

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CRAIG REED, <i>et al.</i> ,)	
)	
Plaintiffs,)	CASE NO. 1:08CV1761
)	
vs.)	JUDGE CHRISTOPHER A. BOYKO
)	
FREEBIRD FILM PRODUCTIONS, INC.,)	
<i>et al.</i> ,)	<u>PLAINTIFFS' MOTION FOR DEFAULT</u>
)	<u>JUDGMENT AGAINST DEFENDANT CABIN</u>
Defendants.)	<u>FEVER ENTERTAINMENT, INC.</u>
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Plaintiffs move this Court, pursuant to Rule 55 of the Federal Rules of Civil Procedure, for judgment by default against Defendant Cabin Fever Entertainment, Inc. Defendant Cabin Fever Entertainment, despite having been duly served, has failed to answer, move, plead or otherwise respond to the Complaint. The reasons in support of this motion are more fully explained in the attached memorandum.

Respectfully submitted,

/s/ H. Alan Rothenbuecher
H. Alan Rothenbuecher, Esq.
hrothenbuecher@szd.com
T. Earl LeVere, Esq.
elevere@szd.com
Schottenstein Zox & Dunn, Co., LPA
US Bank Center at Playhouse Square
1350 Euclid Avenue, Suite 1400
Cleveland, Ohio 44115
Phone: (216) 394-5075
Facsimile: (216) 394-5092

*Attorneys for Plaintiffs Craig Reed and
Survivor Films, Inc.*

MEMORANDUM IN SUPPORT

Plaintiffs, Craig Reed and Survivor Films, Inc., filed a Complaint on July 22, 2008 against various defendants for breach of contract and copyright infringement. Service was made on July 21, 2008 upon Defendant Cabin Fever Entertainment, Inc. *via* certified mail at its usual place of business. *See* ECF No. 6.

Rule 12(a)(1)(A) of the Federal Rules of Civil Procedure provides in pertinent part: “[A] defendant shall serve an answer... Within 20 days after being served with the summons and complaint...” Fed.R. Civ. P. 12(a)(1)(A)(emphasis added). Accordingly, Defendant Cabin Fever Entertainment failed to move, plead or in any way respond to the Complaint on or before that date. (*See* copy of this Court’s Docket, attached as Ex. A).

Rule 33(a) of the Federal Rules of Civil Procedure provides:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party’s default.

Fed. R. Civ. P. 55(a)(emphasis added.)

Defendant Cabin Fever Entertainment is in default because it failed to answer or otherwise respond to the Complaint within the 20 day time period prescribed by Rule 12(a)(1). Plaintiff obtained an entry of default against the Defendant Cabin Fever Entertainment from the Clerk of Courts on December 16, 2008. *See* ECF No. 41. Therefore, pursuant to Rule 55(a), Plaintiffs are entitled to a judgment as a matter of law against Defendant Cabin Fever Entertainment.

CONCLUSION

For the foregoing reason, Plaintiffs request that this Court grant its Motion for Default Judgment against Defendant Cabin Fever Entertainment and enter judgment against it, jointly and severally, for the following:

a) Awarding Plaintiffs 2.5% of all net profits earned on Defendant Cabin Fever Entertainment's sales of FREEBIRD...THE MOVIE, plus interest from the date that such monies were due to Plaintiffs;

b) Ordering that Defendant Cabin Fever Entertainment render an accounting to Plaintiffs for any and all gains, profits, and benefits derived from Defendant Cabin Fever Entertainment's breach of contract and, for all damages sustained by Plaintiffs by reason of Defendant Cabin Fever Entertainment's breach of contract complained of in this Complaint, and ordering that all such amounts be deemed to be held in constructive trust for Plaintiffs;

c) Awarding Plaintiffs their costs and expenses incurred in pursuing this action; and

d) Awarding Plaintiffs such further and additional relief as this Court deems just and equitable.

Respectfully submitted,

/s/ H. Alan Rothenbuecher

H. Alan Rothenbuecher, Esq.

hrothenbuecher@szd.com

T. Earl LeVere, Esq.

elevere@szd.com

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Cleveland, Ohio 44115

Phone: (216) 394-5075

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*Attorneys for Plaintiffs Craig Reed and
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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2008, a copy of the foregoing *Plaintiffs' Motion for Default Judgment Against Defendant Cabin Fever Entertainment, Inc.* was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ H. Alan Rothenbuecher
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