

EXHIBIT U

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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RALPH VARGAS and BLAND-RICKY ROBERTS,

Plaintiffs,
Civil Action
No.

-against- 04CV 9772 (JCF)

PFIZER, INC., PUBLICIS, INC.,
FLUID MUSIC, EAST WEST
COMMUNICATIONS, INC. and
BRIAN TRANSEAU p/k/a "BT",

Defendants

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August 10, 2006
9:10 a.m.

Videotaped Deposition of

MATTHEW RITTER, taken by Defendants, pursuant
to Notice, at the offices of Kirkland & Ellis,
153 East 53rd Street, New York, New York,
before TAMMEY M. PASTOR, a Registered
Professional Reporter, Certified LiveNote
Reporter and Notary Public within and for the
State of New York.

1 MATTHEW RITTER

2 Q. So you don't know whether it is
3 possible to create the exact same sounds as on
4 Bust Dat Groove, create those electronically?

5 MR. CHIN: Objection.

6 A. I don't know enough about
7 electronic music. I actually know very little
8 about it. So, I don't know if there is
9 technology that exists that could do that.

10 Q. When we were talking about the
11 ghost notes on the snare, you said you thought
12 those were -- that was a rare sound because
13 the snare wires were tuned exceedingly
14 tightly; right?

15 MR. CHIN: Objection.

16 A. I believe that it is extremely
17 unusual for a snare drum to at one moment
18 sound like a snare drum and without turning it
19 on or off, which would be physically
20 impossible in this case, to have it
21 momentarily later sound like a tom-tom.

22 Q. Okay. But when you turn the
23 snare off, it does sounds like a tom-tom;
24 right?

25 MR. CHIN: Objection. You're

1 MATTHEW RITTER

2 the same music history class, for example.
3 But my percussion like performance things,
4 yes, they were separate from the classical
5 department. They were in the jazz department.

6 Q. Did you also study like
7 classical percussion instruments as well at
8 the Hartt School?

9 A. Very little, but I did study
10 snare drum technique.

11 Q. Okay.

12 A. Classical snare drum.

13 Q. As a professional drummer what
14 is it that you do?

15 A. Currently I am teaching
16 lessons. As my full time job I teach
17 somewhere between 25 and 35 private drum set
18 lessons per week. I am also just finishing up
19 production on an instructional drumming DVD
20 which will be internationally distributed by
21 Hal Leonard, which is the world's largest
22 music publishing company.

23 I also occasionally when time
24 affords do some performance jobs such as
25 playing for a theater production or doing a

1 MATTHEW RITTER

2 jazz gig.

3 Q. How much do you charge for your
4 individual lessons?

5 A. \$60 per lesson.

6 Q. How long is a lesson?

7 A. One hour.

8 Q. How often do you have what you
9 call performance jobs?

10 A. These days very rarely. I
11 don't generally have the time to do anything
12 except working on my video and teaching
13 lessons. So maybe once every several months
14 that is the way it has been for the past
15 couple years.

16 Before that there was a time
17 when I was performing as a drummer full time
18 and living on the road with a traveling show
19 and so forth.

20 Q. Were those traveling shows what
21 is reflected on your resume like the Broadway
22 type shows?

23 A. Yeah, exactly. I also want to
24 state just to make sure everything I say is
25 100 percent accurate, you asked if I studied

1

MATTHEW RITTER

2

drum to create one note after the other very

3

fast. To almost create the illusion of a

4

sustained sound. A multiple bounce stroke is

5

taking one single stick and letting it

6

ricochet against the drum head two or more

7

times sometimes an untold number of times if

8

you get extra little buzzes and stuff in

9

there.

10

Q. You were saying that is not a

11

snare roll but the multiple bounce stroke on

12

the snare; right?

13

A. Yes, correct.

14

Q. Does the multiple bounce stroke

15

on Bust Dat Groove sound identical to

16

Aparthenonia?

17

A. Yes, it sounds identical.

18

Q. Does the hi-hat sound identical

19

on Bust Dat Groove and Aparthenonia?

20

A. Yes, it does.

21

Q. Does the bass drum sound

22

identical on Bust Dat Groove and Aparthenonia?

23

A. Yes, it does. May I ask a

24

question?

25

Q. Sure.

1 MATTHEW RITTER

2 A. When you ask me if they sound
3 identical, you're talking about the sound of
4 the instrument, because obviously as I said
5 the rhythmic elements have been juxtaposed.

6 Q. Right. When you say identical
7 you mean the sound of those elements?

8 A. Yes.

9 Q. Are identical; right?

10 A. Yes.

11 Q. Other than the change in the
12 order of the elements there is no difference
13 in sounds; right?

14 A. Right.

15 Q. Would a professional drummer
16 ever refer to a multiple bounce stroke like
17 the one found in Bust Dat Groove as a drum
18 roll?

19 A. I don't believe he would. No.

20 Q. Is that because, like you said,
21 to play a roll you have to use both hands
22 whereas the multiple bounce stroke on Bust Dat
23 Groove, it would be physically impossible to
24 play that with both hands?

25 A. It is not only that. It is

1 MATTHEW RITTER

2 the record. The time is 12:51.

3 A. So what am I listening to?

4 Q. We are going to play a track
5 from what was Exhibit C1 to Mr. Rodriguez's
6 declaration. It has been marked Defendants'
7 Exhibit 27. I want you to just listen to it
8 then I will ask you questions about the
9 tracks.

10 MR. CHIN: I'm objecting. Are
11 you going to tell the witness what is on the
12 CD?

13 MS. AHRENS: I have
14 identify -- I will identify the tracks I am
15 playing so it is clear for the record.

16 MR. CHIN: Okay.

17 A. Also you want to move the
18 speakers closer to me.

19 Q. Sure.

20 (Track Playing.)

21 Q. Sorry, I'll start it again.

22 MR. CHIN: Can this go up any?

23 MS. AHRENS: Yes. Hold on.

24 (Track Playing.)

25 Q. I am going to start it over

1 MATTHEW RITTER

2 since the two tracks went together. So it is
3 clear. But the first track I am going to play
4 is track 2 from Defendants' Exhibit 27.

5 A. All right.

6 (Track Playing.)

7 A. That was pretty.

8 Q. It's always something. Do you
9 want me to play the track again so it is not
10 interrupted?

11 A. Sure. Play it one more time.

12 Q. Again I am playing track 2 from
13 Defendants' Exhibit 27.

14 (Track Playing.)

15 A. Okay.

16 Q. Okay. Do you recognize the
17 sound on that track?

18 MR. CHIN: Objection.

19 A. I recognize it as a hi-hat
20 sound.

21 Q. Is there anything particular
22 about the hi-hat sound --

23 MR. CHIN: Objection.

24 Q. -- that you hear?

25 MR. CHIN: Objection. You can

1 MATTHEW RITTER

2 answer.

3 A. Yes, there are two alternating
4 sounds. One sounds like the shaft of a drum
5 stick played on the edge of the hi-hat. The
6 other one sounds like the tip of the drum
7 stick played on the top of the hi-hat. So we
8 have a slightly broader sloshier sound first
9 followed by a tighter tick sound, both of them
10 we together we end up with tick-tock,
11 tick-tock thing between the two sounds.

12 Q. And you hear, is it you hear
13 two different sounds?

14 MR. CHIN: Objection, misstates
15 testimony. You can answer.

16 A. I hear two sounds. Seem to be
17 alternating back and forth.

18 Q. Are the two sounds different?

19 MR. CHIN: Objection. You can
20 answer.

21 A. I hear two different sounds
22 that are alternating back and forth. They are
23 both hi-hat. One sounds like a hi-hat played
24 with the shaft of a stick on the edge of the
25 high hat and one sounds like a hi-hat played

1 MATTHEW RITTER

2 on the top of with a tip of a stick.

3 Q. Okay. Now I am going to play
4 for you what is track 3 on Defendants'
5 Exhibit 27.

6 MR. CHIN: What is Defendants'
7 Exhibit 27?

8 MS. AHRENS: Defendants'
9 Exhibit 27 again is Exhibit C1 to
10 Mr. Rodriquez' declaration.

11 A. Okay.

12 (Track Playing.)

13 Q. Can you tell me what those
14 sounds were?

15 MR. CHIN: Objection.

16 A. May I hear it one more time?

17 Q. Sure. Sorry.

18 (Track Playing.)

19 A. It sounds like a bass drum
20 sound played with simultaneously with a
21 slightly opened hi-hat. That the same
22 combination is happening twice, but in one
23 version it is the open hi-hat sound is a
24 little more pronounced. So it is, again,
25 alternating back and forth between slightly

1 MATTHEW RITTER

2 different sounds, both of which are base drum
3 with hi-hat, slightly opened.

4 Q. Okay. So are the sound
5 different?

6 MR. CHIN: Objection.

7 A. Yes. One of the, one of them
8 the open hi-hat sound is a little more
9 pronounced than other. So, again, they are
10 going back and forth in a sort of tick-tock
11 tick-tock.

12 Q. Now, I am going to play track 4
13 from Defendants' Exhibit 27 which again is
14 Exhibit C1 to the Rodriguez declaration.

15 MR. CHIN: I would like it
16 also to be known on the record I don't have
17 the CD in front of me. And I don't know what
18 track is being played.

19 (Track Playing.)

20 MS. AHRENS: I am going to
21 start the track again so we keep it separate.

22 MR. CHIN: Okay.

23 MS. AHRENS: I did present the
24 track.

25 MR. CHIN: I am not in front

1 MATTHEW RITTER
2 of the laptop, so I don't know which one is
3 being played.

4 MS. AHRENS: I am
5 testifying -- I am stating on the record the
6 tracks that I am playing are what I am
7 stating.

8 MR. CHIN: Okay.

9 MS. AHRENS: And I am not
10 tricking anyone or playing a track other than
11 what I am saying I'm playing.

12 MR. CHIN: I am just not in
13 front of the laptop. That is all I'm saying.

14 MS. AHRENS: I did show you
15 the CD. You watched me put it into my laptop.

16 MR. CHIN: Do you have the
17 declaration?

18 MS. AHRENS: Yes, I have the
19 declaration.

20 MR. CHIN: Can I get a copy? I
21 don't have it with me. Can I get it so I can
22 read as we go along.

23 MS. AHRENS: It is Defendants'
24 Exhibit 22.

25 MR. CHIN: Thanks.

1 MATTHEW RITTER

2 Q. I am going to start again track
3 4 to Defendants' Exhibit 27. This is the
4 Exhibit C1 to the Rodriguez declaration. Are
5 you ready, Mr. Ritter?

6 A. Yes.

7 (Track Playing.)

8 A. Can I hear it one more time,
9 please?

10 Q. Sure.

11 (Track Playing.).

12 Q. Can you tell me what those
13 sounds are?

14 MR. CHIN: Objection. You can
15 answer.

16 A. That sounds like a bass drum to
17 me.

18 Q. Sorry, I didn't hear?

19 A. Sounds like a bass drum sound.

20 Q. Are the sound -- is the base
21 drum sounds on that track different?

22 A. To me it sounds like --

23 MR. CHIN: Hold on.

24 Objection.

25 A. To me it sounds like the same

1 MATTHEW RITTER

2 bass drum. There is a phenomenon which
3 honestly I don't remember the name of right
4 now, but when people hear the same sound
5 played in a series their mind looks for a way
6 to organize it so they automatically start to
7 hear it in groups of twos usually, sometimes
8 threes.

9 So when I first heard this bass
10 drum track I start initially heard a tick-tock
11 kind of back forth, back forth as if it were
12 two slightly different sounds. At this point
13 I remembered this phenomenon I am telling you
14 about and tried to start to clear my mind
15 after each bass drum hit and it started to
16 sound to me like the exact same sounds
17 repeated over and over.

18 Q. Do you need to hear it again?

19 A. No.

20 Q. Now I am going to play track 1
21 on Defendants' Exhibit 27.

22 A. Okay.

23 Q. This is the Rodriguez
24 declaration Exhibit C1.

25 (Track Playing.)

1 MATTHEW RITTER

2 with Rogers snares?

3 A. I'm not.

4 Q. Were they ever like a common
5 snare drum?

6 A. I don't know how common they
7 were. The most common drums have always been
8 just Singerland, Lund, Pearl, recently Yamaha.
9 Gretsch has always been revered in certain
10 circles and was less common, Rogers, I know is
11 also less common, but I don't know to what
12 extent.

13 Q. We can move back to where we
14 were before you were instructed not to answer.
15 I believe we had played, I will just find what
16 we were working with. We were looking at or
17 listening to Defendants' Exhibit 30 which is
18 the Funky Drummer Volume II album.

19 A. Can I have the speakers as
20 close to me as possible.

21 (Discussion off the record).

22 Q. Sure. We played track number 1
23 from Funky Drummer Volume II. I'll play that
24 again. Sorry, it is not working.

25 A. The volume is not even on.

1 MATTHEW RITTER

2 Q. I am going to start it over for
3 you.

4 (Track Playing.)

5 Q. In asking of any of these
6 questions, if you want to hear the track again
7 or any part of it again please feel free.

8 A. Sure.

9 Q. I will play it as many times as
10 you want. What sounds do you hear on that
11 recording?

12 A. May I hear it one more time.

13 Q. Sure.

14 (Track Playing.)

15 A. I hear bass drum, snare drum
16 and hi-hat.

17 Q. You said bass drum, snare drum
18 and hi-hat?

19 A. Yes.

20 Q. Those are the -- I am going to
21 play you the second track on Defendants'
22 Exhibit 2, we are going to go track by track.

23 I want you to tell me, just
24 listen to the drummer, tell me if you think
25 that the drummer on the second track is a

1 MATTHEW RITTER

2 different drummer than the drummer on the
3 first track?

4 MR. CHIN: Objection. But you
5 can answer.

6 A. I am going to say right away
7 since this is not a drummer that I'm familiar
8 with, unless he is playing the exact same
9 thing, I probably will have no way to know.

10 Q. You testified and you stated in
11 your declaration that each time a drummer
12 makes a recording that drummer leaves a
13 fingerprint; right?

14 A. Yes. That's right.

15 Q. And that you can tell based on
16 listening whether the same drummer is playing?

17 A. Playing the same thing. In
18 other words, if you are about to play me
19 something now that is a different rhythm, I
20 haven't heard what this drummer's fingerprint
21 sounds like playing this second rhythm. So I
22 have nothing to compare it to from the first
23 rhythm.

24 On the other hand, if we took
25 rhythm number 1 you just played to me and had

1 MATTHEW RITTER

2 two other drummers play that same rhythm, the
3 way they space the various elements of that
4 rhythm I would in all likelihood be able to
5 tell which drummer played which or whether it
6 was the same person doing the same thing.

7 Q. On Bust Dat Groove part of what
8 would be the fingerprint of that recording
9 would be the ghost notes; right?

10 A. Yes, that's part of it.

11 Q. Part of it was the multiple
12 bounce stroke; right?

13 A. Right. Which is also a ghost
14 note because it is played extremely softly.

15 Q. Let's go through and identify
16 the instruments on, we will do track number 2.

17 A. Okay.

18 Q. Just identify the instruments
19 on each track.

20 (Track Playing.)

21 Q. That is track number 2. What
22 are the instruments?

23 A. Can I hear it again. I am
24 getting some static through the speaker, I am
25 not sure if it is snare rattle or the speaker

1 MATTHEW RITTER

2 or what.

3 (Track Playing.)

4 A. That sounds also like bass
5 drum, snare drum and hi-hat to me.

6 Q. If there is anything about --
7 sorry, if you can tell me and you can tell
8 that any of the tracks has a different drummer
9 than another, go ahead and let me know. If
10 you can't, fair enough.

11 MR. CHIN: Objection. Is it
12 possible to read back what his answer was
13 before that just so can write it down in my
14 notes.

15 (The preceding answer was
16 read.)

17 MR. CHIN: My question is is
18 that what you guys are going to do?

19 MS. AHRENS: We are going to
20 go -- I am going to go through each track and
21 play it and identify the instruments and ask
22 him if he can identify. I will make the
23 question more specific to Mr. Vargas.

24 Q. I am going to play track number
25 1 again.

1 MATTHEW RITTER

2 (Track Playing.).

3 Q. On track number 1 can you tell
4 me whether that is Ralph Vargas playing the
5 drums or not?

6 MR. CHIN: Objection.

7 A. I have no idea. I never heard
8 Ralph play a rhythm like that. So I don't
9 know if I am hearing Ralph play it now.

10 Q. You have heard, of course Ralph
11 play other drum tracks that you know are Ralph
12 playing?

13 MR. CHIN: Objection.

14 A. I have heard Ralph play one
15 other drum track as well as, as I mentioned to
16 you on my second meeting with him he played a
17 snippet of himself in a wedding band or
18 something like that in his car. I don't
19 really remember what it sounded like.

20 Q. Okay. And on track number 1
21 did you hear any ghost notes?

22 A. Before I answer may I hear it
23 again. That is really the thing I would
24 probably want to wear headphones and listen
25 very carefully more than I am able to do with

1 MATTHEW RITTER

2 these speakers.

3 Q. Okay. Let me play it for you
4 again?

5 A. Since this is a sworn
6 testimony. I will try and see if I hear any.
7 (Track Playing.)

8 A. Can I hear it once more,
9 please.

10 Q. Sure.
11 (Track Playing.)

12 A. I am not able to hear any on
13 this but I have no way of knowing if there
14 really is any because I would want to listen
15 more closely with headphones.

16 Q. When you made your original
17 transcription of Bust Dat Groove, you were
18 listening to that on your DiscMan; right?

19 A. Right.

20 Q. You heard ghost notes on that;
21 right?

22 A. I did, yeah. They are
23 definitely more pronounced on that recording
24 than on this one if there are any. I think
25 there might not be any on this one.

1 MATTHEW RITTER

2 Q. That copy of Bust Dat Groove on
3 your DiscMan, that was a copy that was, you
4 said was a poor quality copy?

5 A. It would only play on that
6 machine. So, I mean it was not burned
7 properly or something. Because it didn't play
8 on most machines.

9 Q. Okay. I am going to do -- on
10 track number 1 we still just have bass drum,
11 snare drum and hi-hat?

12 A. Yes.

13 Q. I am going to play -- and on
14 track number 1 you said you can't say whether
15 it is Mr. Vargas or not?

16 MR. CHIN: Objection.

17 A. I don't know if it is
18 Mr. Vargas or not.

19 Q. You don't know. I am going to
20 play track number 2 from Defendants'
21 Exhibit 30.

22 (Track Playing.)

23 Q. What instruments do you hear on
24 track number 2?

25 A. Bass drum, snare, hi-hat and a

1 MATTHEW RITTER

2 ghost note on the snare.

3 Q. Is the ghost notes an
4 instrument?

5 A. No.

6 Q. So three instruments you hear
7 are a bass, a snare drum and a hi-hat right?

8 A. Yes.

9 Q. But you did hear a ghost note
10 too?

11 A. I did.

12 Q. Can you say whether the drummer
13 on track 2 is different than the drummer on
14 track 1?

15 MR. CHIN: Objection.

16 A. I have no idea.

17 Q. Can you tell if the drummer on
18 track number 2 is Mr. Vargas?

19 MR. CHIN: Objection.

20 A. I have no idea.

21 Q. Did you hear on track number 2
22 any multiple bounce strokes?

23 A. No, I did not. I heard one
24 isolated ghost stroke.

25 Q. Okay. I will play track number

1 MATTHEW RITTER

2 3 from Defendants' Exhibit number 30.

3 (Track Playing.)

4 MR. CHIN: Let her ask the
5 questions.

6 Q. Can you identify what
7 instruments are played on track number 3?

8 A. Bass drum, snare drum and
9 hi-hat.

10 Q. Do you have an opinion as to
11 whether the bass drum, snare drum and hi-hat
12 are the same bass drum, snare drum and hi-hat
13 that were played on track 2?

14 MR. CHIN: Objection.

15 A. I don't know. I will have to
16 hear, you know, again it is like the drummer's
17 fingerprint thing, I would want to hear the
18 same drum set playing the same rhythm because,
19 you know, how loud the person is playing the
20 snare changes the tambour of the instrument
21 and so forth.

22 I would want to hear the same
23 rhythm played twice on two different drum sets
24 or the same to determine if it was the same
25 drum set. How you strike a drum, you know,

1 MATTHEW RITTER

2 significantly can change the sound of the
3 drum. I do hear some ghost notes, by the way.

4 Q. Okay. Forgive me if I asked you
5 this about track 3, can you say whether track
6 3 is different, a different drummer than the
7 drummer on the previous track?

8 MR. CHIN: Objection.

9 A. I don't know who is playing the
10 drums.

11 Q. Okay. Even though you don't
12 know who is playing the drums can you
13 determine whether it is a different drummer
14 than the previous track?

15 MR. CHIN: Objection.

16 A. I don't know if it is the same
17 or different drummer.

18 Q. Can you -- so you can't whether
19 it is Mr. Vargas or not; right?

20 MR. CHIN: Objection.

21 A. I cannot tell who is the
22 drummer.

23 Q. You said you heard ghost notes;
24 is that right?

25 A. Yes, I did.

1 MATTHEW RITTER

2 Q. How many ghost notes?

3 A. Can I hear it again.

4 Q. I can play it again sure.

5 (Track Playing.)

6 A. I hear at least three already.

7 Q. Did you hear any multiple

8 bounce strokes?

9 A. No.

10 Q. I just want to ask when you
11 made your transcription of Funky Drummer?

12 A. Yes.

13 Q. You also made a transcription
14 of Aparthenonia, you made those, some of the
15 original versions of those transcriptions you
16 made from listening to the tracks on a
17 DiscMan; right?

18 A. This is true.

19 Q. For both songs; right?

20 A. Yes.

21 Q. What kind of headphones were
22 you listening to when you used your DiscMan?

23 A. They are called Studio Kans,
24 they are professional recording studio
25 headphones.

1 MATTHEW RITTER

2 Q. Sorry, what was the name of the
3 headphones again?

4 A. Studio Kans K-A-N-S.

5 Q. Is there any other kind of
6 manufacturer name or anything?

7 A. No.

8 Q. The ghost notes that you said
9 you heard on track number 3 --

10 A. That is the one we just heard?

11 Q. Yes.

12 A. Yup.

13 Q. Are those Mr. Vargas' ghost
14 notes?

15 MR. CHIN: Objection.

16 A. I don't know whose ghost notes
17 they are. I will say they do sound like tom
18 hits to me. It sounds to me like it is either
19 Mr. Vargas or it is somebody playing on a drum
20 that was tuned by Mr. Vargas and trying to
21 imitate Mr. Vargas' ghost notes technique.

22 Q. Why would you say it would be
23 like it sounds like a drum tuned by
24 Mr. Vargas?

25 A. Because, again, it is

1 MATTHEW RITTER

2 exceedingly rare for one drum to suddenly
3 sound like a different drum just because it is
4 being played at a very soft volume. I mean
5 the sound of the drum can change a little, but
6 to have it suddenly sound like a tom-tom, a
7 moment ago it sounded like a snare is very
8 unusual. I hear that same phenomenon on this
9 record.

10 So, I heard that on Bust Dat
11 Groove. I know that Ralph at least on that
12 song chose to choke the snares on his drum. I
13 hear that same phenomenon here.

14 Q. I will play track number 4 from
15 Defendants' Exhibit 30.

16 (Track Playing.)

17 A. Okay.

18 Q. What instruments do you hear on
19 track number 4?

20 A. Bass drum, snare drum and
21 cymbal.

22 Q. Is it a ride cymbal?

23 A. The person is using it like a
24 ride cymbal which means they are playing
25 constant rhythm on it. It is very hard to

1 MATTHEW RITTER

2 tell what kind of cymbal it is. But, yes, it
3 is being used as a ride cymbal. So some
4 cymbal.

5 Q. Do the instruments you hear on
6 track number 4 in your opinion, are they the
7 same instruments that you heard played on
8 track number 3 -- do the instruments you hear
9 on track number 4 are they the same
10 instruments you heard played on track number
11 3?

12 MR. CHIN: Objection.

13 A. I don't know.

14 Q. Can you say whether the drummer
15 is different on track number 4 than on the
16 previous track?

17 MR. CHIN: Objection.

18 A. I don't know, but I will say
19 that if asked to speculate I would assume
20 that, it may be -- it may be the same drummer
21 because I hear a ghost note immediately
22 following a loud snare accent. Which is
23 something I've heard on, you know, I also
24 heard on previous tracks we play here.

25 Q. Okay. On the previous tracks

1 MATTHEW RITTER

2 we played here, track number 3 you said had at
3 least three ghost notes were those similar
4 ghost notes followed by a loud snare?

5 A. Can I hear number 3 again?

6 Q. Sure.

7 (Track Playing.)

8 A. Yes. Yes. This is a drummer
9 that likes to play a soft ghost note
10 immediately after a loud snare, which is not
11 very common. So it is may well be the same
12 drummer but the rhythm sounds different. So I
13 don't know if it is the same person.

14 Q. Did you hear any other --
15 sorry, how many ghost notes did you hear on
16 that track?

17 A. Track 4; right?

18 Q. Yes.

19 A. Can I hear it again, please.

20 (Track Playing.)

21 A. I only can clearly make out one
22 there is a lot of white noise because of the
23 cymbal. I can make out one immediately
24 following a loud snare hit.

25 Q. Can you tell if track number 4

1 MATTHEW RITTER

2 is Mr. Vargas playing the drums?

3 MR. CHIN: Objection.

4 A. I don't know if it is
5 Mr. Vargas.

6 Q. Did you hear on that track any
7 multiple bounce strokes?

8 A. No, I did not.

9 Q. Do you believe -- we have a
10 pair of headphones, would you prefer to listen
11 to the tracks through the headphones, would
12 that help?

13 A. It might help. I can try that.

14 Q. Okay. I don't know if this is
15 going to cut out the sound for all of us.

16 A. There is a loud buzzing.

17 MR. CHIN: There is now?

18 THE WITNESS: Yes, there is.

19 MR. CHIN: Does anybody know
20 how to get rid of that?

21 VIDEOGRAPHER: It might help if
22 you take it right out of the computer instead
23 of the headphones.

24 A. That is going to cover up any
25 nuance I am trying to find.

1 MATTHEW RITTER

2 MS. AHRENS: Can we go off the
3 record.

4 VIDEOGRAPHER: Going off the
5 record the time is 4:03.

6 (Recess taken.)

7 VIDEOGRAPHER: We are back on
8 the record. The time is 4:04.

9 Q. Mr. Ritter, we are going to
10 play track number 5 through the headphones
11 that we have given you. This is track number
12 5 on Defendants' Exhibit 30.

13 (Track Playing.)

14 A. I'm sorry, I have to go back to
15 speakers, it sounds like it is underwater,
16 maybe it varies from track to track. I think
17 I would prefer the speakers.

18 Q. Do you want to hear it again
19 through the speakers?

20 A. Yes. Just the speakers. Sorry
21 about that.

22 Q. That's okay. Here is track
23 number 5 through the speakers, we might have
24 to turn it up.

25 (Track Playing.)

1 MATTHEW RITTER

2 A. It is so crackly.

3 Q. I hear the crackling as well.
4 To me it sounds like a needle on a record, on
5 a vinyl. Does that sound --

6 A. That sounds like that might be
7 correct. Yes.

8 Q. Can you identify what
9 instruments are played on track number 5?

10 A. Yes. May I hear it one more
11 time.

12 Q. Sure.
13 (Track Playing.)

14 A. Can I hear it once more,
15 please.

16 Q. Uh-huh.
17 (Track Playing.)

18 A. There is bass drum, snare drum,
19 hi-hat.

20 Q. Do you have an opinion whether
21 those three instruments are the same as on the
22 previous track?

23 A. No, I don't have an opinion. I
24 don't know.

25 Q. Is the cymbal that we heard on

1 MATTHEW RITTER

2 track 5 different than the cymbal we heard on
3 track 4?

4 MR. CHIN: Objection.

5 A. Is track 4 the one that I said
6 they are playing it like a ride cymbal?

7 Q. Yes. We can hear track 4.

8 A. This sounds like a hi-hat to
9 me. The other one sounded like a cymbal being
10 used as a ride cymbal.

11 Q. Could a hi-hat cymbal be used
12 as a ride symbol?

13 A. It is possible if it were
14 opened all of the way so the two cymbals
15 didn't hit each other.

16 Q. I can play track 4 again. But
17 I wanted to ask whether you thought on track
18 number 4 the cymbal that was being played like
19 a ride was a hi-hat symbol being played like a
20 ride?

21 A. I am going -- there are ride
22 cymbals of every shape and size. Usually a
23 hi-hat refers to two cymbals placed together
24 so that they now bump up against one another.
25 So I have no idea what kind of cymbal the

1 MATTHEW RITTER

2 person is playing on, but it wasn't two
3 cymbals closed together.

4 Q. Okay. Fair enough. Can you
5 say on track number 5 whether the drummer is
6 different than the previous track?

7 A. No, I don't know.

8 Q. Okay. Can you tell if track
9 number 5 is being played by Mr. Vargas?

10 MR. CHIN: Objection.

11 A. I have no idea.

12 Q. Did you hear any ghost notes on
13 track number 5?

14 A. I don't know. Can I hear it
15 again.

16 Q. Sure.

17 (Track Playing.)

18 A. It does sounds like there is
19 one ghost notes. I'm not clear what
20 instrument it's on. It may be on the snare.
21 It may not. It sounds very tom-like to me
22 again. I'm not sure. This recording is
23 muddier than the others I heard.

24 Q. Okay. When you say you're not
25 sure what instrument it is played on, is it

1 MATTHEW RITTER

2 possible the ghost note is being played on the
3 hi-hat?

4 MR. CHIN: Objection.

5 A. I don't believe it is possible
6 it is being played on the hi-hat.

7 Q. Is it possible the ghost note
8 is being played on the bass drum?

9 MR. CHIN: Objection.

10 A. I believe it is being played on
11 some instrument with a hand not the foot.

12 Q. Okay. So the three instruments
13 we hear there, what you hear there is the bass
14 drum, the snare and hi-hat; right?

15 A. Yes. Except like I said there
16 is one ghost note that again sounds distinctly
17 tom-like.

18 Q. That ghost note, it could be a
19 tom?

20 MR. CHIN: Objection.

21 A. I don't know. It could be or
22 it could be the same phenomenon I heard in
23 other tracks today which is a snare sounding
24 like a tom. The reason I am not assure in
25 this case is because the hit I heard is not

1 MATTHEW RITTER

2 immediately following a snare drum, which
3 means that a drummer may have time to move his
4 hands to another drum all together.

5 Q. I will play track number 6 on
6 Defendants' number 30.

7 (Track Playing.)

8 A. Can I hear it again, please.

9 Q. Sure.

10 (Track Playing.)

11 MR. CHIN: What is that, is
12 that part of the record?

13 THE WITNESS: I don't know
14 what that is.

15 (Track Playing.)

16 A. Okay.

17 Q. On track number 6 what
18 instruments do you hear?

19 A. Bass drum, hi-hat and snare
20 drum.

21 Q. Do you have an opinion as to
22 whether those are the same bass drum, snare
23 and hi-hat as on the previous track?

24 A. I don't know.

25 Q. Can you say whether the drummer

1 MATTHEW RITTER

2 on track 5 is different than the previous --
3 sorry, whether the drummer on track 6 is
4 different than on the previous track?

5 MR. CHIN: Objection.

6 A. I can't say. I don't know.

7 Q. Can you tell if it is
8 Mr. Vargas playing track number 6?

9 MR. CHIN: Objection.

10 A. I don't know.

11 Q. Did you hear any ghost notes in
12 track number 6?

13 A. I did not hear any.

14 Q. Did you hear any multiple
15 bounce strokes in track 6?

16 A. No. But I will say the
17 quality, as you guys are probably hearing
18 already is degenerating as we go track by
19 track. There is a lot of static coming
20 through this. I don't know if it is the
21 machine or recording. I am being asked to
22 identify notes that are extremely difficult to
23 hear even if the drum was in the room with us.

24 But that having been said, I
25 will say no, I don't hear any ghost notes on

1 MATTHEW RITTER

2 that.

3 Q. You are saying those drums and
4 those sounds are extremely difficult to hear
5 even in a room with a live drummer, but you
6 formed your opinion listening to a recording
7 on a DiscMan; is that right?

8 MR. CHIN: Objection.

9 A. That's correct because on that
10 particular recording certain of the elements,
11 including most of the ghost notes were
12 prominent enough for me to hear them. Just as
13 has been the case with a couple of the tracks
14 I heard today.

15 Q. Okay. Track number 7 from
16 Defendants' Exhibit 30.

17 (Track Playing.)

18 Q. On track number 7 can you tell
19 me what instruments are played?

20 A. Bass drum, snare drum and
21 hi-hat.

22 Q. Do you have an opinion as to
23 whether those are the same instruments that
24 were on the previous track?

25 MR. CHIN: Objection.

1 MATTHEW RITTER

2 A. I don't know if they are the
3 same instruments. I do know that the sound is
4 very unusual on this track. It sounds
5 extremely boomy and muddy, I don't know if
6 that is the way it was recorded or something
7 enhanced digitally, but in either case I don't
8 know if it is the same drums used on the
9 previous track.

10 Q. Can you say whether the drummer
11 is different than the drummer for the previous
12 track?

13 MR. CHIN: Objection.

14 A. I don't know.

15 Q. Can you tell if it is
16 Mr. Vargas playing the drums on track
17 number 7?

18 MR. CHIN: Objection.

19 A. I don't know.

20 Q. Did you hear any ghost notes on
21 track 7?

22 A. No. I did not.

23 Q. Did you hear any multiple
24 bounce strokes on track number 7?

25 A. No.

1 MATTHEW RITTER

2 Q. I am going to play track number
3 8 from Defendants' Exhibit 30.

4 (Track Playing.)

5 Q. Can you tell me what
6 instruments are on track 8?

7 A. Bass drum, snare drum and
8 hi-hat.

9 Q. Do you have an opinion as to
10 whether these drums are the same as the
11 previous, the drums used in any of the
12 previous tracks?

13 MR. CHIN: Objection.

14 A. I don't know. But again this
15 sound on this is very -- sounds very strange
16 to me, like something that may have been
17 altered electronically somehow. When the
18 snares hit it seems to echo for almost the
19 whole rest of the measure. So either it is in
20 an echo chamber or there has been a certain
21 kind of reverb put on or the mic is positions
22 in a way to get very unusual recorded sounds.

23 Q. Would added effects make it
24 more difficult to identify whether it is the
25 same drummer playing?

1 MATTHEW RITTER

2 A. I don't know. Possibly. I
3 mean the more a recording is tampered with in
4 any way the more it becomes obscure of what
5 was there originally.

6 Q. On track number 8 -- I can't
7 remember where I was -- did you hear any ghost
8 notes?

9 A. May I hear it one more time.

10 Q. Sure.

11 (Track Playing.)

12 A. I don't believe there are any
13 ghost notes on that recording.

14 Q. Did you hear any multiple
15 bounce strokes on track 8?

16 A. No, I did not.

17 Q. Do you know if any effects were
18 used in the studio when Funky Drummer Volume
19 II was being recorded?

20 A. I don't know.

21 Q. Do you know if any effects were
22 added to Funky Drummer II when it was being
23 mixed?

24 A. I have no idea.

25 Q. Track number 9 from Defendants'

1 MATTHEW RITTER

2 Exhibit number 30.

3 (Track Playing.)

4 Q. Do you know what instruments
5 are on track number 9?

6 A. Bass drum, snare drum, hi-hat
7 and human voices.

8 Q. Can you say whether the
9 instruments you hear on track number 9 are the
10 same as the instruments played on track
11 number 8?

12 MR. CHIN: Objection.

13 A. I don't know.

14 Q. Can you say whether the drummer
15 on track 9 is different than the previous, the
16 drummer on the previous track?

17 MR. CHIN: Objection.

18 A. I don't know.

19 Q. Can you tell if track 9 is
20 being played by Mr. Vargas?

21 MR. CHIN: Objection.

22 A. I cannot tell.

23 Q. Did you hear any ghost notes on
24 track number 9?

25 A. I did not hear any, but I don't

1 MATTHEW RITTER

2 know if there are any because there were
3 children laughing and there is a lot of static
4 coming from the machine. Even if they were
5 there, I don't trust that I would be able to
6 hear them with that kind of recording.

7 Q. Did you hear any multiple
8 bounce stroke on track number 9?

9 A. I did not hear any but again
10 the nuances were pretty obscured as I was
11 listening to that because of the children's
12 voices and stuff they had put in.

13 Q. I will play track number 10
14 from Defendants' Exhibit 30.

15 (Track Playing.)

16 Q. What instruments -- do you want
17 to hear track 10 again?

18 A. Sure.

19 (Track Playing.)

20 A. Okay.

21 Q. What instruments do you hear on
22 track number 10?

23 A. Bass drum, hi-hat, rim click
24 which means hitting on the rim of the snare
25 drum and a person humming.

1 MATTHEW RITTER

2 Q. Is a rim click, would you
3 consider that an instrument?

4 A. When we notate it we usually
5 put it as a separate thing. It has got its
6 own symbol for a rim. I think that is the
7 most specific way to say it. Snare rim.

8 Q. Is a rim click different
9 than -- forget it. Scratch that.

10 Can you say whether the
11 instruments that are used on track number 10
12 are the same as on the previous track?

13 MR. CHIN: Objection.

14 A. I don't know.

15 Q. Can you say whether the drummer
16 on track number 10 is different than the
17 previous track?

18 MR. CHIN: Objection.

19 A. I don't know.

20 Q. Can you tell if it is
21 Mr. Vargas playing the drums on track number
22 10?

23 MR. CHIN: Objection.

24 A. I don't know.

25 Q. Did you hear any ghost notes on

1 MATTHEW RITTER

2 track number 10?

3 A. Yes, there are some ghost notes
4 on the rim that are bordering on not ghost
5 notes because sometimes the volume on them
6 creeps up a little bit. Yes, there are some
7 ghost notes on the rim of the drum.

8 Q. Did you hear any multiple
9 bounce stroke on track 10?

10 A. No, I did not.

11 Q. I am going to play track number
12 11 from Defendants' Exhibit 30.

13 (Track Playing.)

14 Q. What instruments do you hear on
15 track number 11?

16 A. Let me hear it once more,
17 please.

18 Q. Sure.
19 (Track Playing.)

20 A. Okay.

21 Q. What instruments do you hear on
22 track number 11?

23 A. I hear bass drum, hi-hat, snare
24 drum and some other kind of sound that is like
25 a high pitched metallic sound, maybe somebody

1 MATTHEW RITTER

2 hitting on the side of a cymbal stand or
3 something and putting that in there or a drum
4 that is made of metal and is tuned slightly
5 incorrectly so that there is some overtones
6 coming from the metal of the drum.

7 Q. Could it be anything else?

8 A. Sure. It could be anything.

9 It is an unusual sound effect. I don't know
10 where it originated from. But it has got sort
11 of a high pitched metallic sound. Almost like
12 taking a hammer and hitting it on a window
13 frame or something. It is played in unison
14 with the snare drum hits.

15 Q. Right. Can you say whether the
16 instruments you could identify on track number
17 11, whether those are the same instruments
18 that were played on the previous track?

19 MR. CHIN: Objection.

20 A. No, I can't say.

21 Q. Can you tell if whether the
22 drummer is different on track number 11 than
23 on the previous track?

24 MR. CHIN: Objection.

25 A. I can't tell.

1 MATTHEW RITTER

2 Q. Can you tell if track number 11
3 is Mr. Vargas?

4 MR. CHIN: Objection.

5 A. I don't know.

6 Q. Did you hear any ghost notes on
7 track 11?

8 A. I did not hear any.

9 Q. Did you hear any multiple
10 bounce stroke on track 11?

11 A. No.

12 Q. I will play track number 12.
13 (Track Playing.)

14 Q. Can you identify the
15 instruments played on track 12?

16 A. May I hear it once more,
17 please.

18 Q. Sure.
19 (Track Playing.)

20 A. Okay.

21 Q. Can you identify the
22 instruments on track 12?

23 A. Bass drum, snare drum and
24 hi-hat.

25 Q. Do you have an opinion as to

1 MATTHEW RITTER

2 whether those are the same bass drum, snare
3 drum and hi-hat that were on the previous
4 track?

5 MR. CHIN: Objection.

6 A. I don't.

7 Q. Can you say whether the drummer
8 on track number 12 is the same or different
9 than the previous track's drummer?

10 MR. CHIN: Objection.

11 A. I don't know.

12 Q. Can you tell if track number 12
13 is played by Mr. Vargas?

14 MR. CHIN: Objection.

15 A. No.

16 Q. Did you hear any ghost notes on
17 track 12?

18 A. Yes.

19 Q. And did you hear multiple
20 bounce strokes on track 12?

21 A. May I hear it once more,
22 please.

23 Q. Sure.

24 (Track Playing.)

25 A. Once more.

1 MATTHEW RITTER

2 (Track Playing.)

3 Q. What instruments -- sorry, did
4 you hear any multiple bounce stroke on track
5 12?

6 A. I heard one, yes.

7 Q. I will play track number 13
8 from Defendants' number 30 -- actually we can
9 go off the record. We need to switch the
10 tape.

11 VIDEOGRAPHER: Going off the
12 record. The time is 4:26. This is the end of
13 tape number 3.

14 (Recess taken.)

15 VIDEOGRAPHER: Back on the
16 record. The time is 4:30. This is beginning
17 of tape number 4.

18 Q. Mr. Ritter, you said you wanted
19 to finish your answer about the multiple
20 bounce stroke?

21 A. Right. I would like to hear it
22 once more.

23 Q. Talking about track number 12.
24 (Track Playing.)

25 A. I'm not able to say whether

1 MATTHEW RITTER

2 that multiple bounce stroke was executed with
3 one or two hands. Whereas on Bust Dat Groove
4 it was definitely executed with one hand.
5 This one to me sounds a more aggressive and it
6 also sounds like the hi-hat may stop
7 momentarily there, in which case it is
8 possible the drummer took both sticks and did
9 sort of a simultaneous two handed multiple
10 bounce stroke.

11 Q. So if it was two hands it
12 wouldn't be, you wouldn't perform one multiple
13 bounce stroke with two hands?

14 A. You might take both sticks and
15 kind of go "zzzzzz" yeah.

16 Q. I want to go into track number
17 13 of Defendants' Exhibit 30.

18 (Track Playing.)

19 Q. On track 13 what instruments do
20 we hear?

21 A. Bass drum, snare drum and
22 hi-hat.

23 Q. Can you tell if that is
24 Mr. Vargas playing track number 13?

25 MR. CHIN: Objection. Go

1 MATTHEW RITTER

2 ahead.

3 A. I don't know.

4 Q. Do you hear ghost notes on
5 track 13?

6 A. No, I don't hear any.

7 Q. Do you hear multiple bounce
8 stroke on track 13?

9 A. No.

10 Q. We will play track 14.

11 (Track Playing.)

12 Q. I will start it over. That is
13 track 14 of Defendants' Exhibit 30.

14 (Track Playing.)

15 A. Okay, all right. I know that.
16 That must be Bust Dat Groove with Ride.
17 Finally. Yes, that is Mr. Ralph Vargas
18 playing Bust Dat Groove on his drum set with a
19 ride cymbal added in.

20 Q. What about, let's go through
21 it. What instruments do you hear on track 14?

22 A. Bass drum, snare drum, ride
23 cymbal. Let me listen again and see if he
24 pulled the hi-hat out or if the hi-hat is
25 still in there, too.

1 MATTHEW RITTER

2 (Track Playing.)

3 A. And hi-hat.

4 Q. So bass drum, snare drum,
5 hi-hat and ride cymbal?

6 A. Yes.

7 Q. That one you can say for sure
8 that is a ride symbol?

9 A. Again, what one person calls a
10 ride cymbal someone else will call a crash
11 cymbal. A cymbal is a cymbal. A ride cymbal
12 you play constantly, we call ride. If you are
13 playing a ride symbol, I don't know what size
14 or shape or model it is.

15 Q. On this track you said you can
16 tell that is Mr. Vargas; right?

17 A. Yes. Exactly.

18 Q. Why is that?

19 A. Because again since I am
20 hearing the same, you know, I am hearing
21 Ralph's drumming within the same rhythm I am
22 already accustomed to listening to him I
23 immediately recognized his nuance, it is the
24 same sounds on the snare, the same sounds on
25 the bass drum. The exact same multiple bounce

1 MATTHEW RITTER

2 stroke that sounds like a roll on a tom. It
3 sounds like tom, you know.

4 Q. Are you saying that is the --
5 you are saying that is the exact same multiple
6 bounce stroke; correct?

7 A. I believe it is, yes, I believe
8 it is actually the same recording with maybe
9 Ralph himself puts a cymbal in there,
10 something.

11 Q. Okay. Going on to track number
12 15.

13 (Track Playing.)

14 A. Can I hear the previous one
15 once again.

16 Q. Sure thing. We were playing
17 track 15, you want to hear track 14 again?

18 A. Yes. I want to hear With Ride
19 and Without Ride back to back.

20 (Track Playing.)

21 A. Okay.

22 Q. Then track 15?

23 A. Yes.

24 (Track Playing.).

25 A. Okay.

1 MATTHEW RITTER

2 Q. What instruments were played on
3 track 15?

4 A. Bass drum, snare drum and
5 hi-hat.

6 Q. Do you recognize track 15?

7 A. Yes, that is Bust Dat Groove by
8 Ralph Vargas.

9 Q. And we will go on to track
10 number 16.

11 (Track Playing.)

12 A. Okay.

13 Q. What instruments do you hear
14 there?

15 A. Bass drum, snare drum and
16 hi-hat.

17 Q. Is that, can you tell if that
18 is Mr. Vargas playing the drums on track 16?

19 MR. CHIN: Objection.

20 A. I don't know.

21 Q. Do you have any opinion on
22 whether that is Mr. Vargas?

23 MR. CHIN: Objection.

24 A. I don't know. I don't know.

25 Q. Did you hear any ghost notes on

1 MATTHEW RITTER

2 track number 16?

3 A. I didn't hear any on that one.

4 Q. Did you hear any multiple
5 bounce stroke on track 16?

6 A. No.

7 Q. Last one, track 17. Here we
8 go.

9 (Track Playing.)

10 A. Can I hear it once more,
11 please.

12 Q. Sure.

13 (Track Playing.)

14 A. Okay.

15 Q. What instruments do you hear
16 there?

17 A. Bass drum, snare drum and some
18 other sound that is a little foreign to me,
19 maybe it is a second snare drum or some other
20 kind of high pitched sound. It sounds like it
21 has been put in there somehow.

22 Q. Can you tell if that drum track
23 on number 17 is played by Mr. Vargas?

24 MR. CHIN: Objection.

25 A. I don't know.

1 MATTHEW RITTER

2 playing on one of those particular tracks, do
3 you recall that?

4 A. Did I ask that?

5 Q. No. That Ms. Ahrens asked you.

6 A. Yes. I recall that.

7 Q. What would you need to do in
8 order to ascertain whether or not somebody
9 other than Ralph Vargas was playing on one of
10 the tracks on Funky Drummer Volume II?

11 A. Again, I would need to hear
12 that other person playing the drum composition
13 in question, figure out what they sound like
14 playing that rhythm. Then compare it to what
15 is on the record.

16 Q. Would it also help you to know
17 who that other person was?

18 MS. AHRENS: Objection,
19 leading.

20 A. It would help, yes, if I were
21 familiar with that drummer. Some drummers,
22 like I said earlier today are very famous and
23 over time I become familiar with their
24 idiosyncracies, I can usually recognize them.

25 Q. What experience do you have

1 MATTHEW RITTER

2 with obtaining licenses for music?

3 A. Zero.

4 Q. What experience do you have in
5 sampling?

6 A. Zero.

7 Q. In Mr. Ricigliano -- strike
8 that.

9 Do you recall reviewing
10 Mr. Ricigliano's declaration?

11 A. Yes, I do.

12 Q. Is it fair to say you disagree
13 with his conclusions in that, in his
14 declaration?

15 A. Yes, I disagree.

16 MS. AHRENS: Objection,
17 leading.

18 Q. Could you give me some of the
19 things that you strongly disagreed with
20 Mr. Ricigliano in terms of his conclusion in
21 his declaration in this case?

22 MS. AHRENS: Objection,
23 leading. Mischaracterizes.

24 A. Yes. First of all I was
25 immediately struck by the fact that

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, TAMMEY M. PASTOR, a Registered Professional Reporter, Certified LiveNote Reporter and Notary Public within and for the State of New York, do hereby certify:

That MATTHEW RITTER the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2006.

TAMMEY M. PASTOR, RPR, CLR