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 Shinoda, Dave Farrell, Joseph Hahn, Chester
 7 Bennington, Big Bad Mr. Hahn Music,
 Chesterchaz Publishing, Kenji Kobayashi Music,
 8 Machine Shop Recordings LLC, Nondisclosure
 Agreement Music and Rob Bourdon Music
 9

10 UNITED STATES DISTRICT COURT

11 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 Osama Ahmed Fahmy, an individual,
 13 Plaintiff,

14 v.

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

25 Defendants.
 26

CASE NO. CV 07-05715 CAS (PJWx)

The Honorable Christina A. Snyder

**ANSWER TO COMPLAINT OF
 DEFENDANTS ROB BOURDON,
 BRAD DELSON, MIKE SHINODA,
 DAVE FARRELL, JOSEPH HAHN,
 CHESTER BENNINGTON, BIG BAD
 MR. HAHN MUSIC,
 CHESTERCHAZ PUBLISHING,
 KENJI KOBAYASHI MUSIC,
 MACHINE SHOP RECORDINGS
 LLC, NONDISCLOSURE
 AGREEMENT MUSIC AND ROB
 BOURDON MUSIC**

1 Defendants Rob Bourdon, Brad Delson, Mike Shinoda, Dave Farrell, Joseph
2 Hahn, Chester Bennington, Big Bad Mr. Hahn Music, Chesterchaz Publishing,
3 Kenji Kobayashi Music, Machine Shop Recordings LLC, Nondisclosure
4 Agreement Music and Rob Bourdon Music (“Defendants”), answer the Complaint
5 of Osama Ahmed Fahmy (“Plaintiff”) as follows:

6 **JURISDICTION AND VENUE**

7 1. The allegations contained in paragraph 1 are legal conclusions to
8 which a response is not required. To the extent the allegations in paragraph 1 are
9 factual in nature, Defendants deny each and every allegation set forth therein.

10 **PARTIES**

11 2. Answering the first and second sentences of paragraph 2, Defendants
12 lack information sufficient to form a belief as to the truth of said allegations and on
13 that basis deny each and every allegation set forth therein; and answering the third
14 sentence of paragraph 2, deny each and every allegation set forth therein.

15 3. Answering paragraph 3, Defendants admit the allegations in the first
16 sentence of paragraph 3; lack information sufficient to form a belief as to the truth
17 of the allegations in the second sentence of paragraph 3, and on that basis deny
18 each and every allegation set forth therein; and deny each and every remaining
19 allegation set forth in paragraph 3.

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

26 5. Defendants admit that Warner Bros. Records, Inc., a Warner Music
27 Group Company, has been identified in product packaging as a record label that
28 participated in the release of an album entitled *Collision Course*, which contained a

1 track entitled “Big Pimpin’/Papercut,” but deny each and every remaining
2 allegation set forth in the first sentence of paragraph 5. Answering the second
3 sentence of paragraph 5, Defendants lack information sufficient to form a belief as
4 to the truth of said allegations and on that basis deny each and every allegation set
5 forth therein.

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

9 7. Answering paragraph 7, Defendants lack information sufficient to
10 form a belief as to the truth of said allegations and on that basis deny each and
11 every allegation set forth therein.

12 **ALLEGATIONS COMMON TO ALL CLAIMS**

13 8. Answering the final sentence of paragraph 8, Defendants deny each
14 and every allegation set forth therein. Answering the remainder of paragraph 8,
15 Defendants lack information sufficient to form a belief as to the truth of said
16 allegations and on that basis deny each and every allegation set forth therein.

17 9. Answering paragraph 9, Defendants lack information sufficient to
18 form a belief as to the truth of said allegations and on that basis deny each and
19 every allegation set forth therein.

20 10. Answering paragraph 10, Defendants lack information sufficient to
21 form a belief as to the truth of said allegations and on that basis deny each and
22 every allegation set forth therein.

23 11. Answering paragraph 11, Defendants lack information sufficient to
24 form a belief as to the truth of said allegations and on that basis deny each and
25 every allegation set forth therein.

26 12. Answering paragraph 12, Defendants lack information sufficient to
27 form a belief as to the truth of said allegations and on that basis deny each and
28 every allegation set forth therein.

1 13. Answering paragraph 13, Defendants lack information sufficient to
2 form a belief as to the truth of said allegations and on that basis deny each and
3 every allegation set forth therein.

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

12 15. Answering paragraph 15, Defendants lack information sufficient to
13 form a belief as to the truth of said allegations and on that basis deny each and
14 every allegation set forth therein.

15 16. Answering the first sentence of paragraph 16, Defendants deny each
16 and every allegation set forth therein. Answering the second sentence of paragraph
17 16, Defendants lack information sufficient to form a belief as to the truth of said
18 allegations and on that basis deny each and every allegation set forth therein.

19 17. The allegations contained in paragraph 17 are legal conclusions to
20 which a response is not required. To the extent the allegations in paragraph 17 are
21 factual in nature, Defendants lack information sufficient to form a belief as to the
22 truth of said allegations and on that basis deny each and every allegation set forth
23 therein.

24 18. The allegations contained in paragraph 18 are legal conclusions to
25 which a response is not required. To the extent the allegations in paragraph 18 are
26 factual in nature, Defendants lack information sufficient to form a belief as to the
27 truth of said allegations and on that basis deny each and every allegation set forth
28 therein.

ANSWER TO FIRST CLAIM FOR RELIEF

19. Answering paragraph 19, Defendants incorporate by reference their answers to paragraphs 1 through 18 above, as if set forth in full herein.

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

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

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

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

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

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

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

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

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ANSWER TO SECOND CLAIM FOR RELIEF

28. Answering paragraph 28, Defendants incorporate by reference their answers to paragraphs 1 through 18 above, as if set forth in full herein.

29. Answering paragraph 29, Defendants deny each and every allegation set forth therein.

30. Answering paragraph 30, Defendants deny each and every allegation set forth therein.

31. Answering paragraph 31, Defendants admit that Linkin Park and Jay-Z have performed “Big Pimpin’/Papercut” at venues and on occasions other than the July 2004 performance at the Roxy, but deny each and every remaining allegation set forth in Paragraph 31.

32. Answering paragraph 32, Defendants deny each and every allegation set forth therein.

33. Answering paragraph 33, Defendants deny each and every allegation set forth therein.

34. Answering paragraph 34, Defendants deny each and every allegation set forth therein.

35. Answering paragraph 35, Defendants deny each and every allegation set forth therein..

ANSWER TO THIRD CLAIM FOR RELIEF

36. Answering paragraph 36, Defendants incorporate by reference their answers to paragraphs 1 through 18 above, as if set forth in full herein.

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

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

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

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

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

10 42. The allegations contained in paragraph 42 are not directed against
11 Defendants and as such no answer to paragraph 42 is required. To the extent any
12 answer is required, Defendants deny 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, Defendants incorporate by reference their 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, Defendants deny 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, Defendants deny 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

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1 extent any answer is required, Defendants deny 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, Defendants deny each and every allegation set forth
6 therein.

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8 **PRAYER FOR RELIEF**

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

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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.

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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.

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23 **THIRD AFFIRMATIVE DEFENSE**

24 **(Standing)**

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

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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. Defendants' works were the result of Defendants' 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.

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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. Defendants have not willfully infringed any alleged copyright in the Plaintiff's purported work.

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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 Defendants engaged in any act averred by Plaintiff, they 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.

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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, Defendants pray:

1. That Plaintiff take nothing by the Complaint, and that the Complaint, and each claim for relief therein, be dismissed with prejudice;

2. For Defendants’ attorneys’ fees and full costs incurred herein; and

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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 Defendants Rob Bourdon, Brad
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Music, Chesterchaz Publishing, Kenji Kobayashi
Music, Machine Shop Recordings LLC,
Nondisclosure Agreement Music and Rob
Bourdon Music