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9
 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
 17 FERGUSON; ALLAN PINEDA; and
 18 JAIME GOMEZ, all individually and
 collectively as the music group The
 Black Eyed Peas, et al.,
 19 Defendants.

Case No. SACV 10-1656 JST(RZx)
 Hon. Josephine Staton Tucker
 Courtroom 10A

**DECLARATION OF BARRY I.
 SLOTNICK IN SUPPORT OF
 DEFENDANTS' MOTION FOR AN
 AWARD OF ATTORNEYS' FEES
 AND FULL COSTS**

Complaint Filed: October 28, 2010
 Hearing Date: June 25, 2012
 10:00 A.M.
 Courtroom 10A

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1 I, BARRY I. SLOTNICK, declare as follows:

2 1. I am a partner and chair of the Intellectual Property and Entertainment
3 Litigation Practice Group at Loeb & Loeb LLP (“Loeb”), attorneys for Shapiro,
4 Bernstein & Co., Inc., Frederic Riesterer and David Guetta (collectively the “Guetta
5 Defendants”). I am a member in good standing of the Bar of the State of New York
6 and have been admitted to practice in this Court *pro hac vice*. I have personal
7 knowledge of the facts set forth in this Declaration and, and if called as a witness,
8 could and would testify competently thereto.

9 2. I submit this declaration in support of Defendants’ Motion for an
10 Award of Attorneys’ Fees and Full Costs pursuant to 17 U.S.C. § 505, Fed. R. Civ.
11 P. 11, 28 U.S.C. § 1927 and the Court’s inherent authority, to support the
12 reasonableness of the attorneys’ fees and non-taxable costs incurred by the Guetta
13 Defendants in this action, and to provide the Court with documentation for those
14 attorneys’ fees and costs.

15 3. The Guetta Defendants seek \$1,394,554 in attorneys’ fees and
16 \$191,639 in non-taxable costs.¹ As discussed below, these fees and costs were
17 reasonably and necessarily incurred in defending this copyright infringement action,
18 especially given the subject matter of the action, the duration of the litigation (over a
19 year and-a-half), the broad scope of fact and expert discovery, the fact that Plaintiff
20 sought over \$53 million in damages, and the fact that the Guetta Defendants were
21 forced to brief a comprehensive motion for summary judgment. Moreover, these
22 attorneys’ fees represent a substantial discount and write-offs of time that was
23 actually worked on this matter.

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27 ¹ A proposed Bill of Costs itemizing the Guetta Defendants’ taxable costs is being
28 submitted contemporaneously herewith.

1 **I. The Hourly Rates of Loeb Attorneys Are Commensurate With**
2 **Experienced Intellectual Property Counsel in the Relevant Jurisdiction**

3 4. Loeb is a full service law firm with offices in Los Angeles, New York,
4 Chicago, Nashville, and Washington, D.C. Loeb is widely known for its Intellectual
5 Property Litigation practice. Loeb employs more than 300 attorneys, approximately
6 56 of whom specialize in Intellectual Property. In 2008, *The Legal 500* ranked Loeb
7 among the top law firms in Intellectual Property, and recognized Loeb's "reputation
8 for being a leader in the entertainment field" and its "strengths in the music field".
9 (Ex. 1 at 161.) In 2010, *Chambers U.S.A.* ranked Loeb among the top Media and
10 Entertainment law firms, and recognized Loeb's "established history and nationally-
11 recognized reputation in the entertainment and media industry". (Ex. 2 at 595,
12 1673.) Loeb was recently named to *The National Law Journal's* inaugural
13 "Intellectual Property Hot List", which recognized firms that excel in providing
14 patent, copyright and trademark legal services.

15 5. The attorneys assigned to work on this case included myself, associates
16 Tal E. Dickstein and Thomas D. Nolan in Loeb's New York City office, and
17 associates Donald A. Miller and Eric Schwartz in Loeb's Los Angeles office. The
18 paralegals who assisted with this matter include Antoinette Pepper and Timothy
19 Cummins. Other Loeb partners, associates and professionals also provided services
20 in connection with this case, and charged a total of more than \$50,000 in fees.
21 However, because none of those other attorneys and professionals were part of the
22 Guetta Defendants' core litigation team, and none individually charged more than
23 \$10,000 to this matter, we have chosen not to seek reimbursement for those fees.

24 6. Based on my experience and personal knowledge, the hourly rates
25 charged by Loeb partners, associates and paralegals in this case, which are set forth
26 below, are less than those charged by other California and New York law firms of
27 comparable size, reputation and expertise to defend similarly complex cases.

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1 7. The Guetta Defendants appreciate that the Court previously reduced the
2 hourly rates of Loeb attorneys and paralegals when they sought to recover their
3 attorneys' fees in connection with the motion to quash service on Rister Editions in
4 April 2011. That motion involved a relatively straightforward issue of improper
5 service of process. The defense of this copyright infringement litigation, on the
6 other hand, required expertise in copyright law, an understanding of computer
7 forensics and methods of electronic music creation, and a familiarity with the music
8 industry in general. I therefore respectfully submit that Loeb's hourly rates are
9 reasonable given Loeb's expertise in copyright law and in the music industry, and
10 the fact that there was over \$53 million in damages potentially at stake.

11 **A. Barry I. Slotnick**

12 8. I am a partner and chair of the Intellectual Property and Entertainment
13 Litigation Practice Group in Loeb's New York City office. I am a graduate of the
14 Syracuse University College of Law, where I graduated With Honors, and have been
15 licensed to practice law in the State of New York since 1972. I am a nationally
16 recognized copyright and trademark litigator who has represented clients in the
17 music and entertainment industries in courts throughout the United States, and I
18 frequently lecture on the topics of entertainment and copyright law. From 2004 to
19 2006, I served as President of the Copyright Society of the U.S.A. In 2010,
20 *Chambers U.S.A.* recognized me as a Leading Individual in the practice of copyright
21 and trademark litigation and matters in the entertainment industry. (Ex. 2 at 1755.)
22 In 2008, *The Legal 500* recognized me as a Leading Lawyer in the practice of
23 Intellectual Property law and even commented that I am "held in the highest of
24 esteem by clients and peers alike" and "a big draw for clients." (Ex. 1 at 162.) I
25 have also been recognized in *Super Lawyers* for my work in Intellectual Property
26 litigation and entertainment law. A copy of my bio is attached as Exhibit 3.

27 9. I served as lead counsel for the Guetta Defendants in this action. My
28 time on this matter was primarily spent formulating case strategy, appearing in court

1 for motion hearings, defending the depositions of Loeb’s clients, Guetta and
2 Riesterer, appearing at the deposition of Plaintiff, reviewing briefs and other written
3 court submissions drafted by Loeb associates, and generally overseeing the progress
4 of the case.

5 10. From November 2011 through May 23, 2012,² I billed 439.4 hours on
6 this matter, for total fees of \$296,595 before applying the discounts and write-offs
7 shown below, such that my average hourly rate before discount was approximately
8 \$675. In addition, this represents a discount from my usual hourly rate, because
9 Shapiro, Bernstein & Co., Inc. is a long-standing client.

10 11. My average hourly rate of \$675 charged in this case is commensurate
11 with those of other Intellectual Property litigation partners and department chairs
12 with similar years of experience at firms of comparable size in New York City and
13 Los Angeles. Attached as Exhibit 4 hereto are excerpts of the American Intellectual
14 Property Law Association’s 2011 Report of the Economic Survey (“AIPLA
15 Survey”) with relevant portions highlighted. Courts in this Circuit have relied on
16 the AIPLA Survey in determining the reasonableness of fees of Intellectual Property
17 attorneys. *See, e.g., Zynga Game Network Inc. v. Williams*, 2011 WL 2560240, at
18 *2 (N.D. Cal. 2011).

19 12. The AIPLA Survey indicates that, in 2010, the upper quartile (top
20 75%)³ of billing rates for Intellectual Property partners practicing in New York City
21 was \$675, in Los Angeles was \$603, and for partners in firms nationwide with
22 between 51-100 Intellectual Property lawyers, such as Loeb, was \$650 per hour.

23 ² The Guetta Defendants reserve the right to seek recovery of additional fees and
24 costs incurred in completing the instant motion and any reply, which additional fees
25 and cost cannot be computed at this time. The Guetta Defendants estimate that such
26 additional fees and costs will be between \$10,000 to \$20,000, depending on the
length and complexity of Plaintiff’s opposition.

27 ³ The upper quartile of hourly rates for all partners is a conservative metric to use for
28 comparison, given my approximately 40 years of experience as an Intellectual
Property attorney and my expertise in copyright law.

1 (Ex. 4 at I-34.) These rates are in line with the \$675 average rate that I charged in
2 this action.

3 13. Attached hereto as Exhibit 5 is a December 2011 Billing Survey
4 published by *The National Law Journal* (“NLJ Survey”) with relevant portions
5 highlighted. The NLJ Survey indicates that the hourly rates for highly experienced
6 partners at law firms of comparable size in New York City and Los Angeles range
7 from \$730 to \$1,120, which is well above my average hourly rate of \$675 charged
8 in this case. (Ex. 5 at 12-13.)

9 **B. Tal E. Dickstein**

10 14. Tal Dickstein is a senior litigation associate in Loeb’s New York City
11 office. He is a graduate of the Benjamin N. Cardozo School of Law, Yeshiva
12 University, where he was a member of the *Cardozo Law Review* and graduated
13 *magna cum laude*. He has been licensed to practice law in the State of New York
14 since 2004. Mr. Dickstein served as a law clerk for the Honorable Louis L. Stanton
15 of the United States District Court for the Southern District of New York. He is a
16 member of the Copyright Society of the U.S.A., the Intellectual Property Law
17 Section of the New York State Bar Association and the Federal Bar Council. Mr.
18 Dickstein has extensive litigation experience, with particular focus on intellectual
19 property matters in the music and advanced media industries. A copy of Mr.
20 Dickstein’s bio is attached hereto as Exhibit 6.

21 15. Mr. Dickstein served as the lead associate on this matter and took
22 primary responsibility for the day-to-day conduct of the litigation. His time was
23 primarily spent drafting discovery requests and responses; reviewing and analyzing
24 Plaintiff’s document productions and discovery responses; communicating with the
25 Guetta Defendants to facilitate production of discovery documents and materials;
26 conferring with Plaintiff’s counsel in attempts to resolve discovery and procedural
27 disputes; communicating with the Guetta Defendants’ sound recording expert, Paul
28 Geluso, and damages experts, Barry Massarsky and Abbey Konowitch; drafting

1 briefs and other written submissions to the Court (including the Guetta Defendants'
2 motion for summary judgment and reply, and this motion for attorneys' fees and full
3 costs); taking the depositions of Plaintiff's damages expert, Arthur Cobb, and of a
4 third party witness, Brad Mitchell of Verbatim Americas LLC; defending the
5 depositions of sound recording expert Paul Geluso and of Riesterer; assisting in the
6 defense of the depositions of Guetta; and appearing at the depositions of The Black
7 Eyed Peas band members, and of the Plaintiff.

8 16. Mr. Dickstein billed 1,324.6 hours on this matter from November 2010
9 through May 23, 2012 for total fees of \$742,690 before applying the discounts,
10 adjustments and write-offs shown below, such that his average hourly rate before
11 discount was approximately \$561.

12 17. Mr. Dickstein's average hourly billing rate of \$561 is commensurate
13 with those of other senior Intellectual Property associates practicing at similarly
14 sized law firms in New York City and Los Angeles. The AIPLA Survey indicates
15 that in 2010, the upper quartile (top 75%)⁴ of billing rates for Intellectual Property
16 associates was \$545 in New York City, \$445 in Los Angeles, and \$460 for
17 associates at firms nationwide with between 51-100 Intellectual Property lawyers
18 (such as Loeb). (Ex. 4 at I-52.)

19 18. The NLJ Survey indicates that the hourly rates for eighth year
20 associates at law firms of comparable size in New York City and Los Angeles range
21 from \$420 to \$675, which is in line with Mr. Dickstein's pre-discount \$561 average
22 billing rate charged in this case. Indeed, several firms charge significantly more
23 than Mr. Dickstein's average hourly rate (DLA Piper \$675; Hughes Hubbard &
24

25 _____
26 ⁴ The upper quartile of associate hourly rates is a conservative metric to use for
27 comparison, given that Mr. Dickstein is a senior associate with eight years of
28 litigation experience that includes a federal court clerkship and expertise in
copyright law.

1 Reed \$630; Kay Scholer \$640; and Schulte Roth & Zabel \$650; Sheppard, Mullin,
2 Richter & Hampton \$505-\$635). (*Id.* at 16.)

3 **C. Thomas D. Nolan**

4 19. Thomas Nolan is a litigation associate in Loeb's New York City office.
5 He is a graduate of the University of Virginia School of Law, where he was an
6 Editor on the *Virginia Law Review*, and has been licensed to practice law in the
7 State of California since 2005 and in the State of New York since 2011. Mr. Nolan
8 clerked for Hon. Milan D. Smith, Jr. of the United States Court of Appeals for the
9 Ninth Circuit. Mr. Nolan has extensive experience handling a broad array of
10 complex litigation matters, specifically concentrating on copyright and other
11 intellectual property matters, media, and entertainment. Mr. Nolan's undergraduate
12 studies included coursework in music theory, history, and performance, and he has
13 performed with a variety of amateur ensembles in the classical, jazz, and popular
14 music genres. A copy of Mr. Nolan's bio is attached hereto as Exhibit 7.

15 20. Mr. Nolan's time on this matter was primarily spent researching and
16 preparing preliminary drafts of motion papers and other submissions; reviewing
17 deposition transcripts and exhibits for use in the Guetta Defendants' summary
18 judgment motion and reply; communicating with the Guetta Defendants'
19 musicologist, Dr. Lawrence Ferrara; and taking the depositions of Plaintiff's
20 musicologists, Alexander Stewart and Alexander Norris.

21 21. Through May 23, 2012, Mr. Nolan billed 692.3 hours on this case, for
22 total fees of \$353,055 before applying the discounts, adjustments and write-offs
23 shown below, such that his average hourly rate before discount was approximately
24 \$510.

25 22. Mr. Nolan's average hourly billing rate charged in this case is
26 commensurate with those of other senior-level Intellectual Property litigation
27 associates practicing at similarly sized law firms in New York City and Los
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1 Angeles. The AIPLA Survey indicates that in 2010, the upper quartile (top 75%)⁵ of
2 billing rates for Intellectual Property associates was \$545 in New York City, \$445 in
3 Los Angeles, and \$460 for associates practicing at firms nationwide with between
4 51-100 Intellectual Property lawyers (such as Loeb). (Ex. 4 at I-52.)

5 23. The NLJ Survey indicates that the hourly rates for seventh year
6 associates at law firms of comparable size in New York City and Los Angeles range
7 from \$405 to \$650, with several firms charging significantly more than Mr. Nolan's
8 average hourly rate of \$510 (DLA Piper \$650; Hughes Hubbard & Reed \$615; Kay
9 Scholer \$600; and Schulte Roth & Zabel \$630; Sheppard, Mullin, Richter &
10 Hampton \$485-\$610). (*Id.* at 16.)

11 **D. Donald A. Miller**

12 24. Donald Miller is a senior litigation associate in Loeb's Los Angeles,
13 California office. He is a graduate of the University of California at Berkeley, Boalt
14 Hall School of Law, where he served as Chairman of the Moot Court Board. Mr.
15 Miller has been licensed to practice law in the State of California since 2003. He
16 has extensive experience litigating a wide range of intellectual property and
17 entertainment matters on behalf of prominent clients in the motion picture,
18 television, music, and book publishing industries. A copy of Mr. Miller's bio is
19 attached hereto as Exhibit 8.

20 25. Mr. Miller served as local counsel for the Guetta Defendants in this
21 action, and his time was primarily spent reviewing motion papers and other
22 submissions for compliance with the Court's Local Rules and local practice;
23 overseeing the ECF filing of various motion papers and submissions; and defending
24
25

26 ⁵ The upper quartile is a conservative metric to use for comparison, given that Mr.
27 Nolan is a senior litigation associate with seven years of litigation experience that
28 includes a clerkship with the Ninth Circuit Court of Appeals and particular expertise
in copyright law.

1 the deposition of the Guetta Defendants' computer forensic expert, Erik Laykin, in
2 Los Angeles, California.

3 26. Through May 23, 2012, Mr. Miller billed 33.6 hours on this case, for
4 total fees of \$18,497 before applying the discounts, adjustments and write-offs
5 shown below, such that his average hourly rate before discount was approximately
6 \$551.

7 27. Mr. Miller's hourly billing rate is commensurate with those of other
8 senior-level Intellectual Property litigation associates practicing at similarly sized
9 law firms in Los Angeles. The AIPLA Survey indicates that, in 2010, the upper
10 quartile (top 75%)⁶ of billing rates for Intellectual Property associates was \$445 in
11 Los Angeles, and \$460 for associates at firms nationwide with between 51-100
12 Intellectual Property lawyers (such as Loeb). (Ex. 4 at I-52.)

13 28. The NLJ Survey indicates that the hourly rates for eighth year
14 associates⁷ at law firms of comparable size in Los Angeles range from \$505-\$635,
15 which is in line with Mr. Miller's \$551 average hourly rate. (Ex. 5 at 16.)

16 **E. Eric Schwartz**

17 29. Eric Schwartz is a litigation associate in Loeb's Los Angeles,
18 California office. He is a graduate of the University of California Hastings College
19 of the Law, where he graduated *cum laude* and was the Executive Editor of the
20 *Hastings Law Journal*. Mr. Schwartz has been licensed to practice law in the State
21 of California since 2009. A copy of Mr. Schwartz's bio is attached hereto as Exhibit
22 9.

25 ⁶ The upper quartile is a conservative metric to use for comparison, given that Mr.
26 Miller is a senior litigation associate with nine years of litigation experience
27 including experience litigating copyright and entertainment law issues.

28 ⁷ Mr. Miller is a ninth year associate, but information for associates of that seniority
was not available.

1 30. Mr. Schwartz's time on this matter was primarily spent drafting the
2 Guetta Defendants' Bill of Costs and reviewing the supporting documentation; and
3 researching certain legal issues in connection with this motion.

4 31. Through May 23, 2012, Mr. Schwartz billed 23.9 hours on this case,
5 for total fees of \$9,000 before applying the discounts, adjustments and write-offs
6 shown below, such that his average hourly rate before discount was approximately
7 \$377.

8 32. Mr. Schwartz's hourly billing rate is commensurate with those of other
9 third year litigation associates practicing at similarly sized law firms in Los Angeles.
10 The NLJ Survey indicates that the hourly rates for third year associates at law firms
11 of comparable size in Los Angeles range from \$380-\$490, which greater than Mr.
12 Schwartz's \$377 average hourly rate. (Ex. 5 at 16.)

13 **F. Paralegals Antoinette Pepper and Timothy B. Cummins**

14 33. Antoinette Pepper has more than 20 years of experience as a litigation
15 paralegal and currently works in Loeb's New York City office. Ms. Pepper's time
16 on this matter was primarily spent cite checking and Shepherdizing memoranda of
17 law (including online research using Westlaw and PACER); organizing and
18 assembling exhibits to supporting declarations (including the declarations and
19 exhibits in support of the Guetta Defendants' summary judgment motion and reply,
20 and this motion for attorneys' fees and costs); and assembling, organizing and
21 maintaining case files and discovery materials. Through May 23, 2012, Ms. Pepper
22 billed 273.4 hours on this case, for total fees of \$97,893 before applying the
23 discounts, adjustments and write-offs shown below, such that her average hourly
24 rate before discount was approximately \$358.

25 34. Timothy Cummins has over 20 years of experience as a litigation
26 paralegal and serves as Managing Clerk of Loeb's New York City office. Mr.
27 Cummins' time on this matter was primarily spent managing and updating Loeb's
28 internal case calendar for this action; facilitating service of a third party subpoena;

1 and ECF-filing certain motion papers and other submissions. Through May 23,
2 2012, Mr. Cummins billed 13.7 hours on this case, for total fees of \$4,471.00 before
3 applying the discounts, adjustments and write-offs shown below, such that his
4 average hourly rate before discount was \$326.

5 35. Based on my forty years of experience as a litigator and as a partner
6 and practice chair in Loeb's New York City offices, it is my belief that the average
7 hourly rates for Mrs. Pepper and Mr. Cummins are commensurate with the hourly
8 paralegal rates charged by other New York City law firms of similar size, and are
9 reasonable given their many years of experience.

10 **II. The Number of Hours Worked by Loeb Professionals Was Reasonable**
11 **Given the Length and Complexity of the Case**

12 36. As part of Loeb's regular billing practices, each Loeb professional who
13 performed services for the Guetta Defendants in connection with this matter
14 prepared a detailed time record of the time expended and services rendered on a
15 daily basis. These records were then entered into a computer database maintained
16 and supported by Loeb's client accounting and billing department in the regular and
17 ordinary course of business.

18 37. Each month, a preliminary billing report was generated and reviewed
19 by me as the partner responsible for overseeing Loeb's engagement by the Guetta
20 Defendants, to ensure that only reasonable and necessary time entries were included
21 in the monthly invoices. On a number of occasions, I did, in fact, write off time
22 entries that were redundant, unnecessary, or otherwise not appropriately charged to
23 the client. I also provided the Guetta Defendants a courtesy discount, in addition to
24 our already discounted hourly rates.

25 38. The following chart accurately summarizes all time billed by Loeb
26 professionals and charged to the Guetta Defendants in connection with this action.

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Timekeeper	Position	Total Hours	Average Rate	Dollars⁸
Barry I. Slotnick	Partner	439.4	\$675	\$296,595.00
Tal E. Dickstein	Associate	1,324.6	\$561	\$742,690.00
Thomas D. Nolan	Associate	692.3	\$510	\$ 353,055.00
Donald A. Miller	Associate	33.6	\$551	\$18,497.50
Eric Schwartz	Associate	23.9	\$377	\$9,000.00
Antoinette Pepper	Paralegal	273.4	\$358	\$97,893.00
Timothy Cummins	Paralegal	13.7	\$326	\$4,471.00
Subtotal				\$1,522,201.50
Discounts and Adjustments				(\$64,488.99)
Invoice Write-Offs				(\$27,066.04)
Subtotal				\$1,430,646.47
April 2011 fee application				(\$36,091.50)
Total				\$ 1,394,554.97

39. Attached as Exhibit 10 hereto is a report entitled “Amount Billed by Timekeeper” containing billing entries made by the Loeb attorneys and paralegals identified above. Certain time entries on this billing report have been redacted to preserve attorney-client privilege or attorney work-product confidentiality. The billing report reflects that I gave the Guetta Defendants \$64,488.99 in discounts and adjustments, and that I wrote-off an additional \$27,066.04 worth of time that was not charged to the Guetta Defendants. In addition, as noted above, these fees do not include the approximately \$50,000 worth of time charged by other Loeb attorneys and professionals that is not being sought in this application.

40. I have reviewed the attached Time Detail, and based on my forty years of experience as a litigator and my knowledge of the facts of this case, the entries reflect time reasonably and necessarily expended in the defense of this action. This

⁸ Fees recorded in May 2012 have not yet been billed to the Guetta Defendants. They will be billed in the next billing cycle.

1 is particularly so given the length of the case (more than a year and half), the broad
2 scope of fact discovery from sources in both the U.S. and France, Plaintiff's shifting
3 theories of access, and the varied topics of expert discovery. The following is a
4 summary of just some of the steps the Guetta Defendants' counsel were required to
5 take in defending this action:

- 6 • Respond to Plaintiff's *ex parte* application for a temporary restraining
7 order filed shortly before Thanksgiving seeking to halt all distributions and
8 performances of the hit song "I Gotta Feeling";
- 9 • Prepare a motion to dismiss based on Plaintiff's failure to properly
10 allege access, which allegations were shown during discovery to lack factual
11 support;
- 12 • Respond to Plaintiff's preliminary injunction motion on several
13 grounds, including copyright invalidity and technical impossibility of
14 copying;
- 15 • Respond to sixty (60) separate document requests served by Plaintiff,
16 and to review and produce over 10,000 pages of responsive documents and
17 over a Gigabyte of electronic music creation files;
- 18 • Take third-party discovery in the U.S. and gather information from
19 France to show Riesterer's independent creation of "I Gotta Feeling", the lack
20 of any public performances of Plaintiff's works, and the absence of any
21 communications between Plaintiff and either the Guetta Defendants or their
22 associates;
- 23 • Defend Plaintiff's depositions of Guetta and Riesterer, and of experts
24 Geluso and Laykin, and to appear at Plaintiff's depositions of each of the four
25 Black Eyed Peas band members.
- 26 • Prepare for and participate in a Court-ordered mediation in Chicago,
27 Illinois, at which Plaintiff's counsel refused to even meet with Defendants'
- 28

1 counsel unless they were willing to make a multi-million dollar settlement
2 offer.

- 3 • Prepare a comprehensive motion for summary judgment on several
4 grounds, including lack of evidence of access, absence of any substantial
5 similarity, lack of a valid copyright registration for failure to submit a *bona*
6 *fide* deposit copy, and Plaintiff's willful destruction of computer evidence;
- 7 • Respond to a voluminous summary judgment opposition including a
8 rambling and disorganized declaration by Plaintiff containing 261 separate
9 paragraphs and 47 exhibits, and prepare evidentiary objections to Plaintiff's
10 declaration and other third party declarations submitted in opposition to
11 summary judgment; and
- 12 • Respond to Plaintiff's improper summary judgment sur-reply filed one
13 day after appearing in Court for the motion hearing.

14 **III. The Guetta Defendants' Non-Taxable Costs Are Reasonable and Were**
15 **Necessary to Their Defense of the Action**

16 41. As part of their defense of this action, the Guetta Defendants incurred
17 certain non-taxable costs, which are summarized in the following chart.

18

19 Non-Taxable Costs		Amount
20 Expert Witness Fees:		
21 Lawrence Ferrara	\$26,906.25	
22 Paul Geluso	\$15,648.98	
23 Abbey Konowitch	\$13,150.00	
24 Erik Laykin	\$27,951.75	
25 Barry M. Massarsky	\$33,625.00	
26 Alex Norris ⁹	\$1,550.25	
27 Total Expert Witness Fees:		\$118,832.23
28 Online Legal Research Charges		\$44,136.37
Copyright Office Retrieval Services		\$3,393.00

28 ⁹ The Guetta Defendants reimbursed Plaintiff for Mr. Norris' deposition time.

1	Court Filing Fees	\$554.00
2	Court Transcript Fees	\$137.46
3	Mediation Services	\$1,020.00
4	Data Processing	\$2,778.09
5	Copying and Duplication	\$2,423.55
6	Non-Taxable Deposition Costs	\$12,167.76
7	Messengers and Shipping Charges	\$5,361.29
8	PACER Charges	\$835.52
9	Total	\$191,639.27

10 42. The invoices and other supporting documentation for these costs are
11 attached hereto as Exhibits 11-21. I have reviewed all of these invoices and
12 documentation and, based on my forty years of experience as a litigator and my
13 knowledge of the facts of this case, all of these costs were reasonably necessary to
14 the Guetta Defendants' defense of this action.

15 43. The largest such cost, for expert witnesses, were particularly necessary
16 given that Plaintiff proffered reports by no less than *seven* expert witnesses,
17 including an expert sound recording engineer, a damages expert claiming over \$53
18 million in damages, *two* computer forensic experts, and *three* musicologists.

19 44. The Guetta Defendants were therefore required to retain expert sound
20 recording engineer Paul Geluso, who successfully rebutted the declaration of Mark
21 Rubel, and demonstrated that it would have been impossible to sample the guitar
22 twang sequence from "Take a Dive" (Dance Version); musicologist Dr. Lawrence
23 Ferrara who successfully rebutted the declarations of musicologists Alexander
24 Stewart and Alexander Norris, and demonstrated that there were no protectable
25 similarities between "Take a Dive" and "I Gotta Feeling"; computer forensic expert
26 Erik Laykin analyzed Plaintiff's NRG computer file and explained how evidence of
27 Plaintiff's back-dating of his files would have been found on Plaintiff's computer
28 hard drives; and expert economist Barry Massarsky and music industry expert
Abbey Konowitch who rebutted the report of Plaintiff's damages expert who
claimed over \$53 million of revenue allegedly attributable to "I Gotta Feeling".

1 45. Notably, the hourly rates charged by each of the Guetta Defendants'
2 experts were similar to the rates charged by Plaintiff's experts, as demonstrated by
3 the following chart.

	Hourly Rates of Guetta Defendants' Experts	Hourly Rates of Plaintiff's Experts
Sound Engineers	Geluso – \$150	Rubel – \$150
Musicologists	Ferrara – \$375	Stewart – \$375 Norris – \$325
Damages Experts	Massarsky – \$450 Konowitch – \$750	Cobb – \$485
Computer Experts	Laykin – \$525	Frederiksen-Cross – \$525 Gallant – \$500 ¹⁰

11
12 46. Finally, although Mr. Dickstein and I were required to travel to
13 California for Court appearances and depositions, we have not charged the Guetta
14 Defendants, and do not seek to recover here, any of the airfare, hotel or meal
15 expenses associated with that travel.

16 **IV. The Total Amount of Fees and Costs is Reasonable Given that Over \$53**
17 **Million was at Stake in the Litigation**

18
19 47. As detailed above, the Guetta Defendants seek to recover
20 approximately \$1.586 million in attorneys' fees and non-taxable costs. This total
21 cost of defense is more than reasonable given that over \$53 million of damages was
22 potentially at stake and that the litigation lasted for over a year and half.

23 48. The AIPLA Survey indicates that the average total cost of litigating a
24 copyright infringement action where \$25 million or more is at stake is \$1.375
25 million in New York City and \$4.925 million in San Francisco (the next closest
26 jurisdiction to Los Angeles for which data was available). (Ex. 4 at I-164.)

27 _____
28 ¹⁰ Mr. Gallant charges \$2,000 for four hours of deposition time, which is calculated to \$500 per hour.

