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 Distribution, Corp. f/k/a Universal
 7 Music & Video Distribution, Corp.

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

11 Osama Ahmed Fahmy, an individual,
 12 Plaintiff,
 13 v.

CASE NO. CV 07-05715 CAS (PJWx)

The Honorable Christina A. Snyder

**ANSWER TO COMPLAINT OF
 DEFENDANT UNIVERSAL MUSIC
 GROUP DISTRIBUTION, CORP.
 F/K/A UNIVERSAL MUSIC &
 VIDEO DISTRIBUTION, CORP.**

14 Jay-Z (aka Shawn Carter), Timothy
 Mosely, Kyambo Joshua, Rob Bourdon,
 15 Brad Delson, Mike Shinoda, Dave
 Farrell, Joseph Hahn, Chester
 16 Bennington, Big Bad Mr. Hahn Music,
 Chesterchaz Publishing, EMI Blackwood
 17 Music, Inc., EMI Music Publishing Ltd.,
 Kenji Kobayashi Music, Lil Lulu
 18 Publishing, Machine Shop Recordings,
 LLC, Marcy Projects Productions II,
 19 Inc., MTV Networks Enterprises Inc.,
 Nondisclosure Agreement Music,
 20 Paramount Home Entertainment, Inc.,
 Paramount Pictures Corporation, Radical
 21 Media, Rob Bourdon Music, Roc-A-
 Fella Records, LLC, Timbaland
 22 Productions, Inc., UMG Recordings,
 Inc., Universal Music and Video
 23 Distribution, Inc., and Warner Music
 Inc.,

24 Defendants.
 25

1 Defendant Universal Music Group Distribution, Corp. f/k/a Universal Music
2 & Video Distribution, Corp. (“Defendant”), answers the Complaint of Osama
3 Ahmed Fahmy (“Plaintiff”) as follows:

4 **JURISDICTION AND VENUE**

5 1. The allegations contained in paragraph 1 are legal conclusions to
6 which a response is not required. To the extent the allegations in paragraph 1 are
7 factual in nature, Defendant denies each and every allegation set forth therein.

8 **PARTIES**

9 2. Answering the first and second sentences of paragraph 2, Defendant
10 lacks information sufficient to form a belief as to the truth of said allegations and
11 on that basis denies each and every allegation set forth therein; and answering the
12 third sentence of paragraph 2, denies each and every allegation set forth therein.

13 3. Answering paragraph 3, Defendant admits the allegations in the first
14 sentence of paragraph 3; lacks information sufficient to form a belief as to the truth
15 of the allegations in the second sentence of paragraph 3, and on that basis denies
16 each and every allegation set forth therein; and denies each and every remaining
17 allegation set forth in paragraph 3.

18 4. Answering paragraph 4, Defendant lacks information sufficient to
19 form a belief as to the truth of said allegations and on that basis denies each and
20 every allegation set forth therein.

21 5. Answering paragraph 5, Defendant lacks information sufficient to
22 form a belief as to the truth of said allegations and on that basis denies each and
23 every allegation set forth therein.

24 6. Defendant admits that it is a corporate entity that has been identified in
25 product packaging as having participated in the distribution of the album entitled
26 *Vol. 3...Life and Times of S. Carter*. Answering the remaining allegations in
27 paragraph 6, Defendant lacks information sufficient to form a belief as to the truth

1 of said allegations and on that basis denies each and every allegation set forth
2 therein.

3 7. Answering paragraph 7, Defendant lacks information sufficient to
4 form a belief as to the truth of said allegations and on that basis denies each and
5 every allegation set forth therein.

6 **ALLEGATIONS COMMON TO ALL CLAIMS**

7 8. Answering the final sentence of paragraph 8, Defendant denies each
8 and every allegation set forth therein. Answering the remainder of paragraph 8,
9 Defendant lacks information sufficient to form a belief as to the truth of said
10 allegations and on that basis denies each and every allegation set forth therein.

11 9. Answering paragraph 9, Defendant lacks information sufficient to
12 form a belief as to the truth of said allegations and on that basis denies each and
13 every allegation set forth therein.

14 10. Answering paragraph 10, Defendant lacks information sufficient to
15 form a belief as to the truth of said allegations and on that basis denies each and
16 every allegation set forth therein.

17 11. Answering paragraph 11, Defendant lacks information sufficient to
18 form a belief as to the truth of said allegations and on that basis denies each and
19 every allegation set forth therein.

20 12. Answering paragraph 12, Defendant admits that the album *Vol.*
21 *3...Life and Times of S. Carter*, which contains a sound recording entitled “Big
22 Pimpin,”” was released in or about December 1999. Answering the remaining
23 allegations in paragraph 12, Defendant lacks information sufficient to form a belief
24 as to the truth of said allegations and on that basis denies each and every allegation
25 set forth therein.

26 13. Answering the first sentence of paragraph 13, Defendant admits that
27 distribution of the album *Vol. 3...Life and Times of S. Carter* has continued from

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1 its original release through the present. Defendant denies each and every
2 remaining allegation set forth in paragraph 13.

3 14. Answering paragraph 14, Defendant lacks information sufficient to
4 form a belief as to the truth of said allegations and on that basis denies each and
5 every allegation set forth therein.

6 15. Answering paragraph 15, Defendant lacks information sufficient to
7 form a belief as to the truth of said allegations and on that basis denies each and
8 every allegation set forth therein.

9 16. Answering the first sentence of paragraph 16, Defendant denies each
10 and every allegation set forth therein. Answering the second sentence of paragraph
11 16, Defendant lacks information sufficient to form a belief as to the truth of said
12 allegations and on that basis denies each and every allegation set forth therein.

13 17. The allegations contained in paragraph 17 are legal conclusions to
14 which a response is not required. To the extent the allegations in paragraph 17 are
15 factual in nature, Defendant lacks information sufficient to form a belief as to the
16 truth of said allegations and on that basis denies each and every allegation set forth
17 therein.

18 18. The allegations contained in paragraph 18 are legal conclusions to
19 which a response is not required. To the extent the allegations in paragraph 18 are
20 factual in nature, Defendant lacks information sufficient to form a belief as to the
21 truth of said allegations and on that basis denies each and every allegation set forth
22 therein.

23 **ANSWER TO FIRST CLAIM FOR RELIEF**

24 19. Answering paragraph 19, Defendant incorporates by reference its
25 answers to paragraphs 1 through 18 above, as if set forth in full herein.

26 20. Answering paragraph 20, Defendant denies each and every allegation
27 set forth therein.

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PRAYER FOR RELIEF

48. Defendant denies that Plaintiff is entitled to recover any of the damages, injunctive or other relief sought in his Prayer for Relief, and denies each and every allegation contained therein.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim for Relief)

49. The Complaint fails to state facts sufficient to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE
(Statute of Limitations)

50. Plaintiff's claims are barred in whole or in part by the applicable statute(s) of limitations.

THIRD AFFIRMATIVE DEFENSE
(Standing)

51. Plaintiff lacks standing to bring this action or any claim against Defendant for the relief sought herein.

FOURTH AFFIRMATIVE DEFENSE
(Failure to Join Necessary and Indispensable Parties)

52. The Complaint fails to name necessary or indispensable parties, including persons and entities that own the allegedly infringed works, as alleged in the Complaint.

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FIFTH AFFIRMATIVE DEFENSE

(Independent Creation)

53. Defendant’s works were the result of Defendant’s independent creation.

SIXTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

54. Plaintiff’s causes of action, and each of them, and his injunctive and restitution remedies, are barred in light of the fact that Plaintiff has an adequate remedy at law.

SEVENTH AFFIRMATIVE DEFENSE

(Attorneys’ Fees Not Recoverable)

55. Plaintiff is barred from any recovery of attorneys’ fees, because, in bringing this action, Plaintiff has not alleged any basis upon which attorneys’ fees are recoverable.

EIGHTH AFFIRMATIVE DEFENSE

(Laches)

56. Plaintiff is barred by the doctrine of laches from asserting any of his claims for relief.

NINTH AFFIRMATIVE DEFENSE

(Waiver)

57. Plaintiff has, through his actions, conduct, delay, and failure to act, waived any right to relief.

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TENTH AFFIRMATIVE DEFENSE

(Estoppel)

58. Plaintiff is estopped by his own acts and omissions from asserting any claims in this action.

ELEVENTH AFFIRMATIVE DEFENSE

(De Minimis)

59. To the extent any copyrightable elements from any of the allegedly infringed works were used in allegedly infringing works and were not independently created, such use is *de minimis* and not actionable.

TWELFTH AFFIRMATIVE DEFENSE

(Authorization, License, Acquiescence, Ratification, Consent)

60. To the extent any of the acts or omissions averred in the Complaint occurred, those acts were authorized, licensed, acquiesced in, ratified, or consented to it, expressly, by implication, or by conduct.

THIRTEENTH AFFIRMATIVE DEFENSE

(Lack of Willfulness)

61. Defendant has not willfully infringed any alleged copyright in the Plaintiff's purported work.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Comply with Statutory Requirements)

62. Plaintiff has failed to comply with the registration, deposit, and other statutory requirements that are conditions precedent to maintaining this action and/or to the recovery of statutory damages and attorneys' fees.

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FIFTEENTH AFFIRMATIVE DEFENSE

(Work for Hire)

63. To the extent Baligh Hamdy wrote or contributed to “Khosara Khosara,” such contribution was a work made for hire.

SIXTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

64. Plaintiff’s claims are barred by the doctrine of unclean hands.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Good Faith)

65. To the extent Defendant engaged in any act averred by Plaintiff, it did so innocently and in good faith.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Lack of Originality)

66. Plaintiff’s causes of action are barred as the portion of the Plaintiff’s work alleged to have been infringed is not original.

NINETEENTH AFFIRMATIVE DEFENSE

(Lack of Protectability)

67. Plaintiff’s causes of action are barred as the portion of the Plaintiff’s work alleged to have been infringed is not protectable.

TWENTIETH AFFIRMATIVE DEFENSE

(Forfeiture by General Publication)

68. Plaintiff’s works are in the public domain by reason of the alleged author’s sale of said works without affixing any copyright notice thereto.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

(Fair Use)

69. To the extent any copyrightable elements from the allegedly infringed work was used in allegedly infringing works and were not independently created, such use constituted fair use.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Not Copyrightable Expression)

70. Plaintiff’s claims are barred, in whole or in part, because there is no infringement of copyrightable expression.

WHEREFORE, Defendant prays:

- 1. That Plaintiff take nothing by the Complaint, and that the Complaint, and each claim for relief therein, be dismissed with prejudice;
- 2. For Defendant’s attorneys’ fees and full costs incurred herein; and
- 3. For such other relief as the Court deems just and proper.

DATED: April 3, 2008

RUSSELL J. FRACKMAN
ALEXA L. LEWIS
MITCHELL SILBERBERG & KNUPP LLP

By: /s/ Alexa L. Lewis
Alexa L. Lewis

Attorneys for Defendant Universal Music Group
Distribution, Corp. f/k/a Universal Music & Video
Distribution, Corp.