UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| PETER BERNEGGER,<br><br>Plaintiff,<br><br>v.<br><br>FEDERAL ELECTION COMMISSION,<br><br>Defendant. | Civil Action No. 1:26-cv-02194 (RBW)<br><br>PLAINTIFF'S MOTION FOR CLERK'S ENTRY OF DEFAULT AGAINST DEFENDANT FEDERAL ELECTION COMMISSION (Fed. R. Civ. P. 55(a)) |

**PLAINTIFF'S MOTION FOR CLERK'S ENTRY OF DEFAULT AGAINST DEFENDANT FEDERAL ELECTION COMMISSION**

Plaintiff Peter Bernegger respectfully moves under Federal Rule of Civil Procedure 55(a) and Local Civil Rule 7 for entry of default by the Clerk of Court against Defendant Federal Election Commission ("FEC" or "Commission"). The Commission was served in the manner required by Federal Rule of Civil Procedure 4(i), the time to respond under Rule 12(a)(2) has expired, and the Commission has filed a notice affirmatively stating that it will not defend this action. This motion is supported by the accompanying Affidavit of Peter Bernegger in Support of Entry of Default, the docket in this action, and the following points and authorities. A proposed Clerk's Entry of Default is attached as required by Local Civil Rule 7(c).

I. BACKGROUND

1. Plaintiff filed the Complaint on June 22, 2026. ECF No. 1. The Complaint seeks a declaration under 52 U.S.C. § 30109(a)(8)(C) that the Commission's failure to act on Plaintiff's administrative complaint (MUR 8386) is contrary to law and an order directing the Commission to conform within thirty days. The FEC is the sole defendant. On August 25, 2026, the case was

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reassigned as related from Judge Cobb to Judge Walton by direction of the Calendar Committee. ECF No. 5.

2. Summonses issued on June 22, 2026 for the Commission, the United States Attorney for the District of Columbia, and the Attorney General of the United States. ECF No. 2. Through Capitol Process Services, Inc., a private process server: (a) the United States Attorney for the District of Columbia was personally served at 601 D Street, NW, Washington, DC 20530 on July 7, 2026, by delivery to Tusmo Ali, a paralegal authorized to accept service; (b) the Commission was personally served at 1050 First Street, NE, Washington, DC on July 8, 2026, by delivery to a clerk authorized to accept service; and (c) the summons and Complaint were mailed to the Attorney General at 950 Pennsylvania Avenue, NW, Washington, DC 20530 by certified mail, return receipt requested, on July 6, 2026. ECF No. 3 at 1–3. Out of an abundance of caution, Plaintiff again served the Attorney General by certified mail, return receipt requested, mailed August 3, 2026 and signed for at the Department of Justice on August 11, 2026, as shown by the United States Postal Service proof of delivery. ECF No. 6. Service on the United States and on the Commission is therefore complete under Rule 4(i)(1)(A)(i), 4(i)(1)(B), and 4(i)(2).

3. Under Rule 12(a)(2), a United States agency must serve an answer "within 60 days after service on the United States attorney." The United States Attorney was served on July 7, 2026. ECF No. 3 at 2. The sixtieth day thereafter was Saturday, September 5, 2026, so the Commission's response was due on Monday, September 8, 2026. Fed. R. Civ. P. 6(a)(1)(C). That deadline has passed. No extension has been requested or granted.

4. The Commission has not answered, moved, or otherwise defended. Instead, on August 25, 2026, through its Office of General Counsel, the Commission filed a "Notice of Lack

of Quorum." ECF No. 4. The Notice states that the Commission has had only two Commissioners since October 3, 2025; that four affirmative votes are required to "defend a civil action brought under 52 U.S.C. § 30109(a)(8)(A) or (C)"; that "as of May 1, 2025, the Commission is without a quorum and unable to authorize defense of this action"; and that the Notice "is given for the sole purpose of notifying the Court that the Commission currently lacks a quorum and is currently without the authority to litigate the merits of plaintiff's Complaint." Id. ¶¶ 2–4 (citing 52 U.S.C. §§ 30106(c), 30107(a)(6)). The Notice further discloses that the Commission "is filing Notices in each of the cases in which it has been served," confirming that the Commission regards itself as served in this action. Id. at 2 n.4.

## II. ARGUMENT

### A. Rule 55(a) requires the Clerk to enter default when the record shows a failure to plead or otherwise defend.

Rule 55(a) provides: "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). Entry of default is the first, ministerial step of the two-step process under Rule 55; it is distinct from a default judgment under Rule 55(b). See Int'l Painters & Allied Trades Indus. Pension Fund v. Auxier Drywall, LLC, 531 F. Supp. 2d 56, 57 (D.D.C. 2008). Rule 55(d), which conditions a default judgment against the United States or its agencies on a claim "establish[ed] . . . by evidence that satisfies the court," governs the second step, not the Clerk's entry of default. Fed. R. Civ. P. 55(d).

Each element is shown by the accompanying affidavit and the docket: (1) the Commission is a party against whom affirmative relief is sought (ECF No. 1, Prayer for Relief); (2) the

Commission was served in full compliance with Rule 4(i) (ECF Nos. 3, 6); (3) the 60-day response period of Rule 12(a)(2) has run; and (4) the Commission has neither pleaded nor otherwise defended.

B. The Commission's Notice of Lack of Quorum is not a pleading and does not "otherwise defend."

The Commission's Notice (ECF No. 4) is not an answer, a Rule 12 motion, or any other filing that contests the Complaint. By its own terms, it is filed "for the sole purpose" of informing the Court that the Commission is "without the authority to litigate the merits." ECF No. 4 ¶ 4. A filing that expressly disclaims any defense cannot constitute "otherwise defend[ing]" within the meaning of Rule 55(a). The phrase "otherwise defend" refers to motions or other filings that challenge the sufficiency of the complaint or the court's power to hear it, not to a notice that the defendant has elected, or is unable, to respond at all.

Nor does the Commission's internal inability to muster four votes toll or extend the deadline set by Rule 12(a)(2). Congress anticipated exactly this circumstance. FECA provides that if the Commission fails to act on an administrative complaint, the complainant may sue the Commission, 52 U.S.C. § 30109(a)(8)(A), and if the Commission then fails to conform to the Court's declaration within thirty days, the complainant may proceed directly against the administrative respondents, id. § 30109(a)(8)(C). That private-enforcement mechanism functions only if the judicial process against the Commission continues to move when the Commission cannot or will not defend. The Commission's Notice concedes the operative fact: it is not defending this action.

C. This Court has entered default against the FEC in the same posture.

When the Commission lost its quorum in 2019–2020, this Court entered Clerk's defaults against the FEC in materially identical § 30109(a)(8) actions and proceeded to default judgment. See *Campaign Legal Ctr. v. FEC*, No. 1:20-cv-00809 (ABJ) (D.D.C.), ECF No. 10 (Clerk's entry of default, May 28, 2020); Order, *Citizens for Responsibility & Ethics in Washington v. FEC*, No. 1:19-cv-02753 (RCL) (D.D.C. Apr. 9, 2020) (granting default judgment against the FEC on a showing that its failure to act was contrary to law). Nothing in the present record distinguishes this case from those.

D. The service defects identified in Plaintiff's other actions are not present here.

In other actions brought by Plaintiff, this Court declined to enter default because the United States Attorney or the Attorney General had not been served with a summons. See Minute Order, *Bernegger v. FEC,* No. 1:26-cv-00213 (TSC) (D.D.C. July 6, 2026). In this action, separate summonses issued for the Commission, the United States Attorney, and the Attorney General (ECF No. 2); the Commission and the United States Attorney were personally served by a private process server (ECF No. 3 at 1–2); and the Attorney General was served by certified mail, as Rule 4(i)(1)(B) expressly permits, with a signed Postal Service proof of delivery dated August 11, 2026 in the record (ECF No. 3 at 3; ECF No. 6). Even if the Rule 12(a)(2) period were measured from the August 11, 2026 delivery to the Attorney General rather than from service on the United States Attorney as the Rule provides, the Commission has already announced that it will not defend, and Rule 55(a) requires only a failure "to plead or otherwise defend."

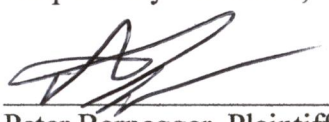
E. Local Civil Rule 7(m).

Although Local Civil Rule 7(m) applies by its terms to counsel, Plaintiff, on September 4th 2026, notified counsel of record for the Commission, Michael D. Contino, Esq. (mcontino@fec.gov), who signed ECF No. 4, by email of his intent to file this motion and requested the Commission's position. Counsel responded that the Commission takes no position because it lacks a quorum to authorize any litigating position.

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Clerk of Court enter the default of Defendant Federal Election Commission pursuant to Federal Rule of Civil Procedure 55(a). Plaintiff will thereafter move for default judgment under Rule 55(b)(2) and (d) on a record sufficient to satisfy the Court.

Respectfully submitted,



Peter Bernegger, Plaintiff
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Telephone: (920) 551-0510
Email: peter@electionwatch.info

Dated: September 8th, 2026

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Angela D. Caesar, Clerk of Court
U.S. District & Bankruptcy Courts for the District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| PETER BERNEGGER,<br><br>Plaintiff,<br><br>v.<br><br>FEDERAL ELECTION COMMISSION,<br><br>Defendant. | Civil Action No. 1:26-cv-02194 (RBW)<br><br>AFFIDAVIT OF PETER BERNEGGER IN SUPPORT OF MOTION FOR CLERK'S ENTRY OF DEFAULT (Fed. R. Civ. P. 55(a)) |

AFFIDAVIT IN SUPPORT OF ENTRY OF DEFAULT

STATE OF WISCONSIN )
) ss.
COUNTY OF WAUPACA )

I, Peter Bernegger, being first duly sworn, depose and state as follows:

1. I am the Plaintiff in this action and am over eighteen years of age. I make this affidavit on personal knowledge and on my review of the docket in this action. I am competent to testify to the matters stated herein.

2. I filed the Complaint in this action on June 22, 2026 (ECF No. 1). The Complaint seeks affirmative relief against Defendant Federal Election Commission, namely a declaration under 52 U.S.C. § 30109(a)(8)(C) and an order directing the Commission to conform within thirty days.

3. On June 22, 2026, the Clerk issued summonses for the Federal Election Commission, the United States Attorney for the District of Columbia, and the Attorney General of the United States (ECF No. 2).

4. I retained Capitol Process Services, Inc., 7500 Greenway Center Drive, Suite 420, Greenbelt, Maryland 20770, to serve process. According to the Declaration of Service of Nigyl Nibblins, private process server, the summons, civil cover sheet, and Complaint were served on

the United States Attorney for the District of Columbia at 601 D Street, NW, Washington, DC 20530 on July 7, 2026 at 11:18 a.m., by delivery to Tusmo Ali, Paralegal, authorized to accept service (ECF No. 3 at 2), and on the Federal Election Commission at 1050 First Street, NE, Washington, DC on July 8, 2026 at 10:35 a.m., by delivery to a clerk authorized to accept service (ECF No. 3 at 1).

5. According to the Affidavit of Service by Certified Mail of GiVonna Stuart, the summons, civil cover sheet, and Complaint were mailed to the Attorney General of the United States at 950 Pennsylvania Avenue, NW, Washington, DC 20530 by United States Postal Service certified mail, return receipt requested, Article No. 9414 8362 0855 1303 0489 01, on July 6, 2026 (ECF No. 3 at 3). The same documents were again mailed to the Attorney General by certified mail, return receipt requested, Article No. 9414 8362 0855 1304 5233 53, on August 3, 2026, and were signed for at the Department of Justice on August 11, 2026, as reflected in the United States Postal Service proof of delivery (ECF No. 6).

6. Service on the United States and on the Federal Election Commission is therefore complete under Federal Rule of Civil Procedure 4(i)(1) and 4(i)(2).

7. Under Federal Rule of Civil Procedure 12(a)(2), the Commission's answer or other response was due sixty days after service on the United States Attorney on July 7, 2026. The sixtieth day was Saturday, September 5, 2026; under Rule 6(a)(1)(C) the response was therefore due on Monday, September 8, 2026. That date has passed without any answer or motion.

8. No extension of time to respond has been requested by the Commission or granted by the Court.

9. The Commission has not filed an answer, a motion under Rule 12, or any other pleading or motion directed to the Complaint. The only filing by the Commission is a Notice filed August 25, 2026 (ECF No. 4), stating that the Commission lacks a quorum and is "unable to authorize defense of this action" (ECF No. 4 ¶ 3). That Notice does not respond to the allegations of the Complaint, raise any defense, or seek any relief.

10. I have received no answer or other response to the Complaint from the Commission, the United States Attorney, or the Attorney General.

11. Defendant Federal Election Commission is an independent agency of the United States Government. It is not an individual, an infant, or an incompetent person, and the Servicemembers Civil Relief Act, 50 U.S.C. § 3931, has no application to it.

12. I make this affidavit in support of my request that the Clerk of Court enter the default of Defendant Federal Election Commission under Federal Rule of Civil Procedure 55(a).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on September 8, 2026, at New London, Wisconsin.

Peter Bernegger
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New London, WI 54961
Telephone: (920) 551-0510
Email: peter@electionwatch.info

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CLERK'S ENTRY OF DEFAULT

It appearing from the record that Defendant Federal Election Commission was served with the summons and Complaint in the manner required by Federal Rule of Civil Procedure 4(i), that the time within which Defendant was required to answer or otherwise respond under Federal Rule of Civil Procedure 12(a)(2) has expired, and that Defendant has failed to plead or otherwise defend as shown by the Affidavit of Peter Bernegger,

The DEFAULT of Defendant FEDERAL ELECTION COMMISSION is hereby ENTERED pursuant to Federal Rule of Civil Procedure 55(a).

Dated: _____, 2026

ANGELA D. CAESAR, Clerk of Court

By: _____
Deputy Clerk

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U.S. District Court District of Columbia