

1 RUSSELL J. FRACKMAN (SBN 49087)
 rjf@msk.com
 2 ALEXA L. LEWIS (SBN 235867)
 all@msk.com
 3 MITCHELL SILBERBERG & KNUPP LLP
 11377 West Olympic Boulevard
 4 Los Angeles, California 90064-1683
 Telephone: (310) 312-2000
 5 Facsimile: (310) 312-3100
 6 Attorneys for Warner Music Inc.

7
 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
 10

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 WARNER MUSIC
 INC.**

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 Warner Music Inc. (“Defendant”), answers the Complaint of
2 Osama Ahmed Fahmy (“Plaintiff”) as follows:

3 **JURISDICTION AND VENUE**

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

7 **PARTIES**

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

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

17 4. Answering paragraph 4, Defendant admits that Rob Bourdon, Brad
18 Delson, Mike Shinoda, Dave Farrell, Joseph Hahn, and Chester Bennington are
19 entertainers who record, produce, and perform music as members of the band
20 “Linkin Park,” but lacks information sufficient to form a belief as to the truth of
21 the remaining allegations of paragraph 4 and on that basis denies each and every
22 allegation set forth therein.

23 5. Defendant admits that Warner Bros. Records Inc., a Warner Music
24 Group Company, has been identified in product packaging as a record label that
25 participated in the release of an album entitled *Collision Course*, which contained a
26 track entitled “Big Pimpin’/Papercut,” but denies each and every remaining
27 allegation set forth in the first sentence of paragraph 5. Answering the second
28 sentence of paragraph 5, Defendant lacks information sufficient to form a belief as

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

3 6. Answering paragraph 6, 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 7. Answering paragraph 7, 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 **ALLEGATIONS COMMON TO ALL CLAIMS**

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

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

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

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

1 14. Answering paragraph 14, Defendant admits that, in or about July
2 2004, Linkin Park and Jay-Z performed a concert at the Roxy Theater in West
3 Hollywood; that, during said concert Jay-Z and Linkin Park performed a song
4 entitled “Big Pimpin’/Papercut;” and that, in approximately late November 2004, a
5 work entitled *Collision Course*, which jointly packaged a DVD recording of said
6 concert and a CD containing an in-studio recording of “Big Pimpin’/Papercut;”
7 was released, which continues to be distributed today. Defendant denies each and
8 every remaining allegation set forth in paragraph 14.

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

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

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

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

26 **ANSWER TO FIRST CLAIM FOR RELIEF**

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

1 20. The allegations contained in paragraph 20 are not directed against
2 Defendant and as such no answer to paragraph 20 is required. To the extent any
3 answer is required, Defendant denies each and every allegation set forth therein.

4 21. The allegations contained in paragraph 21 are not directed against
5 Defendant and as such no answer to paragraph 21 is required. To the extent any
6 answer is required, Defendant denies each and every allegation set forth therein.

7 22. The allegations contained in paragraph 22 are not directed against
8 Defendant and as such no answer to paragraph 22 is required. To the extent any
9 answer is required, Defendant denies each and every allegation set forth therein.

10 23. The allegations contained in paragraph 23 are not directed against
11 Defendant and as such no answer to paragraph 23 is required. To the extent any
12 answer is required, Defendant denies each and every allegation set forth therein.

13 24. The allegations contained in paragraph 24 are not directed against
14 Defendant and as such no answer to paragraph 24 is required. To the extent any
15 answer is required, Defendant denies each and every allegation set forth therein.

16 25. The allegations contained in paragraph 25 are not directed against
17 Defendant and as such no answer to paragraph 25 is required. To the extent any
18 answer is required, Defendant denies each and every allegation set forth therein.

19 26. The allegations contained in paragraph 26 are not directed against
20 Defendant and as such no answer to paragraph 26 is required. To the extent any
21 answer is required, Defendant denies each and every allegation set forth therein.

22 27. The allegations contained in paragraph 27 are not directed against
23 Defendant and as such no answer to paragraph 27 is required. To the extent any
24 answer is required, Defendant denies each and every allegation set forth therein.

25 **ANSWER TO SECOND CLAIM FOR RELIEF**

26 28. Answering paragraph 28, Defendant incorporates by reference its
27 answers to paragraphs 1 through 18 above, as if set forth in full herein.

1 29. Answering paragraph 29, Defendant denies each and every allegation
2 set forth therein.

3 30. Answering the first sentence of paragraph 30, Defendant denies each
4 and every allegation set forth therein. Defendant lacks information sufficient to
5 form a belief as to the truth of the allegations in the second sentence of paragraph
6 30 and on that basis denies each and every allegation set forth therein.

7 31. Answering paragraph 31, Defendant lacks information sufficient to
8 form a belief as to the truth of the allegations that Linkin Park and Jay-Z have
9 performed “Big Pimpin’/Papercut” at venues and on occasions other than the July
10 2004 performance at the Roxy, and on that basis denies those allegations.
11 Defendant denies each and every remaining allegation set forth in Paragraph 31.

12 32. Answering paragraph 32, Defendant denies each and every allegation
13 set forth therein.

14 33. Answering paragraph 33, Defendant denies each and every allegation
15 set forth therein.

16 34. Answering paragraph 34, Defendant denies each and every allegation
17 set forth therein.

18 35. Answering paragraph 35, Defendant denies each and every allegation
19 set forth therein..

20 **ANSWER TO THIRD CLAIM FOR RELIEF**

21 36. Answering paragraph 36, Defendant incorporates by reference its
22 answers to paragraphs 1 through 18 above, as if set forth in full herein.

23 37. The allegations contained in paragraph 37 are not directed against
24 Defendant and as such no answer to paragraph 37 is required. To the extent any
25 answer is required, Defendant denies each and every allegation set forth therein.

26 38. The allegations contained in paragraph 38 are not directed against
27 Defendant and as such no answer to paragraph 38 is required. To the extent any
28 answer is required, Defendant denies each and every allegation set forth therein.

1 39. The allegations contained in paragraph 39 are not directed against
2 Defendant and as such no answer to paragraph 39 is required. To the extent any
3 answer is required, Defendant denies each and every allegation set forth therein.

4 40. The allegations contained in paragraph 40 are not directed against
5 Defendant and as such no answer to paragraph 40 is required. To the extent any
6 answer is required, Defendant denies each and every allegation set forth therein.

7 41. The allegations contained in paragraph 41 are not directed against
8 Defendant and as such no answer to paragraph 41 is required. To the extent any
9 answer is required, Defendant denies each and every allegation set forth therein.

10 42. The allegations contained in paragraph 42 are not directed against
11 Defendant and as such no answer to paragraph 42 is required. To the extent any
12 answer is required, Defendant denies each and every allegation set forth therein.

13 **ANSWER TO FOURTH CLAIM FOR RELIEF**

14 43. This claim for relief has been dismissed pursuant to the Court's Order
15 of March 20, 2008, and as such no answer to paragraph 43 is required. To the
16 extent any answer is required, Defendant incorporates by reference its answers to
17 paragraphs 1 through 37 above, as if set forth in full herein.

18 44. This claim for relief has been dismissed pursuant to the Court's Order
19 of March 20, 2008, and as such no answer to paragraph 44 is required. To the
20 extent any answer is required, Defendant denies each and every allegation set forth
21 therein.

22 45. This claim for relief has been dismissed pursuant to the Court's Order
23 of March 20, 2008, and as such no answer to paragraph 45 is required. To the
24 extent any answer is required, Defendant denies each and every allegation set forth
25 therein.

26 46. This claim for relief has been dismissed pursuant to the Court's Order
27 of March 20, 2008, and as such no answer to paragraph 46 is required. To the

1 extent any answer is required, Defendant denies each and every allegation set forth
2 therein.

3 47. This claim for relief has been dismissed pursuant to the Court's Order
4 of March 20, 2008, and as such no answer to paragraph 47 is required. To the
5 extent any answer is required, Defendant denies each and every allegation set forth
6 therein.

7
8 **PRAYER FOR RELIEF**

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

12
13 **FIRST AFFIRMATIVE DEFENSE**

14 **(Failure to State a Claim for Relief)**

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

17
18 **SECOND AFFIRMATIVE DEFENSE**

19 **(Statute of Limitations)**

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

22
23 **THIRD AFFIRMATIVE DEFENSE**

24 **(Standing)**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NINTH AFFIRMATIVE DEFENSE

(Waiver)

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

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 Warner Music Inc.