

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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Clerk
Columbia

PETER BERNEGGER,

Plaintiff,

v.

Civil Action No. 1:25-cv-04559-JEB

FEDERAL ELECTION COMMISSION,

Defendant.

**PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AGAINST
DEFENDANT FEDERAL ELECTION COMMISSION**

Pursuant to Federal Rule of Civil Procedure 55(b)(2) and 55(d), Local Civil Rule 7, and 52 U.S.C. § 30109(a)(8)(C), the plaintiff Peter Bernegger moves this Court for entry of default judgment against the defendant Federal Election Commission. In support of this Motion, the plaintiff states as follows:

1. On December 31, 2025, the plaintiff commenced this action by filing the Complaint for Declaratory and Injunctive Relief (Dkt. 1), seeking review under 52 U.S.C. § 30109(a)(8) of the defendant's failure to act within 120 days on the plaintiff's sworn administrative complaint, MUR 8399.
2. The plaintiff completed service of process pursuant to Federal Rule of Civil Procedure 4(i). Capitol Process Services, Inc., through process server Givonna Stuart, served the Federal Election Commission c/o Office of General Counsel, 1050 First Street, NE, Washington, DC 20463, by United States Postal Service Certified Mail, Return Receipt Requested, on January 5, 2026 (USPS Article No. 9414 8362 0855 1293 2122 69), and the process server's sworn Affidavit of Service was filed with the Court. On the same day, January 5, 2026, at 2:40 p.m., Ambiko Wallace of

Capitol Process Services, Inc., personally served the United States Attorney for the District of Columbia, c/o Civil Process Clerk, 601 D Street, NW, Washington, DC 20530, by delivering the court-stamped Summons and Complaint to Elena Haramalis, Paralegal Specialist, authorized to accept service; the process server's Declaration of Service was filed on January 20, 2026 (Dkt. 2). The plaintiff additionally served the United States Attorney by certified mail, return receipt requested (USPS tracking 9590 9402 9434 5069 5677 89; delivered February 2, 2026), and served the Attorney General of the United States by certified mail, return receipt requested, addressed to the Civil Process Clerk, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001 (USPS tracking 9590 9402 9434 5069 5677 96; delivered February 2, 2026), in accordance with Rule 4(i)(1)(A)(ii) and Rule 4(i)(1)(B). The plaintiff filed the Notice to Court of Proof of Service on February 20, 2026 (Dkt. 6) (signed February 19, 2026), with the certified-mail return-receipt cards and the process server's Affidavit of Service by Certified Mail on the Federal Election Commission attached. The plaintiff additionally filed a Sworn Declaration of Service on March 9, 2026 (Dkt. 8; envelope exhibit Dkt. 8-1), confirming completion of Rule 4(i) service and reflecting that on February 12, 2026 the plaintiff's personal certified-mail attempt to serve the Federal Election Commission was refused signature, which the plaintiff considers service effected.

3. On February 6, 2026, the plaintiff filed his First Amended Complaint, which was entered on the docket the same day (Dkt. 5). The First Amended Complaint is the operative pleading. The plaintiff served the First Amended Complaint that same day on counsel for the Commission, Michael D. Contino, by FedEx overnight delivery pursuant to Federal Rule of Civil Procedure 5.

4. The deadlines for the defendant to answer or otherwise respond have expired. Under Federal Rule of Civil Procedure 12(a)(2), an agency of the United States must serve an answer within 60 days after service on the United States Attorney; based on the January 5, 2026 Rule 4(i)(1)(A)

service on the United States Attorney for the District of Columbia, the 60-day period expired on March 6, 2026. Under Rule 15(a)(3), a response to an amended pleading is due within the time remaining or 14 days after service of the amended pleading, whichever is later; the 14-day period expired on February 20, 2026. The later of the two deadlines, March 6, 2026, has lapsed. The defendant has filed no answer, has filed no motion under Rule 12, and has neither requested nor obtained any enlargement of time under Rule 6(b).

5. The defendant's January 29, 2026 Notice of Lack of Quorum (Dkt. 3) is not a responsive pleading and does not "otherwise defend" within the meaning of Rule 55(a). The Notice was filed before the operative First Amended Complaint, is not directed to that pleading, does not admit or deny any allegation, asserts no defense, requests no relief, and seeks no extension of time. Its sole stated purpose is to advise the Court that the Commission lacks a quorum and is without the authority to litigate the merits of the plaintiff's Complaint.

6. The Clerk of Court has entered default against the defendant Federal Election Commission under Federal Rule of Civil Procedure 55(a). See Clerk's Entry of Default, Dkt. 10, dated April 22, 2026.

7. Because the defendant is an agency of the United States, the plaintiff must "establish[] a claim or right to relief by evidence that satisfies the court." Fed. R. Civ. P. 55(d). The plaintiff has done so. The accompanying Memorandum of Points and Authorities and Declaration of Peter Bernegger, with Exhibits A through H listed in the accompanying Exhibit Index, set forth (a) the administrative-phase facts establishing the Commission's receipt of MUR 8399 on August 26, 2025 and the elapse of the 120-day statutory period on December 24, 2025; (b) the procedural facts establishing service, default, and the absence of any defense; and (c) the legal basis for relief under 52 U.S.C. § 30109(a)(8)(C).

8. Notice under Rule 55(b)(2). Although counsel for the Federal Election Commission filed the January 29, 2026 Notice of Lack of Quorum (Dkt. 3) for the limited purpose of advising the Court that the Commission cannot defend, the plaintiff treats that filing as an appearance “by a representative” for purposes of Rule 55(b)(2) and provides this Motion to counsel of record listed on Dkt. 3 — Lisa J. Stevenson (D.C. Bar No. 457628), Acting General Counsel; James D. McGinley (D.C. Bar No. 1017356), Associate General Counsel; Michael D. Contino (D.C. Bar No. 1782269), Attorney; and Shaina Ward (D.C. Bar No. 1002801), Acting Assistant General Counsel, of the FEC Office of General Counsel — together with the accompanying papers, more than seven days before any hearing on this Motion. The Commission’s counsel filed a Certificate of Service of the Notice of Lack of Quorum on February 6, 2026 (Dkt. 4).

9. The plaintiff seeks the relief that Congress prescribed for this exact circumstance: (a) a declaration, under 52 U.S.C. § 30109(a)(8)(C), that the Commission’s failure to act on MUR 8399 is contrary to law; (b) an order directing the Commission to conform with that declaration within thirty (30) days, including by certifying any vote and filing any controlling Statement of Reasons sufficient to permit judicial review of any dismissal; (c) authorization, in the event the Commission fails to conform within thirty days, for the plaintiff to bring a civil action under § 30109(a)(8)(C) to remedy the violation involved in the original administrative complaint; (d) retention of jurisdiction over the conformance period; and (e) allowable costs. The plaintiff does not at this stage ask the Court to adjudicate the underlying FECA violations alleged in MUR 8399; that is the subject of the citizen-action remedy that Congress placed in § 30109(a)(8)(C) for use only after a failure of conformance.

10. Local Civil Rule 7(m) does not apply to this Motion. A motion for default judgment is dispositive, and LCvR 7(m) governs only nondispositive motions. Even if the Rule applied,

conferral was not feasible: the defendant has formally represented to this Court that it lacks the quorum required to authorize the defense of this action (Dkt. 3), and no counsel has appeared on behalf of the defendant in any capacity beyond the filing of that Notice.

11. Pursuant to Local Civil Rule 7(a), this Motion is supported by the accompanying Memorandum of Points and Authorities. Pursuant to Local Civil Rule 7(c), this Motion is accompanied by a [Proposed] Order. Pursuant to Local Civil Rule 7(k), the [Proposed] Order includes a list of the names and addresses of all persons entitled to notice of its entry. An Exhibit Index accompanies the supporting Declaration.

WHEREFORE, the plaintiff respectfully requests that this Court GRANT this Motion for Default Judgment and enter the relief set forth in the accompanying [Proposed] Order Granting Plaintiff's Motion for Default Judgment.

Respectfully submitted,



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Dated: May 4, 2026