

1 DONALD A. MILLER (SBN 228753)  
 dmiller@loeb.com  
 2 BARRY I. SLOTNICK (*Pro Hac Vice*)  
 bslotnick@loeb.com  
 3 TAL E. DICKSTEIN (*Pro Hac Vice*)  
 tdickstein@loeb.com  
 4 LOEB & LOEB LLP  
 10100 Santa Monica Boulevard, Suite 2200  
 5 Los Angeles, California 90067-4120  
 Telephone: 310-282-2000  
 6 Facsimile: 310-282-2200

7 Attorneys for Defendants SHAPIRO,  
 BERNSTEIN & CO., INC. (incorrectly  
 8 sued as Shapiro, Bernstein & Co.);  
 RISTER EDITIONS and DAVID  
 9 GUETTA

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

14 BRYAN PRINGLE, an individual,  
 15 Plaintiff,  
 16 v.  
 17 WILLIAM ADAMS, JR.; STACY  
 FERGUSON; ALLAN PINEDA; and  
 18 JAIME GOMEZ, all individually and  
 collectively as the music group The  
 19 Black Eyed Peas, et al.,  
 20 Defendants.

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

**DECLARATION OF PAUL  
 GELUSO IN SUPPORT OF  
 DEFENDANTS' OPPOSITION TO  
 PLAINTIFF'S MOTION FOR  
 PRELIMINARY INJUNCTION**

Date: January 31, 2011  
 Time: 10:00 A.M.  
 Dept.: 10A

Complaint Filed: October 28, 2010  
 Trial Date: Not Assigned

1 I, PAUL GELUSO, declare as follows:

2 1. I am an expert in music technology and have worked professionally as  
3 an audio engineer, producer, electrical engineer, and musician for more than 20  
4 years. I earned a Bachelor of Science in Electrical Engineering from the New Jersey  
5 Institute of Technology in 1988 and a Masters of Music in Music Technology from  
6 New York University in 1999. I have been credited as Recording Engineer,  
7 Mastering Engineer, Producer and/or Musician on more than 100 albums across  
8 numerous musical genres, including electronic, rock, hip-hop, dance, jazz and  
9 classical. I have also mixed numerous soundtracks for broadcast TV and award-  
10 winning independent films, and have served as Sound Editor and Mixer for several  
11 media companies, including Outpost Digital, Radical Media, HBO, Miramax, and  
12 MTV II.

13 2. I am currently a professor and Chief Recording Engineer in the  
14 Department of Music and Performing Arts Professions at the Steinhardt School of  
15 Education at New York University. I have also taught in the fields of music and  
16 sound recording at the Peabody Institute at Johns Hopkins University, Bard College  
17 and the State University of New York at Oneonta. I have lectured extensively on  
18 topics related to music technology, including analog electronics, digital electronics,  
19 digital signal processing, sound art, electronic music, critical listening, music  
20 production, sound recording, sound processing and sound mixing.

21 3. I have previously been retained to perform expert forensic music  
22 analysis in two copyright infringement lawsuits involving claims of digital  
23 sampling.

24 4. I submit this declaration in support of Defendants' Opposition to  
25 Plaintiff's Motion for a Preliminary Injunction. I have personal knowledge of the  
26 facts stated herein, and if called as a witness, could and would testify competently  
27 regarding the following facts:

28

1           5.       I was retained by Loeb & Loeb LLP to analyze The Black Eyed Peas’  
2 song “I Gotta Feeling” and the derivative version of “Take a Dive” allegedly created  
3 and distributed by Plaintiff Bryan Pringle, and to offer my professional expert  
4 opinion as to whether “I Gotta Feeling” contains any recorded sounds that were  
5 digitally copied, or “sampled,” from the derivative version of “Take a Dive”, and to  
6 evaluate the November 17, 2010 Declaration of Mark Rubel (the “Rubel  
7 Declaration”) and the November 17, 2010 Expert Report of Mark Rubel (the “Rubel  
8 Report”).

9           6.       In conducting my analysis, I reviewed the January 3, 2011 Declaration  
10 of Bryan Pringle (“Pringle Declaration”) as well as the Rubel Declaration and  
11 Report, and I forensically examined the three sound recordings that were attached as  
12 Exhibit B to the Rubel Declaration: (1) the derivative version of “Take a Dive”; (2)  
13 an isolated version of the so-called “guitar twang” sequence;<sup>1</sup> and (3) “I Gotta  
14 Feeling.” I also analyzed the original version of “Take a Dive”, which was attached  
15 to the Pringle Declaration.

16           7.       Based on my analysis described below, it is my professional expert  
17 opinion that the guitar twang sequence in “I Gotta Feeling” could not have been  
18 sampled from the derivative version of “Take a Dive” allegedly distributed by  
19

---

20 <sup>1</sup> As discussed below, Rubel states that the isolated guitar twang sequence was  
21 “identified to me” by the Gould Law Group as “Bryan Pringle – The ‘guitar twang’  
22 sequence” (Rubel Report ¶ 4), yet Rubel does not indicate that he performed any  
23 analysis to independently verify whether the isolated guitar twang sequence did, in  
24 fact, originate from the derivative version of Pringle’s “Take a Dive,” or whether it  
25 was obtained from some other source.

25 Furthermore, I note that the Rubel Report repeatedly refers to a “Piano Twang  
26 Sequence,” while the Rubel Declaration refers to a “guitar twang sequence.”  
27 Although Rubel does not explain this discrepancy, I assume, for purposes of this  
28 Declaration, that these references are to the same sequence. However, because the  
audio examples referenced in Rubel’s Report, including the so-called “Piano Twang  
Sequence”, have not been made available, there is no way to verify this assumption.

1 Plaintiff. This is because the guitar twang sequence in the derivative version of  
2 “Take a Dive” is layered with other musical elements, while a number of instances  
3 of the guitar twang sequence in “I Gotta Feeling” (particularly at 0:31-0:33) have no  
4 other sound elements (often referred to as “artifacts” or “ghosts”), which one would  
5 expect to find if the guitar twang sequence in “I Gotta Feeling” had been sampled  
6 from derivative version of “Take a Dive.” In other words, it would not have been  
7 technologically possible to obtain the “clean” guitar twang sequence that appears in  
8 “I Gotta Feeling” from the sequence that appears in the derivative version of “Take  
9 a Dive” allegedly distributed by Plaintiff.

10 8. In performing my analysis, I attempted to isolate the guitar twang  
11 sequence in the derivative version of “Take a Dive” using ProTools sound editing  
12 software, which is widely used in the digital sound editing field and which I  
13 regularly use in my professional work, by employing the following techniques in  
14 various combinations:

- 15 a. left / right channel isolation
- 16 b. equalization techniques;
- 17 c. phase inversion and cancellation;
- 18 d. noise gating techniques; and
- 19 e. spectral repair software, known as iZotope RX.

20 9. Based on my industry knowledge and technological expertise and  
21 experience, these techniques represent an exhaustive list of options that can be  
22 employed to isolate a particular sound from a sound recording. Despite applying all  
23 of these techniques to the derivative version of “Take a Dive” to the best of my  
24 ability, none of them yielded an even remotely artifact-free isolated guitar twang  
25 sequence, as was present in “I Gotta Feeling.”

26 10. As a result of this analysis, it is my professional expert opinion that the  
27 guitar twang sequence in the song “I Gotta Feeling” could not have been sampled  
28

1 from the derivative version of “Take a Dive” that Plaintiff claims to have  
2 distributed.

3       11. Notably, the Rubel Declaration and Report is not inconsistent with this  
4 conclusion, because it does not show that the guitar twang sequence in “I Gotta  
5 Feeling” was sampled from the derivative version of “Take a Dive.” It appears that  
6 Rubel did not attempt to independently confirm whether the isolated guitar twang  
7 sequence originated from the derivative version of “Take a Dive” that Plaintiff  
8 allegedly distributed, or from some other source. Instead, he simply accepted the  
9 Gould Law Group’s representation on face value. (Rubel Decl. ¶ 4) (stating,  
10 without any support, that “[t]he second Mp3 is simply the ‘guitar twang sequence’  
11 soloed out from ‘Take a Dive,’ with no other instrumentation or vocals.”) As a  
12 result, although Rubel concludes that the isolated guitar twang sequence provided to  
13 him by the Gould Law Group is the same as the guitar twang sequence in “I Gotta  
14 Feeling,” Rubel offers no basis to conclude that “I Gotta Feeling” sampled from the  
15 derivative version of “Take a Dive” allegedly distributed by Plaintiff.

16       12. Indeed, the Rubel Declaration and Report support the conclusion that “I  
17 Gotta Feeling” could not have sampled from the derivative version of “Take a Dive”  
18 allegedly distributed by Plaintiff. On several occasions, Rubel acknowledges that in  
19 the derivative version of “Take a Dive,” the guitar twang sequence is layered with  
20 other sound elements that are not present in “I Gotta Feeling.” (Rubel Decl. ¶ 4)  
21 (noting that there are “other sonic elements” layered in the guitar twang sequence of  
22 the derivative version of “Take a Dive”); (Rubel Report at 17) (noting that, even  
23 after Rubel attempted to isolate the guitar twang sequences in the derivative version  
24 of “Take a Dive” and in “I Gotta Feeling, “one can hear that there are other sounds  
25 in the two[.]”); (Rubel Report at 18) (“The other elements that make up ‘Take a  
26 Dive’ introduction, various synthesizers, are audible on the left.”) The fact that Rubel  
27 was unable to isolate from the derivative version of “Take a Dive” a clean sample of  
28 the guitar twang sequence as it appears in “I Gotta Feeling,” supports the conclusion

1 that the producer of “I Gotta Feeling” likewise could not have sampled the guitar  
2 twang sequence from the derivative version of “Take a Dive” allegedly distributed  
3 by Plaintiff. Otherwise, artifacts of other musical elements from the derivative  
4 version of “Take a Dive” would necessarily exist in “I Gotta Feeling,” which they  
5 do not. (*See* ¶ 9 above.)

6       13. The Rubel Report and Declaration are lacking in other respects as well.  
7 In performing his waveform analysis, Rubel selected very short segments of the  
8 guitar twang sequence (approximately 0.05 seconds) out of the entire 15 second  
9 sequence. (*See, e.g.*, Rubel Decl. ¶ 10, Rubel Report at 11, 16-29.) However,  
10 because Rubel did not identify which segments he selected, there is no reasonable  
11 way to recreate and verify his waveform analysis. Moreover, the Rubel Report and  
12 Declaration were clearly intended to be reviewed in conjunction with the audio  
13 examples listed on page 20 of the Report. (*See e.g.*, Rubel Report at 15) (citing  
14 audio examples 6 and 7 and asking “[s]ounds like the same thing, doesn’t it?”) Yet,  
15 because none of the audio examples have been made available, it is impossible to  
16 test Rubel’s listening analysis.

17       14. Lastly, I note that there appear to be omissions in Plaintiff’s  
18 explanation as to how he created the derivative version of “Take a Dive.” Although  
19 Pringle only states that in creating the derivative version of “Take a Dive” he  
20 removed the lyrics and added the guitar twang sequence, an examination of the  
21 original and derivative versions of “Take a Dive” reveal other changes in the  
22 derivative version of “Take a Dive”, including reversal of the left and right  
23 channels, and a different drum pattern from 1:31 to the end of the song. Further  
24 analysis may reveal additional differences between the original and derivative  
25 versions of “Take a Dive.”

26 /  
27 /  
28 /

1 I declare under penalty of perjury under the laws of the United States of  
2 America that the foregoing is true and correct. Executed this 10<sup>th</sup> day of January,  
3 2011.

4  
5 

6 \_\_\_\_\_  
7 PAUL GELUSO  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28