

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

LAVA RECORDS LLC, et al.

DOCKET NO.08-2376-cv

v.

ROLANDO AMURAO

DECLARATION OF TIMOTHY M. REYNOLDS

I, Timothy M. Reynolds, declare under penalty of perjury that the following is true and correct:

1. I am a Partner at the law firm of Holme, Roberts & Owen LLP counsel to Plaintiffs-Appellees in the above matter. I am familiar with the above-captioned matter and have personal knowledge of the facts stated herein.
2. On April 2, 2009, I received information, informally, that the Court was proposing oral argument for the week of May 18, 2009. Upon receipt of this information, my office contacted the Deputy Clerk by telephone to advise the Court that I had a conflict due to a jury trial scheduled in federal court that same week. The following day, I sent a letter to the Deputy Clerk advising that I had a conflict with the proposed week of May 18, 2009. Unfortunately, the letter was mistakenly sent to a fax number belonging to Staff Counsel, with whom I had previously corresponded regarding the case, and was not received by the Deputy Clerk. (A copy of my April 3, 2009 letter is attached as Exhibit A.) My April 3 letter was also sent to counsel for Appellant, who did receive it.
3. On April 13, 2009, Plaintiffs-Appellees received a Notice of Hearing Date, reflecting a hearing date of May 19, 2009. After receiving this Notice, I contacted the Deputy Clerk and learned that the Deputy Clerk had not received my April 3, 2009 letter.

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

5. Immediately upon learning of the proposal to set oral argument for the week of May 18, 2009, Plaintiffs-Appellees made a good faith effort both orally and in writing to advise the Court of my conflict. Plaintiffs-Appellees also acted promptly to seek to adjourn the hearing after receiving the Court's Notice. It would substantially prejudice Plaintiffs-Appellees to have to retain new counsel for oral argument at this late date. 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.

6. I conferred with counsel for Appellant by telephone concerning this request and was advised that Appellant would oppose the request.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 14th day of April, 2009.



s/Timothy M. Reynolds
Timothy Reynolds

EXHIBIT A



Holme Roberts & Owen LLP
Attorneys at Law

BOULDER

Via Facsimile (212) 857-8756

April 3, 2009

COLORADO SPRINGS

Erin Justice, Deputy Clerk
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

DENVER

Re: Lava Records, LLC v. Amurao
Docket No. 08-2376-cv

LONDON

Dear Ms. Justice:

Undersigned is counsel for Plaintiffs/Appellees in the above-referenced matter. I write to advise the Court that I now have additional conflicts due to other pending matters as follows:

LOS ANGELES

May 11, 2009 through May 22, 2009

June 8, 2009 through June 19, 2009; and

MUNICH

August 17, 2009 through September 18, 2009.

PHOENIX

I appreciate your courtesies in this matter.

Sincerely yours,

Timothy M. Reynolds

SALT LAKE CITY

SAN FRANCISCO

TMR/rb

cc Richard Altman (via ordinary mail)