

DEC 27 2007

JOHN A. CLARKE, CLERK  
*John A. Clarke*  
BY JALON TAYLOR, DEPUTY

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4 Attorney for Plaintiff,  
5 Daniel Kapon

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**  
10

11 **DANIEL KAPON**, an individual. )  
12 Plaintiffs, )  
13 v. )  
14 **MICHAEL JOE JACKSON**, an individual; )  
MJ PRODUCTIONS, INC., a California )  
15 corporation; SONY MUSIC )  
ENTERTAINMENT INC., a Delaware )  
16 corporation; and DOES 1 through 100, )  
inclusive, )  
17 Defendants. )  
18

Case No.: BC 351102

**DECLARATION OF BARRY FISCHER IN SUPPORT OF PLAINTIFF'S EX PARTE APPLICATION**

Date: December 27, 2007  
Time: 8:30 a.m.  
Dept.: 58-DARK, 56

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21 **DECLARATION OF BARRY FISCHER**  
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23 I, Barry Fischer, declare as follows:

24 1. I am an attorney at law duly authorized to practice law before all courts of the  
25 State of California. I make this declaration based upon my own personal knowledge, and if called  
26 to testify to the following, I could and would competently do so.

27 2. I was retained by Plaintiff, Daniel Kapon, on Wednesday, August 15, 2007.  
28

12/27/07

1           3.       The court entered a discovery sanction order on 11/27/2007. As I left the court  
2 room, I met Daniel Kapon and his mother Susi Newman coming out of the elevator. I informed  
3 them of the ruling of the court.

4           4.       I have not seen Daniel Kapon since the date of that hearing nor do I know his  
5 whereabouts or condition.

6           5.       From 11/27/2007 to December 17, 2007, I or my paralegal Kili Sands, have  
7 attempted to contact Daniel Kapon multiple times every day via e-mail (Further, evidenced, is a  
8 true and correct copy of said emails dated November 20, 2007 thru December 26, 2007, to Daniel  
9 Kapone from Barry Fischer, attached as "Exhibit A" and emails dated December 11, 2007 thru  
10 December 24, 2007, to Daniel Kapone from Kili Sands, attached as "Exhibit B" are incorporated  
11 herein by these references. Both of which, in order to protect the client-attorney privilege, we  
12 ask the Court to view them in-camera) requesting information to try to repair the deficiencies in  
13 discovery, to try to provide the court with new evidence, to support Plaintiff's ex parte to shorten  
14 time, to prepare for trial, to hear the motion to withdraw and the Court's Orders of 11/27/2007  
15 and 12/5/2007.

16           6.       Over the course of the litigation, Daniel Kapon initially participated,  
17 communicated with my office, help draft responses to discovery and provided digital and hard-  
18 copy documents. However, since the November 27, 2007 hearing, Daniel Kapon has effectively  
19 disappeared.

20           7.       His mother Susie Newman told me Danile Kapone was homeless, living in a car.

21           8.       Danile Kapone told me that he was ill from November 10, 2007 thru November  
22 27, 2007 with the flu.

23           9.       I have written to him, called him, sent emails but to no avail. There has been no  
24 response.

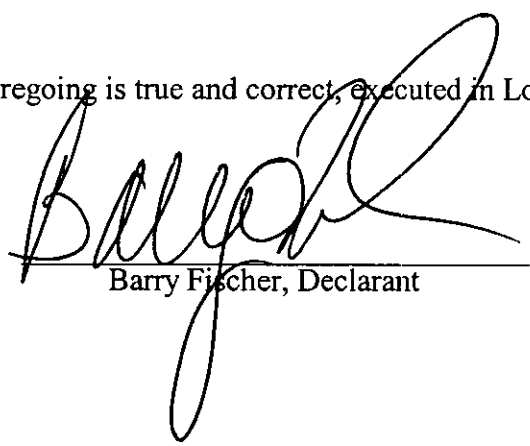
25           10.      I do not know if he is ill, dead or simply refusing to respond.

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11. I simply cannot prepare for trial under these circumstances. I can not prepare without a client.,

I declare under penalty of perjury that the foregoing is true and correct, executed in Los Angeles, California on December 26, 2007.



Barry Fischer, Declarant

12/27/07