. Adams contributed his vocals
18			and lyrics.
		I	and ly lied.
19			
20			
21			

1	Non	e of The Defendants Can Explain The Origin Of The "Guitar Twang	
2		Sequence"	
3	169.	Adams admitted that he contributed	Undisputed that Mr. Adams composed the lyrics to "I Gotta"
4		only the lyrics for "I Gotta Feeling" and that he relied on Guetta for "the	Feeling," and that Mr. Guetta
		music." He could not account for the	is one of the creators of the
5		origin of the "guitar twang" sequence	music for "I Gotta Feeling."
6		and he was careful to specify that	Disputed, but immaterial, that
7		Guetta merely "represented" that he composed it himself. Adams Dep. at	Mr. Adams "admitted" that this is the case, and that Mr.
8		124-125.	Adams "could not account for
			the origin of the 'guitar twang'
9			sequence," as Mr. Guetta sent
10			him the "guitar twang"
11			sequence, and Mr. Guetta and Mr. Riesterer created it.
12			(Riesterer Decl. ¶¶ 4-7;
13			Riesterer Tr. 165:19-166:21,
			179:10-181:8). There is no
14			evidence that Mr. Adams was "careful to specify" that Guetta
15			"merely" represented that he
16			composed it himself.
17	170.	Guetta claimed that the guitar	Disputed, but immaterial.
		instrumentation "came from	Riesterer has explained the
18		[Riesterer]" and that Riesterer never told him where he got it from. Dickie	software, presets, and effects he used to create the "guitar"
19		Decl. Ex. [sic] Guetta Dep. at p.	twang sequence." (Riesterer
20		115:2-116:8.	Decl. ¶ 5-7). Moreover, in the
21			cited testimony, Mr. Guetta
22			stated that he did not need to ask Mr. Riesterer about the
			origins of the ideas for "Love
23			is Gone"—not "I Gotta
24			Feeling"—"because it was
25			obvious" that Mr. Riesterer created it. (Guetta Tr. 115:2-
26			116:8)
27			
<i>∠1</i>			

1	171	. Riesterer submitted wholly	Disputed, but immaterial.
2		contradictory claims as to the origins	Riesterer has explained the
		of the "guitar twang sequence." He	software, presets, and effects
3		first claimed that the entire sequence	he used to create the "guitar
4		used in "I Gotta Feeling" came pre-	twang sequence," and has fully
5		packaged from a licensed Univers-	explained any alleged
5		Sons music library. Riesterer TRO	inconsistency with his
6		Decl. at ¶¶ 5-6. (Doc. 22-3)	emergency 2010 TRO
7			declaration. (Riesterer Decl.
	172	. He later claimed however that he took	¶ 5-7)
8	1/2	the guitar sequence from "Love is	Disputed, but immaterial. Riesterer has explained the
9		Gone" and changed the "preset" and	software, presets, and effects
10		"processing effects" to make the	he used to create the "guitar
10		sequence for "I Gotta Feeling."	twang sequence." (Riesterer
11		Riesterer Nov. 9, 2011 Decl. at ¶ 6.	Decl. ¶ 5-7)
12		(Dck. 166)	" ,
	173	. He could provide no explanation for	Disputed, but immaterial.
13		the origin of the sequence from "Love	Riesterer has explained his
14		is Gone" however because he doesn't	creation of "Love is Gone" in
15		"remember exactly" how he created it.	detail, including the equipment
		Riesterer Dep. at 130:9-16.	and software he used, and his
16			process of composition.
17	174	TT 1 1 1 1 2	(Riesterer Tr. 127:13-134:17)
	174		Disputed, but immaterial.
18		evidence of the "preset" and "presessing affects" he allegedly used	Riesterer has explained his
19		"processing effects" he allegedly used. Riesterer Dep. at 130:9; Declaration of	creation of "Love is Gone" in detail, including the equipment
20		Paul Geluso at ¶ 18.	and software he used, and his
		1 aa1 Ootuso at 10.	process of composition.
21			(Riesterer Tr. 127:13-134:17;
22			Riesterer TRO Decl. ¶¶ 4-5)
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1	175.	Riesterer cannot even produce the	Disputed, but immaterial. Mr.
2		computer that he allegedly used to	Riesterer created backup files
		create the sequence, claiming that he	and all information necessary
3		gave it to a "friend" whose name he	to confirm his creation of the
4		can't remember because he "has a lot	"guitar twang sequence"
5		of friends." Riesterer Dep. at 192:24-193:6.	(which information has been produced to Pringle in this
		193.0.	case). (Riesterer Tr. 193:12-
6			194:10; Geluso Decl. [Doc.
7			162] ¶¶ 15-21, 25-28;
8			Riesterer Reply Decl. ¶ 5)
	176.	Geluso claims that Riesterer files 1-9	Disputed, but immaterial. Mr.
9		and 30 constitute the original David	Geluso was provided with, and
10		Pop Guitar creation files. Geluso at	analyzed, true and correct
11		¶ 6.	copies of Mr. Riesterer's
			creation files. (Geluso Decl.
12			[Doc. 162] ¶¶ 15-21, 25-28;
13			Riesterer Reply Decl. ¶ 5)
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177.

Furthermore, the creation dates and other metadata of Riesterer's alleged "creation files" for "I Gotta Feeling" suggest that Defendants have manipulated these files. **First**, Riesterer failed to produce the hard drive that he allegedly used to create "David Pop GTR" which became "I Gotta Feeling." **Second**, several of the creation files allegedly used to create the original version of "I Gotta Feeling" have creation dates which show that they were created after the original version of "I Gotta Feeling" was already recorded and released. Third, the "David Pop GTR" song file that Riesterer claims he used to create "I Gotta Feeling" contains an entry in the document Data Logic File for an audio device allegedly used in the creation of "I Gotta Feeling" that wasn't available in 2008 or 2009, when "I Gotta Feeling" was created. **Fourth**, one of the alleged creation files is titled "Disk 1 tb Litige (def) OK. David Pop Guitar: Audio Files. There is no reason why a file that was allegedly created in 2008 or 2009 would refer to "litigation" and be "ok." Fifth, one of the alleged creation files, "0.6s Snare Hall.SDIR", has been produced twice by the defense and has had two different creation dates each time. Pringle Decl. at ¶¶ 234-244. Frederiksen-Cross Decl. ¶¶ 46-53. [emphasis added]

Disputed, but immaterial. **First**, Mr. Riesterer created backup files and all information necessary to confirm his creation of the "guitar twang sequence" (which information has been produced to Pringle in this case). (Riesterer Tr. 193:12-194:10; Geluso Decl. [Doc. 162] ¶¶ 15-21, 25-28; Riesterer Reply Decl. ¶ 5). **Second**, Mr. Riesterer's creation files do pre-date "I Gotta Feeling"; the files to which Pringle refers are not related to the "guitar twang sequence, and their "creation" dates simply reflect Mr. Riesterer opening and using them in connection with newer music projects. (Geluso Rebuttal Decl. ¶ 51; Riesterer Reply Decl. ¶¶ 6, 8). **Third**, Mr. Riesterer did not use this device to create "David Pop GTR"; the data to which Pringle refers merely reflects that, when Mr. Riesterer opened the file to confirm it was the correct file to produce in litigation, the device was connected to his computer at the time. (Geluso Rebuttal Decl. ¶ 52; Riesterer Reply Decl. \P 6). **Fourth**, the reference to "Litige" in this file has nothing to do with "litigation"; rather, it reflects the French term for "disagreement," and refers to a

1	musical "disagreement"
2	between Mr. Riesterer and Mr.
3	Guetta. The "OK" in the file name simply reflects that the
4	disagreement was resolved.
5	(Riesterer Reply Decl. ¶ 7). Fifth, the referenced creation
6	file is not the "guitar twang
7	sequence," and is, accordingly, irrelevant. (Riesterer Reply
8	Decl. ¶ 9; see also "First,"
9	above)
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	RESPONSE TO STATEMENT

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Defendants Concoct Another Explanation

178. More than a year into the litigation, and unable to justify the striking similarity between "Take a Dive"

Dance Version, which was created in 1999, and "I Gotta Feeling", which was created in 2009, Defendants decided to make the reckless and wholly unsupported allegation that Plaintiff first heard the "guitar twang sequence" some time after "I Gotta Feeling" was released in 2009.

Exhibit J to Dickie Decl.

Disputed, but immaterial. This statement is irrelevant because Defendants need not "prove" that Pringle copied "I Gotta Feeling" to prevail on the instant motion—such copying would constitute copyright infringement by Pringle, which Defendants have not elected to assert at this time. Regardless, Pringle has not established that he actually created "Take a Dive" (Dance Version) in 1999, and the recording he has submitted to the Copyright Office and the Court was in fact created in 2010. (Pringle Dep. Tr. 17:1-19:7, 69:5-71:6, 72:20-73:13, 76:3-6, 100:24-101:8, 124:2-20, 201:15-23, 375:22-377:22). Moreover, the physical evidence precludes sampling by Defendants, but suggests sampling of "I Gotta Feeling" by Mr. Pringle, and Mr. Pringle has destroyed evidence that would confirm this. (Geluso TRO Decl. ¶ 7; Geluso MSJ Decl. ¶¶ 10-13; Laykin MSJ Decl. ¶¶ 30-36)

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1	179.	They then claimed that Plaintiff	Disputed, but immaterial. This
2		somehow reverse engineered "I Gotta	statement is irrelevant because
2		Feeling" in 2009 to make it look like	Defendants need not "prove"
3		"Take a Dive" Dance Version was	that Pringle copied "I Gotta
4		created in 1999. Exhibit J to Dickie	Feeling" to prevail on the
5		Decl.	instant motion—such copying would constitute copyright
			infringement by Pringle, which
6			Defendants have not elected to
7			assert at this time. Moreover,
8			Pringle provides no
			meaningful evidence that he
9			actually created "Take a Dive"
10			(Dance Version) in 1999, and
11			the recording he has submitted
			to the Copyright Office and the Court was created in 2010.
12			(Pringle Dep. Tr. 17:1-19:7,
13			69:5-71:6, 72:20-73:13, 76:3-
14			6, 100:24-101:8, 124:2-20,
			201:15-23, 375:22-377:22).
15			However, the physical
16			evidence precludes sampling
17			by Defendants, but suggests
			sampling of "I Gotta Feeling"
18			by Mr. Pringle, and Mr.
19			Pringle has destroyed evidence that would confirm this.
20			(Geluso TRO Decl. ¶ 7;
20			Geluso MSJ Decl. ¶¶ 10-13;
21			Laykin MSJ Decl. ¶¶ 30-36)
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RESPONSE TO STATEMENT OF GENUINE DISPUTES

1	180.	Defendants have not presented a single	Disputed, but immaterial. This
2		piece of evidence that proves or even	statement is irrelevant because
3		suggests that Pringle engaged in such	Defendants need not "prove"
3		conduct. Deposition of Erik Laykin at	that Pringle copied "I Gotta
4		92:17-92:20, 93:12-93:19, 94:22-24, ,	Feeling" to prevail on the
5		("Laykin Dep."), attached to Dickie	instant motion—such copying would constitute copyright
		Decl. as Exhibit E.; Frederiksen-Cross Decl. at ¶¶ 14-44	infringement by Pringle, which
6		Deci. at 14-44	Defendants have not elected to
7			assert at this time. Moreover,
8			Pringle provides no
			meaningful evidence that he
9			actually created "Take a Dive"
10			(Dance Version) in 1999, and
11			the recording he has submitted
			to the Copyright Office and the
12			Court was created in 2010. (Pringle Dep. Tr. 17:1-19:7,
13			69:5-71:6, 72:20-73:13, 76:3-
14			6, 100:24-101:8, 124:2-20,
			201:15-23, 375:22-377:22).
15			However, the physical
16			evidence precludes sampling
17			by Defendants, but suggests
17			sampling of "I Gotta Feeling"
18			by Mr. Pringle, and Mr.
19			Pringle has destroyed evidence
			that would confirm this.
20			(Geluso TRO Decl. ¶ 7; Geluso MSJ Decl. ¶¶ 10-13;
21			Laykin MSJ Decl. ¶¶ 30-36)
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1	181.	Plaintiff has produced evidence that	Disputed, but immaterial.
2		"Take a Dive" (Dance Version) is a	Pringle has not established that
		derivative of "Take a Dive." Norris	he actually created "Take a
3		Decl. ¶ 6.	Dive" (Dance Version) in
4			1999, and the recording he has
5			submitted to the Copyright
3			Office and the Court was
6			created in 2010—after the
7			release of "I Gotta Feeling."
			(Pringle Dep. Tr. 17:1-19:7,
8			69:5-71:6, 72:20-73:13, 76:3-
9			6, 100:24-101:8, 124:2-20, 201:15-23, 375:22-377:22)
	182.	Plaintiff has produced evidence that	Disputed, but immaterial. The
10	102.	establishes conclusively that August	creation date of Pringle's
11		22, 1999 was the last time that the	alleged "creation file" for
12		creation file for "Take a Dive" Dance	"Take a Dive" (Dance
		Version, containing the song, its	Version) can be easily
13		component parts and its sequencing	backdated, and without his
14		and arrangement information, was	computers and hard drives—
		modified. [Gallant, Frederickson]	which Pringle has destroyed—
15		Gallant Decl. at ¶ 9; Frederiksen-Cross	it is impossible to verify the
16		Decl. at ¶ 14-44	true creation date(s). (Laykin
17			MSJ Decl. ¶ 21-29)
1 /	183.	Defendants theory is based on the	Disputed, but immaterial. The
18		assumption that Mr. Pringle wanted to	statement is irrelevant because
19		create a backdated NRG file[.]	Defendants need not "prove"
		Frederiksen-Cross Decl. at ¶ 21	that Pringle copied "I Gotta
20			Feeling" to prevail on the
21			instant motion—such copying
			would constitute copyright
22			infringement by Pringle, which Defendants have not elected to
23			assert at this time.
24			assert at this time.

1	184.	j	Disputed, but immaterial. This
2		assumption that Mr. Pringle retained	statement is irrelevant because
3		blank CD recording media for approximately 10 years and was also	Defendants need not "prove" that Pringle copied "I Gotta
		able to somehow determine the age of	Feeling" to prevail on the
4		this media to identify how old it was[.]	instant motion—such copying
5		Frederiksen-Cross Decl. at ¶ 21	would constitute copyright
6		2200211110011	infringement by Pringle, which
			Defendants have not elected to
7			assert at this time. Moreover,
8			Pringle admitted purchasing
			CDs in bulk, and his expert
9			was easily able to determine
10			the manufacture date of the
11			CD. (Pringle Tr. 76:3-7,
			276:9-10; Gallant Decl. ¶ 6).
12			None of these assumptions are
13			impossible or even remarkable.
14	185.	Defendants theory is based on the	Disputed, but immaterial. This
	105.	assumption that the CD recording	statement is irrelevant because
15		media was stored in an environment	Defendants need not "prove"
16		with sufficient protection from heat	that Pringle copied "I Gotta
		and damage that it would still be	Feeling" to prevail on the
17		useable after that time period[.]	instant motion—such copying
18		Frederiksen-Cross Decl. at ¶ 21	would constitute copyright
19			infringement by Pringle, which Defendants have not elected to
20			assert at this time. None of
			these assumptions are
21			impossible or even
22			remarkable.
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1	186.	Defendants theory is based on the	Disputed, but immaterial. This
2		assumption that Mr. Pringle somehow	statement is irrelevant because
3		discovered a copy of the guitar twang	Defendants need not "prove"
3		from an Internet source, that the guitar	that Pringle copied "I Gotta
4		twang coincidentally matched a song that Mr. Pringle wrote and copyrighted	Feeling" to prevail on the instant motion—such copying
5		a decade before, and that Mr. Pringle	would constitute copyright
6		was able to integrate the guitar	infringement by Pringle, which
		sequence somehow with the music for	Defendants have not elected to
7		"Take A Dive" that Mr. Pringle had	assert at this time. None of
8		already composed, in order to create a	these assumptions are
9		new recording that he would then	impossible or even
		backdate[.] Frederiksen-Cross Decl. at	remarkable.
10	187.	¶ 21 Defendants theory is based on the	Disputed, but immaterial. This
11	107.	assumption that Mr. Pringle	statement is irrelevant because
12		deliberately set the computer date back	Defendants need not "prove"
		to 1999, so that the files he wrote	that Pringle copied "I Gotta
13		would have operating system dates	Feeling" to prevail on the
14		from 1999[.] Frederiksen-Cross Decl.	instant motion—such copying
15		at ¶ 21	would constitute copyright
			infringement by Pringle, which Defendants have not elected to
16			assert at this time. None of
17			these assumptions are
18			impossible or even
			remarkable.
19	188.	Defendants theory is based on the	Disputed, but immaterial. This
20		assumption that Mr. Pringle	statement is irrelevant because
21		coincidentally kept at least 134	Defendants need not "prove"
22		contemporaneous photos, including photos of himself, whose external file	that Pringle copied "I Gotta Feeling" to prevail on the
		dates and internal metadata dates are	instant motion—such copying
23		from September 6th and 8th 1999[.]	would constitute copyright
24		Frederiksen-Cross Decl. at ¶ 21	infringement by Pringle, which
25		"	Defendants have not elected to
			assert at this time. None of
26			these assumptions are
27			impossible or even remarkable.
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1	189.	It is uncontroverted that "Take a Dive"	Disputed, but immaterial.
2		(Dance Version) is a derivative of	Pringle provides no
3		"Take a Dive", along with Plaintiff's	meaningful evidence that he
		other songs "Faith" and "Regret,"	actually created "Take a Dive"
4		which are also on the copyrighted album "Deadbeat Club." Pringle Decl.	(Dance Version) in 1999, and the recording he has submitted
5		¶ 133	to the Copyright Office and the
6		133	Court was created in 2010—
			after the release of "I Gotta
7			Feeling." (Pringle Dep. Tr.
8			17:1-19:7, 69:5- 71:6, 72:20-
0			73:13, 76:3-6, 100:24-101:8,
9			124:2-20, 201:15-23, 375:22-
10			377:22). Moreover,
11			uncontroverted evidence
			shows that Defendants, not Mr. Pringle, composed the
12			"guitar twang sequence"
13			(Riesterer Decl. ¶¶ 4-7;
14			Riesterer Tr. 165:19-166:21,
			179:10-181:8). Mr. Pringle
15			has also testified that he
16			recorded the "guitar twang"
17			sequence in 1999 rather than
			1997, and that it was "modeled after 'Take a Dive's'
18			progression of notes in the
19			chorus vocals of the original
20			version, which [he] sang,"
			rather than recorded for the
21			songs "Faith" and/or "Regret."
22			(Pringle TRO Decl. ¶ 4;
23			Pringle PI Decl. ¶ 4)
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1	190.	In addition to providing	Disputed, but immaterial. It is
2		uncontroverted evidence that he	uncontested that Pringle has
		created "Take a Dive" Dance Version	destroyed relevant evidence
3		in 1999, Plaintiff took considerable	during the pendency of this
4		and significant steps to preserve this	litigation. (Laykin MSJ Decl.
5		evidence. Gallant Decl. at ¶ 4	¶¶ 21-36). There is no
5			authenticated admissible
6			evidence that Pringle created
7			"Take a Dive" (Dance
	101	District he also down the amortion file for	Version) in 1999.
8	191.	Plaintiff backed up the creation file for "Take a Dive" Dance Version on to a	Disputed, but immaterial.
9		small computer serial interface (SCSI)	Pringle presents no evidence that he actually did this, or
10		hard drive. Gallant Decl. at ¶ 4	when—Gallant merely
10		nard drive. Gariant Deer, at 4	declares that Pringle <i>told him</i>
11			he did this. (Gallant Decl.
12			¶ 4). Pringle no longer has this
			alleged hard drive or any of
13			the related equipment. (<i>Id.</i> ;
14			Pringle Decl. ¶¶ 147, 148)
	192.	He then connected the SCSI drive to a	Disputed, but immaterial.
15		Windows 98 based computer and,	Pringle presents no evidence
16		using Ensoniq Disk Manager (EDM)	that he actually did this, or
17		software, he created .NRG image files	when—Gallant merely
		creation files he burned on to a cd and	declares that Pringle told him
18		titled "DISK05.NRG"2. Gallant Decl.	he did this. (Gallant Decl.
19		at ¶ 4	¶ 4). Pringle no longer has this
			alleged hard drive or any of
20			the related equipment. (<i>Id.</i> ; Pringle Decl. ¶¶ 147, 148)
21			1 mgic Deci. 147, 148)
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1	193.	These steps preserved the evidence of	Disputed, but immaterial.
2		his creation of the "Take a Dive"	Pringle presents no evidence
		Dance Version even after his hard	that he actually "preserved"
3		drives and audio equipment were	any evidence of alleged
1		stolen from a storage locker on	creation of "Take a Dive"
5		October 19, 2000. Pringle Decl. at	Dance Version in 1999.
'		¶ 147; Gallant Decl. at ¶ 4	(Gallant Decl. ¶ 4; Pringle
5			Decl. ¶¶ 147, 148; Pringle
,			Dep. Tr. 17:1-19:7, 69:5-71:6,
			72:20-73:13, 76:3-6, 100:24-
3			101:8, 124:2-20, 201:15-23,
)	104	Association to reverse beating its local age. the	375:22-377:22)
	194.	According to www.beatportal.com, the website from which the Defendants	Disputed, but immaterial. Even if the various stems of "I
)		claim Pringle downloaded Black Eyed	Gotta Feeling" were available
		Peas samples, the tracks were only	on www.beatportal.com only
2		available from August 21 to	between August 21 and
		September 8, 2009. Frederiksen-Cross	September 8, 2009, that does
3		Decl. at ¶ 35	not preclude their availability
			on other websites or from
			other sources at other times.
			Indeed, Defendants' expert
;			personally downloaded the
			remix stems for "I Gotta
'			Feeling" as recently as January
3			2, 2012. (Geluso Rebuttal
)			Decl. ¶ 35).
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1	1	95.	Evidence of that downloading would	Disputed, but immaterial. Ms.
2			have been on the hard drive that he	Frederiksen-Cross has no basis
3			upgraded in January 2010, at least a	to state what was or was not on
			month before he became aware of "I	a computer she did not examine, and even if the
4			Gotta Feeling." Frederiksen-Cross Decl. at ¶ 36	various stems of "I Gotta
5			Deci. at 30	Feeling" were available on
6				www.beatportal.com only
				between August 21 and
7				September 8, 2009, that does
8				not preclude their availability
9				on other websites or from other sources at other times.
10				Indeed, Defendants' expert
				personally downloaded the
11				remix stems for "I Gotta
12				Feeling" as recently as January
13				2, 2012. (Geluso Rebuttal
	1	06	His raple coment hard drive in	Decl. ¶ 35). Disputed, but immaterial. Ms.
14	1	96.	His replacement hard drive, in operation from January 2010 to	Frederiksen-Cross has no basis
15			January 2011, would not have had any	to state what was or was not on
16			data relating to activities from 2009.	a computer she did not
17			Frederiksen-Cross Decl. at ¶ 37	examine, and even if the
				various stems of "I Gotta
18				Feeling" were available on
19				www.beatportal.com only between August 21 and
20				September 8, 2009, that does
				not preclude their availability
21				on other websites or from
22				other sources at other times.
23				Indeed, Defendants' expert personally downloaded the
24				remix stems for "I Gotta
				Feeling" on January 2, 2012.
25				(Geluso Rebuttal Decl. ¶ 35).
26				Moreover, this statement does
27				not address Mr. Pringle's
28				computer hard drive used in 2010.
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	197.	Furthermore, Beatportal would have	Disputed, but immaterial.
2		records evidencing Pringle's alleged	Pringle and Ms. Frederiksen-
		registration, downloading of tracks,	Cross have no basis to state
3		and credit card payment for purchase	what records Beatportal may
1		of tracks. Frederiksen-Cross Decl. at	or may not keep, and whether
5		¶ 38	such records (if any) would be available to third parties.
5			Moreover, the referenced
			musical stems were also
7			available from sources other
3			than Beatportal. (Geluso
)			Rebuttal Decl. ¶ 35).
	198.	Defendants have produced no	Undisputed, but irrelevant.
)		evidence of same and Clark Warner's	Pringle and Ms. Frederiksen-
		declaration makes no such reference.	Cross have no basis to state
		Declaration of Clark Warner, Dckt.	what records Beatportal may
2		No. 163.	or may not keep, and whether
3			such records (if any) would be
			available to third parties.
			Moreover, the referenced musical stems were also
			available from sources other
			than Beatportal. (Geluso
			Rebuttal Decl. ¶ 35).
	199.	When Plaintiff returned his defective	Disputed, but immaterial.
;		hard drive to Western Digital for	Pringle offers no evidence of
		warranty repair or replacement in the	the contents of this allegedly
		summer of 2011, it did not contain any	defective hard drive and no
۱.		remix of "I Gotta Feeling." Pringle	basis to deny that he has
		Decl. at ¶ 246	spoliated critical evidence.
			(Laykin MSJ Decl. ¶¶ 34-36)

1	20	,	Disputed, but immaterial.
2		reason to believe that there was	Pringle offers no evidence of
3		anything on his defective hard drive	the contents of this allegedly
3		that had anything to do with his case	defective hard drive and no
4		because he, in good faith, believed that	<u> </u>
5		all such materials were turned over to	spoliated critical evidence. (Laykin MSJ Decl. ¶¶ 34-36).
		David Gallant in 2010. Pringle Decl. at ¶ 247	Defendants made numerous
6		at 247	demands that Pringle preserve
7			and produce for inspection <u>all</u>
8			of his computer equipment
			from 2009 to the present.
9	20	1. Before returning the hard drive for	Disputed, but immaterial.
10		repair, Plaintiff backed up everything	Pringle failed to conduct a
11		he could onto a DVD-Rom and	proper forensic backup of the
11		provided it to Gallant, who made it	discarded hard-drive and,
12		available to Defendant's expert, Mr.	therefore, the "backup" files
13		Aga on August 8, 2011. Pringle Decl.	could not contain the key
		at ¶ 250	evidence (such as temporary Internet files, program data or
14			system data) that Pringle
15			destroyed. (Laykin MSJ Decl.
16			¶¶ 34-36; Pringle Tr. 286)
	20	2. Mr. Aga declined to inspect the hard	Disputed, but immaterial. The
17		drive. Pringle Decl. at ¶ 254	"hard drive" Pringle made
18			available for inspection was
19			not the hard drive he disposed
			of, but alleged "backup" files
20			saved to a DVD. (Pringle Decl. ¶ 254). Pringle failed to
21			conduct a proper forensic
22			backup of the discarded hard-
23			drive and, therefore, the
			"backup" files could not
24			contain the key evidence (such
25			as temporary Internet files,
26			program data or system data) that Pringle destroyed.
			(Laykin MSJ Decl. ¶¶ 34-36)
27			(Laykiii 14153 Deci. 34-30)

1 2		203.	On November 15, 2011 Mr. Pringle submitted an application to the U.S. Copyright Office for the registration of	Undisputed.			
3			the derivative Dance Version of "Take				
4		204.	a Dive." Exhibit K to Dickie Decl. The Copyright Office registered the	Undisputed that the Copyright			
5		204.	sound recording in "Take a Dive	Office issued a registration in			
6			(Dance Version)," but refused to	the sound recording of "Take a			
7			register the musical composition in the new material added, stating that the	Dive" (Dance Version) and denied registration of same as			
8			"work does not contain enough	a new musical composition,			
9			original musical authorship to be copyrightable." Exhibit K to Dickie	based on an application submitted on November 15,			
10			Decl.	2010 (after Pringle filed suit).			
11		205.	Plaintiff has notified the Copyright Office of the litigation pursuant to	Disputed, but immaterial. Undisputed that Plaintiff			
12			Section 411(a) of the Copyright Act.	notified the Copyright Office			
13			Exhibit K to Dickie Decl.	of litigation pertaining to the			
14				original version of "Take a Dive" on or around October			
15				28, 2010. (Doc. 3). Disputed			
16				that Plaintiff notified the Copyright Office, in any form,			
				of litigation pertaining to			
17				"Take a Dive" (Dance			
18				Version) at that time, or at any time prior to December 9,			
19				2011. (Dickie Decl., Ex. K			
20				(Doc. 197-11)).			
21	Datada January 0, 2012 I OED & LOED LLD						
22	Dated: January 9, 2012 LOEB & LOEB LLP						
23		By: /s/ Tal E. Dickstein Donald A. Miller					
24	Donald A. Miller Barry I. Slotnick Tal E. Dickstein						
25							
26		Attorneys for Defendants SHAPIRO, BERNSTEIN & CO., INC., FREDERIC RIESTERER and DAVID					
27			FRED GUET	PERIC RIESTERER and DAVID TTA			
28							
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