

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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LAVA RECORDS, LLC, et al.

DOCKET NO.08-2376-cv

v.

ROLANDO AMURAO

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**PLAINTIFFS-APPELLEES' MOTION TO ADJOURN ORAL ARGUMENT**

Plaintiffs-Appellees respectfully submit this motion under this Court's Local Rule 27 and Interim Local Rule 34(e) requesting an adjournment and resetting of the date for oral argument in this matter. As grounds for their motion, Plaintiffs-Appellees state as follows:

Appellant filed this appeal on May 13, 2008. Appellant's Brief was initially due on June 25, 2008, but Appellant sought and was granted two extensions, first to July 25, 2008 (*see* Scheduling Order #2) and then to August 4, 2008 (*see* July 30, 2008 Order). Plaintiffs-Appellees were granted one extension and filed their Brief on October 3, 2008. Appellant filed his Reply on October 23, 2008.

On April 2, 2009, undersigned counsel received information, informally, that the Court was proposing oral argument for the week of May 18, 2009. (Reynolds Decl. ¶ 2.) Upon receipt of this information, Plaintiffs-Appellees' contacted the Court to advise that undersigned counsel had a conflict due to a jury trial scheduled in federal court that same week. (*Id.*) Undersigned counsel also sent a letter to the Deputy Clerk advising that undersigned counsel had a conflict with the proposed week of May 18, 2009. (*Id.*) Unfortunately, the letter was mistakenly sent to a fax number belonging to Staff Counsel and was not received by the Deputy Clerk. (A copy of Plaintiffs-Appellees' April 3, 2009 letter is

attached as Exhibit A to the Declaration of Timothy M. Reynolds.) The letter was also sent to counsel for Appellant, who did receive it. (Reynolds Decl. ¶ 2.)

On April 13, 2009, Plaintiffs-Appellees received a Notice of Hearing Date, reflecting a hearing date of May 19, 2009. (*Id.* ¶ 3.) After receiving this Notice, Plaintiffs-Appellees contacted the Court and learned that the Deputy Clerk had not received Plaintiffs-Appellees' April 3, 2009 letter concerning undersigned counsel's conflict. (*Id.*)

Undersigned counsel is the attorney primarily responsible for representing Plaintiffs-Appellees both in this Court and in the District Court. (*Id.* ¶ 4.) Undersigned counsel drafted the briefs and argued all motions in the District Court, and is the attorney responsible for drafting Plaintiffs-Appellees' Brief in this Court. (*Id.*) Undersigned counsel has a conflict with the May 19, 2009 date set for oral argument. (*Id.*) Specifically, undersigned counsel is lead counsel for the plaintiffs in a jury trial scheduled to begin in federal court on May 18, 2009. (*Id.*)

Plaintiffs-Appellees respectfully submit that the foregoing circumstances justify an adjournment of the May 19, 2009 hearing date. Immediately upon learning of the proposal to set oral argument for the week of May 18, Plaintiffs-Appellees made a good faith effort both orally and in writing to advise the Court of undersigned counsel's conflict. (*Id.* ¶ 5.) Plaintiffs-Appellees also acted promptly to seek to adjourn the hearing after receiving the Court's Notice. (*Id.*) It would substantially prejudice Plaintiffs-Appellees to have to retain new counsel for oral argument at this late date. (*Id.*) By contrast, Plaintiffs-Appellees do not believe that an adjournment would prejudice any party, especially where Appellant has already sought and been granted two extensions to file his Brief. (*Id.*)

Counsel for Plaintiffs-Appellees has conferred with counsel for Appellant by telephone concerning this request. Appellant opposes the request. (*Id.* ¶ 6.)

WHEREFORE, Plaintiffs-Appellees request that the hearing on oral argument set for May 19, 2009 be adjourned and reset to a later date that is convenient for the Court and the parties.

Respectfully submitted,



s/ Timothy M. Reynolds

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## CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2009, a true and correct hard copy of PLAINTIFFS-APPELLEE'S MOTION TO ADJOURN ORAL ARGUMENT was sent to the following person by FedEx overnight delivery and by email:

Richard Altman  
285 W. Fourth Street  
New York, NY 10014

All required privacy redactions have been made to said document, with the exception of those redactions, every document submitted in digital form is an exact copy of the written document filed with the clerk, and said document has been scanned for viruses with the most recent version of a commercial virus scanning program (see attached Anti-Virus Certification Form) and according to the program are free of viruses.



s/Timothy M. Reynolds

**ANTI-VIRUS CERTIFICATION FORM**  
**See Second Circuit Interim Local Rule 25(a)6**

CASE NAME: Lava Records v. Rolando Amurao

DOCKET NUMBER: 08-2376-cv

I, Timothy M. Reynolds, certify that I have scanned for viruses the PDF versions of the attached documents that were submitted in this case as an email attachment to:

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s/ Timothy M. Reynolds

Date: April 14, 2009