

1 | *express mail with return receipt requested; or that the identity of the defendant's insurance*
2 | *carrier is unknown to the plaintiff.]*

3 | **B Intent to appear; notice of intent to take default.**

4 | **B(1) For the purposes of avoiding a default, a party may provide written notice of**
5 | **intent to file an appearance to a plaintiff, counterclaimant, or cross-claimant.**

6 | **B(2) If the party against whom an order of default is sought has filed an**
7 | **appearance in the action or has provided written notice of intent to file an appearance,**
8 | **then formal notice of the intent to take to default must be filed and served at least 10 days,**
9 | **unless shortened by the court, prior to entry of the order of default. The notice of intent to**
10 | **take default must be in the form prescribed by Uniform Trial Court Rule 2.010 and must**
11 | **be filed with the court and served on the party against whom an order of default is sought.**

12 | *[B Entry of judgment by default.*

13 | *B(1) By the court or the clerk. The court or the clerk upon written application of the*
14 | *party seeking judgment shall enter judgment when:*

15 | *B(1)(a) The action arises upon contract;*

16 | *B(1)(b) The claim of a party seeking judgment is for the recovery of a sum certain or for*
17 | *a sum which can by computation be made certain;*

18 | *B(1)(c) The party against whom judgment is sought has been defaulted for failure to*
19 | *appear;*

20 | *B(1)(d) The party seeking judgment submits an affidavit or a declaration stating that, to*
21 | *the best knowledge and belief of the party seeking judgment, the party against whom judgment is*
22 | *sought is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in*
23 | *ORS 125.005, or a respondent as defined in ORS 125.005;*

24 | *B(1)(e) The party seeking judgment submits an affidavit or a declaration of the amount*
25 | *due;*

26 | *B(1)(f) An affidavit or a declaration pursuant to subsection B(4) of this rule has been*

1 | *submitted; and*

2 | *B(1)(g) Summons was personally served within the State of Oregon upon the party, or an*
3 | *agent, officer, director, or partner of a party, against whom judgment is sought pursuant to Rule*
4 | *7 D(3)(a)(I), 7 D(3)(b)(I), 7 D(3)(c)(I), 7 D(3)(d)(I), 7 D(3)(e), or 7 D(3)(f).*

5 | *B(2) By the court.] **C Motion for order of judgment by default.***

6 | **C(1)** *In cases other than those cases described in subsection F(1) of this section, the party*
7 | *seeking judgment must [apply to the court for] **make a motion for order of** judgment by*
8 | *default. **That motion must be accompanied by an affidavit or declaration by [T]the party***
9 | *seeking judgment **establishing the following:** [must submit the affidavit or declaration required*
10 | *by subsection (1)(d) of this section if, to the best knowledge and belief of the party seeking*
11 | *judgment, the party against whom judgment is sought is not incapacitated as defined in ORS*
12 | *125.005, a minor, a protected person as defined in ORS 125.005, or a respondent as defined in*
13 | *ORS 125.005. If the party seeking judgment cannot submit an affidavit or a declaration under*
14 | *this subsection, a default judgment may be entered against the other party only if a guardian ad*
15 | *litem has been appointed or the party is represented by another person as described in Rule 27.*
16 | *If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take*
17 | *an account or to determine the amount of damages or to establish the truth of any averment by*
18 | *evidence or to make an investigation of any other matter, the court may conduct such hearing, or*
19 | *make an order of reference, or order that issues be tried by a jury, as it deems necessary and*
20 | *proper. The court may determine the truth of any matter upon affidavits or declarations.*

21 | *B(3) Amount of judgment. The judgment entered shall be for the amount due as shown by*
22 | *the affidavit or declaration, and may include costs and disbursements and attorney fees entered*
23 | *pursuant to Rule 68.*

24 | *B(4) Non-military affidavit or declaration required. No judgment by default shall be*
25 | *entered until the filing of an affidavit or a declaration on behalf of the plaintiff, showing that the*
26 | *defendant is or is not a person in the military service, or stating that plaintiff is unable to*

1 *determine whether or not the defendant is in the military service as required by Section 201(b)(1)*
2 *of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 521, as amended, except upon order*
3 *of the court in accordance with that Act.]*

4 **C(1)(a) service has been accomplished in accordance with Rule 7 or other court**
5 **order;**

6 **C(1)(b) whether the party has appeared or notice of intent to appear has been**
7 **received, and if so whether notice of intent to take default has been filed and served 10 days**
8 **prior to the motion or verification that the court shortened the time;**

9 **C(1)(c) the amount due as claimed in the pleadings, together with a statement as to**
10 **whether costs, disbursements or attorneys fees are claimed pursuant to ORCP 68;**

11 **C(1)(d) the fact that the party against whom the order of default is sought has**
12 **failed to plead or otherwise defend as provided in these rules;**

13 **C(1)(e) to the best knowledge and belief of the party seeking judgment, the party**
14 **against whom judgment is sought is not incapacitated as defined in ORS 125.005, a minor,**
15 **a protected person as defined in ORS 125.005, or a respondent as defined in ORS 125.005.**

16 **If the party seeking judgment cannot submit an affidavit or a declaration under this**
17 **subsection, a default judgment may be entered against the other party only if a guardian ad**
18 **litem has been appointed or the party is represented by another person as described in**
19 **Rule 27; and**

20 **C(1)(f) the defendant is or is not a person in the military service, or stating that**
21 **plaintiff is unable to determine whether or not the defendant is in the military service as**
22 **required by Section 201(b)(1) of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. §**
23 **521, as amended, except upon order of the court in accordance with that Act.**

24 **C(2) An order of default may be granted by the court if it appears the motion and**
25 **affidavit or declaration has been filed in good faith and good cause is shown that such an**
26 **order is proper.**

1 **D Default judgment**

2 **D(1) Amount of judgment. The judgment entered shall be for the amount due as**
3 **shown by the affidavit or declaration, and may include costs and disbursements and**
4 **attorney fees entered pursuant to Rule 68. If, in order to enable the court to enter judgment**
5 **or to carry it into effect, it is necessary to take an account or to determine the amount of**
6 **damages or to establish the truth of any averment by evidence or to make an investigation**
7 **of any other matter, the court may conduct such hearing, or make an order of reference, or**
8 **order that issues be tried by a jury, as it deems necessary and proper. The court may**
9 **determine the truth of any matter upon affidavits or declarations.**

10 **D(2) Costs, disbursements & attorney fees. If costs, disbursements, and/or attorney**
11 **fees are allowable based on a contract, statute or other legal provision, then application**
12 **shall be made pursuant to ORCP 68.**

13 **[First Draft: If attorney fees are allowable based on a contract, statute or other legal**
14 **provision, then application for attorney fees shall be made by motion for a**
15 **supplemental judgment within 14 days of judgment. The motion for a supplemental**
16 **judgment shall contain the legal basis on which the attorney fees are sought, an**
17 **affidavit containing a detailed description of the legal services which form the basis**
18 **of the request for attorney fees.]**

19 **[C Setting aside default.] E Setting aside a default order or judgment.** For good cause
20 shown, the court may set aside an order of default and, if a judgment by default has been entered,
21 may likewise set it aside in accordance with Rule 71 B and C.

22 **[D Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply**
23 **whether the party entitled to the judgment by default is a plaintiff, a third party plaintiff, or a**
24 **party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is**
25 **subject to the provisions of Rule 67 B.**

26 **E “Clerk” defined. Reference to “clerk” in this rule shall include the clerk of court or**

1 *any person performing the duties of that office.]*

2 **F Special cases.**

3 **F(1) Certain contract cases. The court, upon written application of the party**
4 **seeking judgment shall enter a default judgment after an order of default supported by**
5 **motion and order substantiating the following has been obtained:**

6 **F(1)(a) The action arises upon contract;**

7 **F(1)(b) The claim of a party seeking judgment is for the recovery of a sum certain or**
8 **for a sum which can by computation be made certain; and**

9 **F(1)(c) Summons was personally served within the State of Oregon upon the party,**
10 **or an agent, officer, director, or partner of a party, against whom judgment is sought**
11 **pursuant to Rule 7 D(3)(a)(I), 7 D(3)(b)(I), 7 D(3)(e), or 7 D(3)(f); and**

12 **F(1)(d) compliance with the provisions set forth in Subsection C (b)-(f) of this rule.**

13 **(2) Certain motor vehicle cases. No default shall be entered against a defendant**
14 **served with summons pursuant to subparagraph D(4)(a)(I) of Rule 7 unless the plaintiff**
15 **submits an affidavit or a declaration showing:**

16 **F(2)(a) that the plaintiff has complied with subparagraph D(4)(a)(I) of Rule 7; and**

17 **F(2)(b) either, if the identity of the defendant's insurance carrier is known to the**
18 **plaintiff or could be determined from any records of the Department of Transportation**
19 **accessible to the plaintiff, that the plaintiff not less than 30 days prior to the application for**
20 **default mailed a copy of the summons and the complaint, together with notice of intent to**
21 **apply for an order of default, to the insurance carrier by first class mail and by any of the**
22 **following: certified or registered mail, return receipt requested, or express mail; or that the**
23 **identity of the defendant's insurance carrier is unknown to the plaintiff.**

1 *carrier is unknown to the plaintiff.]*

2 **B Notice of intent to move for default.**

3 **If the party against whom an order of default is sought has filed a motion or has**
4 **provided written notice of intent to file a motion or answer, then formal notice of the intent**
5 **to move for an order of default must be filed and served at least 10 days, unless shortened**
6 **by the court, before entry of an order of default. The notice of intent to move for an order**
7 **of default must be in the form prescribed by Uniform Trial Court Rule 2.010 and must be**
8 **filed with the court and served on the party against whom an order of default is sought.**

9 *[B Entry of judgment by default.*

10 *B(1) By the court or the clerk. The court or the clerk upon written application of the*
11 *party seeking judgment shall enter judgment when:*

12 *B(1)(a) The action arises upon contract;*

13 *B(1)(b) The claim of a party seeking judgment is for the recovery of a sum certain or for*
14 *a sum which can by computation be made certain;*

15 *B(1)(c) The party against whom judgment is sought has been defaulted for failure to*
16 *appear;*

17 *B(1)(d) The party seeking judgment submits an affidavit or a declaration stating that, to*
18 *the best knowledge and belief of the party seeking judgment, the party against whom judgment is*
19 *sought is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in*
20 *ORS 125.005, or a respondent as defined in ORS 125.005;*

21 *B(1)(e) The party seeking judgment submits an affidavit or a declaration of the amount*
22 *due;*

23 *B(1)(f) An affidavit or a declaration pursuant to subsection B(4) of this rule has been*
24 *submitted; and*

25 *B(1)(g) Summons was personally served within the State of Oregon upon the party, or an*
26 *agent, officer, director, or partner of a party, against whom judgment is sought pursuant to Rule*

1 7 D(3)(a)(I), 7 D(3)(b)(I), 7 D(3)(c)(I), 7 D(3)(d)(I), 7 D(3)(e), or 7 D(3)(f).

2 *B(2) By the court.] **C Motion for order of judgment by default.***

3 *- In cases other than those cases described in subsection **F** of this section, the party*
4 *seeking judgment must [apply to the court for] **make a motion for order of** judgment by*
5 *default. **That motion must be accompanied by an affidavit or declaration by [T]the party***
6 *seeking judgment **establishing the following:** [must submit the affidavit or declaration required*
7 *by subsection (1)(d) of this section if, to the best knowledge and belief of the party seeking*
8 *judgment, the party against whom judgment is sought is not incapacitated as defined in ORS*
9 *125.005, a minor, a protected person as defined in ORS 125.005, or a respondent as defined in*
10 *ORS 125.005. If the party seeking judgment cannot submit an affidavit or a declaration under*
11 *this subsection, a default judgment may be entered against the other party only if a guardian ad*
12 *litem has been appointed or the party is represented by another person as described in Rule 27.*
13 *If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take*
14 *an account or to determine the amount of damages or to establish the truth of any averment by*
15 *evidence or to make an investigation of any other matter, the court may conduct such hearing, or*
16 *make an order of reference, or order that issues be tried by a jury, as it deems necessary and*
17 *proper. The court may determine the truth of any matter upon affidavits or declarations.*

18 *B(3) Amount of judgment. The judgment entered shall be for the amount due as shown by*
19 *the affidavit or declaration, and may include costs and disbursements and attorney fees entered*
20 *pursuant to Rule 68.*

21 *B(4) Non-military affidavit or declaration required. No judgment by default shall be*
22 *entered until the filing of an affidavit or a declaration on behalf of the plaintiff, showing that the*
23 *defendant is or is not a person in the military service, or stating that plaintiff is unable to*
24 *determine whether or not the defendant is in the military service as required by Section*
25 *201(b)(1) of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 521, as amended, except*
26 *upon order of the court in accordance with that Act.]*

1 C(1) service has been accomplished in accordance with Rule 7 or by court order;

2 C(2) the party against whom judgment is sought has not filed a motion, or has filed
3 a motion but not an answer as provided in these rules; and if that party has provided a
4 written notice of intent to file a motion or answer, that a notice of intent to move for an
5 order of default has been filed and served 10 days before the motion or within any
6 shortened time set by court order;

7 C(3) the amount due as claimed in the pleadings, together with a statement as to
8 whether costs, disbursements or attorneys fees are claimed pursuant to ORCP 68;

9 C(4) to the best knowledge and belief of the party seeking judgment, the party
10 against whom judgment is sought is not incapacitated as defined in ORS 125.005, a minor,
11 a protected person as defined in ORS 125.005, or a respondent as defined in ORS 125.005
12 (if the party seeking judgment cannot submit an affidavit or a declaration under this
13 subsection, a judgment by default may be entered against the other party only if a
14 guardian ad litem has been appointed or the party is represented by another person as
15 described in Rule 27); and

16 C(5) the defendant is or is not a person in the military service, or that plaintiff is
17 unable to determine whether or not the defendant is in the military service as required by
18 Section 201(b)(1) of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 521, as
19 amended, except upon order of the court in accordance with that Act.

20 **D Judgment by Default**

21 **D(1) Amount of judgment. If the claim of a party seeking judgment is for the**
22 **recovery of a sum certain or for a sum which can by computation be made certain, the**
23 **judgment shall be for the amount due as shown by the affidavit or declaration. If, in order**
24 **to enable the court to enter judgment or to carry it into effect, it is necessary to take an**
25 **account or to determine the amount of damages or to establish the truth of any averment**
26 **by evidence or to make an investigation of any other matter, the court may conduct such**

1 hearing, or make an order of reference, or order that issues be tried by a jury, as it deems
2 necessary and proper. The court may determine the truth of any matter upon affidavits or
3 declarations.

4 D(2) Costs, disbursements and attorney fees. If costs, disbursements, and/or
5 attorney fees are allowable, then application shall be made pursuant to ORCP 68.

6 [C Setting aside default.] E Setting aside an order of default or a judgment by
7 default. For good cause shown, the court may set aside an order of default and, if a
8 judgment by default has been entered, may likewise set it aside in accordance with Rule
9 71 B and C.

10 [D Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply
11 whether the party entitled to the judgment by default is a plaintiff, a third party plaintiff, or a
12 party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is
13 subject to the provisions of Rule 67 B.

14 E “Clerk” defined. Reference to “clerk” in this rule shall include the clerk of court or
15 any person performing the duties of that office.]

16 F Certain motor vehicle cases

17 No order of default shall be entered against a defendant served with summons
18 pursuant to subparagraph D(4)(a)(i) of Rule 7 unless the plaintiff submits an affidavit or a
19 declaration showing:

20 (1) that the plaintiff has complied with Rule 7D(4)(a)(i); and

21 (2) either, if the identity of the defendant's insurance carrier is known to the
22 plaintiff or could be determined from any records of the Oregon Department of
23 Transportation accessible to the plaintiff, that the plaintiff not less than 30 days before the
24 motion for an order of default mailed a copy of the summons and the complaint, together
25 with notice of intent to move for an order of default, to the insurance carrier by first class
26 mail and by any of the following: certified or registered or express mail, return receipt

1 requested; or that the identity of the defendant's insurance carrier is unknown to the
2 plaintiff.

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1 | *or could be determined from any records of the Department of Transportation accessible to the*
2 | *plaintiff, that the plaintiff not less than 30 days prior to the application for default mailed a copy*
3 | *of the summons and the complaint, together with notice of intent to apply for an order of default,*
4 | *to the insurance carrier by first class mail and by any of the following: certified, registered, or*
5 | *express mail with return receipt requested; or that the identity of the defendant's insurance*
6 | *carrier is unknown to the plaintiff.]*

7 | **B Intent to appear; notice of intent to take default.**

8 | **B(1) For the purposes of avoiding a default, a party may provide written notice of**
9 | **intent to file an appearance to a plaintiff, counterclaimant, or cross-claimant.**

10 | **B(2) If the party against whom an order of default is sought has filed an**
11 | **appearance in the action or has provided written notice of intent to file an appearance,**
12 | **then formal notice of the intent to default must be filed and served at least 10 days, unless**
13 | **shortened by the court, prior to entry of the order of default. The notice of intent to take**
14 | **default must be in the form prescribed by Uniform Trial Court Rule 2.010 and must be**
15 | **filed with the court and served on the party against whom an order of default is sought.**

16 | *[B Entry of judgment by default.*

17 | *B(1) By the court or the clerk. The court or the clerk upon written application of the*
18 | *party seeking judgment shall enter judgment when:*

19 | *B(1)(a) The action arises upon contract;*

20 | *B(1)(b) The claim of a party seeking judgment is for the recovery of a sum certain or for*
21 | *a sum which can by computation be made certain;*

22 | *B(1)(c) The party against whom judgment is sought has been defaulted for failure to*
23 | *appear;*

24 | *B(1)(d) The party seeking judgment submits an affidavit or a declaration stating that, to*
25 | *the best knowledge and belief of the party seeking judgment, the party against whom judgment is*
26 | *sought is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in*

1 *ORS 125.005, or a respondent as defined in ORS 125.005;*

2 *B(1)(e) The party seeking judgment submits an affidavit or a declaration of the amount*
3 *due;*

4 *B(1)(f) An affidavit or a declaration pursuant to subsection B(4) of this rule has been*
5 *submitted; and*

6 *B(1)(g) Summons was personally served within the State of Oregon upon the party, or an*
7 *agent, officer, director, or partner of a party, against whom judgment is sought pursuant to Rule*
8 *7 D(3)(a)(I), 7 D(3)(b)(I), 7 D(3)(c)(I), 7 D(3)(d)(I), 7 D(3)(e), or 7 D(3)(f).*

9 *B(2) By the court. In cases other than those cases described in subsection (1) of this*
10 *section, the party seeking judgment must apply to the court for judgment by default. The party*
11 *seeking judgment must submit the affidavit or declaration required by subsection (1)(d) of this*
12 *section if, to the best knowledge and belief of the party seeking judgment, the party against*
13 *whom judgment is sought is not incapacitated as defined in ORS 125.005, a minor, a protected*
14 *person as defined in ORS 125.005, or a respondent as defined in ORS 125.005. If the party*
15 *seeking judgment cannot submit an affidavit or a declaration under this subsection, a default*
16 *judgment may be entered against the other party only if a guardian ad litem has been appointed*
17 *or the party is represented by another person as described in Rule 27. If, in order to enable the*
18 *court to enter judgment or to carry it into effect, it is necessary to take an account or to*
19 *determine the amount of damages or to establish the truth of any averment by evidence or to*
20 *make an investigation of any other matter, the court may conduct such hearing, or make an*
21 *order of reference, or order that issues be tried by a jury, as it deems necessary and proper. The*
22 *court may determine the truth of any matter upon affidavits or declarations.*

23 *B(3) Amount of judgment. The judgment entered shall be for the amount due as shown by*
24 *the affidavit or declaration, and may include costs and disbursements and attorney fees entered*
25 *pursuant to Rule 68.*

26 *B(4) Non-military affidavit or declaration required. No judgment by default shall be*

1 entered until the filing of an affidavit or a declaration on behalf of the plaintiff, showing that the
2 defendant is or is not a person in the military service, or stating that plaintiff is unable to
3 determine whether or not the defendant is in the military service as required by Section
4 201(b)(1) of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 521, as amended, except
5 upon order of the court in accordance with that Act.]

6 **C Motion for order of default.**

7 **C(1) The party seeking default must file a motion for order of judgment by default.**
8 **That motion must be accompanied by an affidavit or declaration to support that default is**
9 **appropriate and contain facts sufficient to establish the following:**

10 **C(1)(a) the party to be defaulted has been served pursuant to Rule 7 or is otherwise**
11 **subject to the jurisdiction of the court;**

12 **C(1)(b) the fact that the party against whom the order of default is sought has failed**
13 **to "appear" by filing a motion, answer, or otherwise defend as provided by these rules or**
14 **applicable statute;**

15 **C(1)(c) whether notice of intent to appear has been received and a formal notice of**
16 **intent to take default was filed and served at least 10 days prior to the motion or**
17 **verification that the court shortened the time;**

18 **C(1)(d) to the best knowledge and belief of the party seeking a default order, the**
19 **party against whom judgment is sought is not incapacitated as defined in ORS 125.005, a**
20 **minor, a protected person as defined in ORS 125.005, or a respondent as defined in ORS**
21 **125.005. If the party seeking default cannot submit an affidavit or a declaration under this**
22 **subsection, an order of default may be entered against the other party only if a guardian ad**
23 **litem has been appointed or the party is represented by another person as described in**
24 **Rule 27;**

25 **C(1)(e) the defendant is or is not a person in the military service, or stating that**
26 **plaintiff is unable to determine whether or not the defendant is in the military service as**

1 required by Section 201(b)(1) of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. §
2 521, as amended, except upon order of the court in accordance with that Act; and

3 C(1)(f) if the action arises upon contract, that the summons was personally served
4 within the State of Oregon upon the party, or an agent, officer, director, or partner of a
5 party, against whom judgment is sought pursuant to Rule 7 D(3)(a)(i), 7 D(3)(b)(i), 7
6 D(3)(e), or 7 D(3)(f);

7 C(2) The court may grant an order of default if it appears the motion and affidavit
8 or declaration has been filed in good faith and good cause is shown that such an order is
9 proper.

10 D Motion for Judgment by Default.

11 D(1) A party seeking a judgment of default must file a motion, supported by
12 affidavit or declaration, establishing the relief to be awarded as follows:

13 D(1)(a) an order of default has been granted and entered;

14 D(1)(b) the relief sought including any amounts due as claimed in the pleadings;

15 D(1)(c) If costs, disbursements and/or attorney fees are allowable based on a
16 contract, statute or other legal provision, a party may seek approval of costs,
17 disbursements and/or attorneys fees as allowed by Rule 68 by either:

18 D(1)(c)(i) supplemental judgment, or

19 D(1)(c)(ii) submitting herewith a signed and detailed statement of the costs,
20 disbursements and/or attorney fees, including an assertion of relevant facts and legal
21 criteria upon which the request is based as supported by declaration.

22 D(2) The judgment entered shall comply with all applicable rules and statutes.

23 D(3) The court, acting in its sole discretion, may conduct such hearing, make an
24 order of reference, or order that issues be tried by a jury, as it deems necessary and
25 proper, in order to enable the court to determine the amount of damages or to establish the
26 truth of any averment by evidence or to make an investigation of any other matter. The

1 **court may determine the truth of any matter upon affidavits or declarations.**

2 [C *Setting aside default.*] **E Setting aside a default order or judgment.** For good cause
3 shown, the court may set aside an order of default and, if a judgment by default has been entered,
4 may likewise set it aside in accordance with Rule 71 B and C.

5 [D *Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply*
6 *whether the party entitled to the judgment by default is a plaintiff, a third party plaintiff, or a*
7 *party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is*
8 *subject to the provisions of Rule 67 B.*

9 E “Clerk” defined. Reference to “clerk” in this rule shall include the clerk of court or
10 any person performing the duties of that office.]

11 **F Certain Motor Vehicle Cases. No default shall be entered against a defendant**
12 **served with summons pursuant to subparagraph D(4)(a)(i) of Rule 7 unless the plaintiff**
13 **submits an affidavit or a declaration showing:**

14 **F(1) that the plaintiff has complied with subparagraph D(4)(a)(i) of Rule 7; and**

15 **F(2) either, if the identity of the defendant's insurance carrier is known to the**
16 **plaintiff or could be determined from any records of the Department of Transportation**
17 **accessible to the plaintiff, that the plaintiff not less than 30 days prior to the application for**
18 **default mailed a copy of the summons and the complaint, together with notice of intent to**
19 **apply for an order of default, to the insurance carrier by first class mail and by any of the**
20 **following: certified or registered mail, return receipt requested, or express mail; or that the**
21 **identity of the defendant's insurance carrier is unknown to the plaintiff.**

1 A(2)(b) either, if the identity of the defendant's insurance carrier is known to the plaintiff
2 or could be determined from any records of the Department of Transportation accessible to the
3 plaintiff, that the plaintiff not less than 30 days prior to the application for default mailed a copy
4 of the summons and the complaint, together with notice of intent to apply for an order of default,
5 to the insurance carrier by first class mail and by any of the following: certified, registered, or
6 express mail with return receipt requested; or that the identity of the defendant's insurance
7 carrier is unknown to the plaintiff.]

8 **B Intent to appear; notice of intent to [take apply for an order of default.](#)**

9 **B(1) For the purposes of avoiding a default, a party may provide written notice of**
10 **intent to file an appearance to a plaintiff, counterclaimant, or cross-claimant.**

11 **B(2) If the party against whom an order of default is sought has filed an**
12 **appearance in the action, or has provided written notice of intent to file an appearance,**
13 **then formal notice of the intent to [apply for an order of default](#) must be filed and served at**
14 **least 10 days, unless shortened by the court, prior to entry of the order of default. The**
15 **notice of intent to [take apply for an order of default](#) must be in the form prescribed by**
16 **Uniform Trial Court Rule 2.010 and must be filed with the court and served on the party**
17 **against whom an order of default is sought.**

18 [B Entry of judgment by default.

19 B(1) By the court or the clerk. The court or the clerk upon written application of the
20 party seeking judgment shall enter judgment when:

21 B(1)(a) The action arises upon contract;

22 B(1)(b) The claim of a party seeking judgment is for the recovery of a sum certain or for
23 a sum which can by computation be made certain;

24 B(1)(c) The party against whom judgment is sought has been defaulted for failure to
25 appear;

26 B(1)(d) The party seeking judgment submits an affidavit or a declaration stating that, to

1 *the best knowledge and belief of the party seeking judgment, the party against whom judgment is*
2 *sought is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in*
3 *ORS 125.005, or a respondent as defined in ORS 125.005;*

4 *B(1)(e) The party seeking judgment submits an affidavit or a declaration of the amount*
5 *due;*

6 *B(1)(f) An affidavit or a declaration pursuant to subsection B(4) of this rule has been*
7 *submitted; and*

8 *B(1)(g) Summons was personally served within the State of Oregon upon the party, or an*
9 *agent, officer, director, or partner of a party, against whom judgment is sought pursuant to Rule*
10 *7 D(3)(a)(I), 7 D(3)(b)(I), 7 D(3)(c)(I), 7 D(3)(d)(I), 7 D(3)(e), or 7 D(3)(f).*

11 *B(2) By the court. In cases other than those cases described in subsection (1) of this*
12 *section, the party seeking judgment must apply to the court for judgment by default. The party*
13 *seeking judgment must submit the affidavit or declaration required by subsection (1)(d) of this*
14 *section if, to the best knowledge and belief of the party seeking judgment, the party against*
15 *whom judgment is sought is not incapacitated as defined in ORS 125.005, a minor, a protected*
16 *person as defined in ORS 125.005, or a respondent as defined in ORS 125.005. If the party*
17 *seeking judgment cannot submit an affidavit or a declaration under this subsection, a default*
18 *judgment may be entered against the other party only if a guardian ad litem has been appointed*
19 *or the party is represented by another person as described in Rule 27. If, in order to enable the*
20 *court to enter judgment or to carry it into effect, it is necessary to take an account or to*
21 *determine the amount of damages or to establish the truth of any averment by evidence or to*
22 *make an investigation of any other matter, the court may conduct such hearing, or make an*
23 *order of reference, or order that issues be tried by a jury, as it deems necessary and proper. The*
24 *court may determine the truth of any matter upon affidavits or declarations.*

25 *B(3) Amount of judgment. The judgment entered shall be for the amount due as shown by*
26 *the affidavit or declaration, and may include costs and disbursements and attorney fees entered*

1 pursuant to Rule 68.

2 *B(4) Non-military affidavit or declaration required. No judgment by default shall be*
3 *entered until the filing of an affidavit or a declaration on behalf of the plaintiff, showing that the*
4 *defendant is or is not a person in the military service, or stating that plaintiff is unable to*
5 *determine whether or not the defendant is in the military service as required by Section*
6 *201(b)(1) of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 521, as amended, except*
7 *upon order of the court in accordance with that Act.]*

8 **C Motion for order of default.**

9 **C(1) The party seeking default must file a motion for order of judgment by default.**
10 **That motion must be accompanied by an affidavit or declaration to support that default is**
11 **appropriate and contain facts sufficient to establish the following:**

12 **C(1)(a) that the party to be defaulted has been served pursuant to Rule 7 or is**
13 **otherwise subject to the jurisdiction of the court;**

14 **C(1)(b) the fact that the party against whom the order of default is sought has failed**
15 **to appear by filing a motion, answer, or to otherwise defend as provided by these rules or**
16 **applicable statute;**

17 **C(1)(c) whether a notice of intent to appear has been received by the movant and, if**
18 **so, whether and a formal notice of intent to apply for an order of take default was filed and**
19 **served at least 10 days prior to the motion or verification that the court shortened the time;**

20 **C(1)(d) that, to the best knowledge and belief of the party seeking a an order of**
21 **default order, the party against whom judgment is sought is not incapacitated as defined in**
22 **ORS 125.005, a minor, a protected person as defined in ORS 125.005, or a respondent as**
23 **defined in ORS 125.005. If the party seeking the order of default cannot submit an affidavit**
24 **or a declaration under this subsection, an order of default may be entered against the other**
25 **party only if a guardian ad litem has been appointed or the party is represented by another**
26 **person as described in Rule 27;**

1 C(1)(e) that the defendant is or is not a person in the military service, or stating that
2 plaintiff movant is unable to determine whether or not the defendant party against whom
3 the order is sought is in the military service as required by Section 201(b)(1) of the
4 Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 521, as amended, except upon order
5 of the court in accordance with that Act; and

6 C(1)(f) that, if the action arises upon contract, that the summons was personally
7 served within the State of Oregon upon the party, or an agent, officer, director, or partner
8 of a party, against whom judgment is sought pursuant to Rule 7 D(3)(a)(i), 7 D(3)(b)(i), 7
9 D(3)(e), or 7 D(3)(f);

10 C(2) The court may grant an order of default if it appears the motion and affidavit
11 or declaration has been filed in good faith and good cause is shown that entry of such an
12 order is proper.

13 D Motion for Judgment by Default.

14 D(1) A party seeking a judgment of by default must file a motion, supported by
15 affidavit or declaration, establishing the relief to be awarded as follows:

16 D(1)(a) stating that an order of default has been granted and entered;

17 D(1)(b) stating the relief sought including any amounts due as claimed in the
18 pleadings;

19 D(1)(c) if costs, disbursements, and/or attorney fees are allowable based on a
20 contract fact, statute, or rule, or other legal provision, a party may seek approval of costs,
21 disbursements, and/or attorneys fees as allowed by Rule 68 by either:

22 D(1)(c)(i) in a supplemental judgment; or

23 D(1)(c)(ii) by submitting herewith the motion for judgment by default a signed and
24 detailed statement of the costs, disbursements, and/or attorney fees, including an assertion
25 of relevant facts and legal criteria upon which the request is based as supported by an
26 affidavit or a declaration.

1 D(2) The form of judgment entered submitted shall comply with all applicable rules
2 and statutes.

3 D(3) The court, acting in its sole discretion, may conduct such hearing, make an
4 order of reference, or order that issues be tried by a jury, as it deems necessary and
5 proper, in order to enable the court to determine the amount of damages or to establish the
6 truth of any averment by evidence or to make an investigation of any other matter. The
7 court may determine the truth of any matter upon affidavits or declarations.

8 [C Setting aside default.] E Setting aside an default order of default or judgment by
9 default. For good cause shown, the court may set aside an order of default and, if a judgment by
10 default has been entered, may likewise set it aside in accordance with Rule 71 B and C.

11 [D Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply
12 whether the party entitled to the judgment by default is a plaintiff, a third party plaintiff, or a
13 party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is
14 subject to the provisions of Rule 67 B.

15 E "Clerk" defined. Reference to "clerk" in this rule shall include the clerk of court or
16 any person performing the duties of that office.]

17 F Certain Motor Vehicle Cases. No order of default shall be entered against a
18 defendant served with summons pursuant to subparagraph of Rule 7 D(4)(a)(i) unless the
19 plaintiff submits an affidavit or a declaration showing:

20 F(1) that the plaintiff has complied with subparagraph of Rule 7 D(4)(a)(i); and

21 F(2) either, if the identity of the defendant's insurance carrier is known to the
22 plaintiff or could be determined from any records of the Department of Transportation
23 accessible to the plaintiff, that the plaintiff not less than 30 days prior to the application for
24 default mailed a copy of the summons and the complaint, together with notice of intent to

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1 apply for an order of default, to the insurance carrier by first class mail and by any of the
2 following: certified, registered, or express mail, return receipt requested, ~~or express mail;~~
3 or that the identity of the defendant's insurance carrier is unknown to the plaintiff.
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1 A(2)(b) either, if the identity of the defendant's insurance carrier is known to the plaintiff
2 or could be determined from any records of the Department of Transportation accessible to the
3 plaintiff, that the plaintiff not less than 30 days prior to the application for default mailed a copy
4 of the summons and the complaint, together with notice of intent to apply for an order of default,
5 to the insurance carrier by first class mail and by any of the following: certified, registered, or
6 express mail with return receipt requested; or that the identity of the defendant's insurance
7 carrier is unknown to the plaintiff.]

8 **B Intent to appear; notice of intent to apply for an order of default.**

9 **B(1) For the purposes of avoiding a default, a party may provide written notice of**
10 **intent to file an appearance to a plaintiff, counterclaimant, or cross-claimant.**

11 **B(2) If the party against whom an order of default is sought has filed an**
12 **appearance in the action, or has provided written notice of intent to file an appearance,**
13 **then formal notice of the intent to apply for an order of default must be filed and served at**
14 **least 10 days, unless shortened by the court, prior to entry of the order of default. The**
15 **notice of intent to apply for an order of default must be in the form prescribed by Uniform**
16 **Trial Court Rule 2.010 and must be filed with the court and served on the party against**
17 **whom an order of default is sought.**

18 [B Entry of judgment by default.

19 B(1) By the court or the clerk. The court or the clerk upon written application of the
20 party seeking judgment shall enter judgment when:

21 B(1)(a) The action arises upon contract;

22 B(1)(b) The claim of a party seeking judgment is for the recovery of a sum certain or for
23 a sum which can by computation be made certain;

24 B(1)(c) The party against whom judgment is sought has been defaulted for failure to
25 appear;

26 B(1)(d) The party seeking judgment submits an affidavit or a declaration stating that, to

1 *the best knowledge and belief of the party seeking judgment, the party against whom judgment is*
2 *sought is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in*
3 *ORS 125.005, or a respondent as defined in ORS 125.005;*

4 *B(1)(e) The party seeking judgment submits an affidavit or a declaration of the amount*
5 *due;*

6 *B(1)(f) An affidavit or a declaration pursuant to subsection B(4) of this rule has been*
7 *submitted; and*

8 *B(1)(g) Summons was personally served within the State of Oregon upon the party, or an*
9 *agent, officer, director, or partner of a party, against whom judgment is sought pursuant to Rule*
10 *7 D(3)(a)(I), 7 D(3)(b)(I), 7 D(3)(c)(I), 7 D(3)(d)(I), 7 D(3)(e), or 7 D(3)(f).*

11 *B(2) By the court. In cases other than those cases described in subsection (1) of this*
12 *section, the party seeking judgment must apply to the court for judgment by default. The party*
13 *seeking judgment must submit the affidavit or declaration required by subsection (1)(d) of this*
14 *section if, to the best knowledge and belief of the party seeking judgment, the party against*
15 *whom judgment is sought is not incapacitated as defined in ORS 125.005, a minor, a protected*
16 *person as defined in ORS 125.005, or a respondent as defined in ORS 125.005. If the party*
17 *seeking judgment cannot submit an affidavit or a declaration under this subsection, a default*
18 *judgment may be entered against the other party only if a guardian ad litem has been appointed*
19 *or the party is represented by another person as described in Rule 27. If, in order to enable the*
20 *court to enter judgment or to carry it into effect, it is necessary to take an account or to*
21 *determine the amount of damages or to establish the truth of any averment by evidence or to*
22 *make an investigation of any other matter, the court may conduct such hearing, or make an*
23 *order of reference, or order that issues be tried by a jury, as it deems necessary and proper. The*
24 *court may determine the truth of any matter upon affidavits or declarations.*

25 *B(3) Amount of judgment. The judgment entered shall be for the amount due as shown by*
26 *the affidavit or declaration, and may include costs and disbursements and attorney fees entered*

1 pursuant to Rule 68.

2 *B(4) Non-military affidavit or declaration required. No judgment by default shall be*
3 *entered until the filing of an affidavit or a declaration on behalf of the plaintiff, showing that the*
4 *defendant is or is not a person in the military service, or stating that plaintiff is unable to*
5 *determine whether or not the defendant is in the military service as required by Section*
6 *201(b)(1) of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 521, as amended, except*
7 *upon order of the court in accordance with that Act.]*

8 **C Motion for order of default.**

9 **C(1) The party seeking default must file a motion for order of default. That motion**
10 **must be accompanied by an affidavit or declaration to support that default is appropriate**
11 **and contain facts sufficient to establish the following:**

12 **C(1)(a) that the party to be defaulted has been served pursuant to Rule 7 or is**
13 **otherwise subject to the jurisdiction of the court;**

14 **C(1)(b) that the party against whom the order of default is sought has failed to**
15 **appear by filing a motion, answer, or to otherwise defend as provided by these rules or**
16 **applicable statute;**

17 **C(1)(c) whether written notice of intent to appear has been received by the movant**
18 **and, if so, whether written notice of intent to apply for an order of default was filed and**
19 **served at least 10 days prior to the motion or verification that the court shortened the time;**

20 **C(1)(d) that, to the best knowledge and belief of the party seeking an order of**
21 **default, the party against whom judgment is sought is not incapacitated as defined in ORS**
22 **125.005, a minor, a protected person as defined in ORS 125.005, or a respondent as defined**
23 **in ORS 125.005. If the party seeking the order of default cannot submit an affidavit or a**
24 **declaration under this subsection, an order of default may be entered against the other**
25 **party only if a guardian ad litem has been appointed or the party is represented by another**
26 **person as described in Rule 27;**

1 C(1)(e) that the defendant is or is not a person in the military service, or stating that
2 movant is unable to determine whether or not the party against whom the order is sought
3 is in the military service as required by Section 201(b)(1) of the Servicemembers Civil
4 Relief Act, 50 App. U.S.C.A. § 521, as amended, except upon order of the court in
5 accordance with that Act; and

6 C(1)(f) that, if the action arises upon contract, that the summons was personally
7 served within the State of Oregon upon the party, or an agent, officer, director, or partner
8 of a party, against whom judgment is sought pursuant to Rule 7 D(3)(a)(i), 7 D(3)(b)(i), 7
9 D(3)(e), or 7 D(3)(f);

10 C(2) The court may grant an order of default if it appears the motion and affidavit
11 or declaration has been filed in good faith and good cause is shown that entry of such an
12 order is proper.

13 D Motion for Judgment by Default.

14 D(1) A party seeking a judgment by default must file a motion, supported by
15 affidavit or declaration, establishing the relief to be awarded as follows:

16 D(1)(a) stating that an order of default has been granted;

17 D(1)(b) stating the relief sought including any amounts due as claimed in the
18 pleadings;

19 D(1)(c) if costs, disbursements, and/or attorney fees are allowable based on a
20 contract, statute, or rule, or other legal provision, a party include costs, disbursements, and
21 attorney fees awarded pursuant to Rule 68.

22 D(2) The form of judgment submitted shall comply with all applicable rules and
23 statutes.

24 D(3) The court, acting in its discretion, may conduct a hearing, make an order of
25 reference, or order that issues be tried by a jury, as it deems necessary and proper, in
26 order to enable the court to determine the amount of damages or to establish the truth of

1 **any averment by evidence or to make an investigation of any other matter. The court may**
2 **determine the truth of any matter upon affidavits or declarations.**

3 *[C Setting aside default. For good cause shown, the court may set aside an order of*
4 *default and, if a judgment by default has been entered, may likewise set it aside in accordance*
5 *with Rule 71 B and C.]*

6 *[D Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply*
7 *whether the party entitled to the judgment by default is a plaintiff, a third party plaintiff, or a*
8 *party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is*
9 *subject to the provisions of Rule 67 B.*

10 *E “Clerk” defined. Reference to “clerk” in this rule shall include the clerk of court or*
11 *any person performing the duties of that office.]*

12 **E Certain Motor Vehicle Cases. No order of default shall be entered against a**
13 **defendant served with summons pursuant to Rule 7 D(4)(a)(i) unless, in addition to the**
14 **requirements in subparagraph D, the plaintiff submits an affidavit or a declaration**
15 **showing:**

16 **E(1) that the plaintiff has complied with Rule 7 D(4)(a)(i); and**

17 **E(2) either, if the identity of the defendant's insurance carrier is known to the**
18 **plaintiff or could be determined from any records of the Department of Transportation**
19 **accessible to the plaintiff, that the plaintiff not less than 30 days prior to the application for**
20 **default mailed a copy of the summons and the complaint, together with notice of intent to**
21 **apply for an order of default, to the insurance carrier by first class mail and by any of the**
22 **following: certified, registered, or express mail, return receipt requested; or that the**
23 **identity of the defendant's insurance carrier is unknown to the plaintiff.**

24 **F Setting aside an order of default or judgment by default.**

25 **For good cause shown, the court may set aside an order of default and, if a**
26 **judgment by default has been entered, may likewise set it aside in accordance with Rule 71**

1 **B and C.**

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1 | could be determined from any records of the Department of Transportation accessible to the plaintiff,
2 | that the plaintiff not less than 30 days prior to the application for default mailed a copy of the
3 | summons and the complaint, together with notice of intent to apply for an order of default, to the
4 | insurance carrier by first class mail and by any of the following: certified, registered, or express mail
5 | with return receipt requested; or that the identity of the defendant's insurance carrier is unknown to
6 | the plaintiff.]

7 | **B Intent to appear; notice of intent to apply for an order of default.**

8 | **B(1) For the purposes of avoiding a default, a party may provide written notice of intent**
9 | **to file an appearance to a plaintiff, counterclaimant, or cross-claimant.**

10 | **B(2) If the party against whom an order of default is sought has filed an appearance in**
11 | **the action, or has provided written notice of intent to file an appearance, then formal notice of**
12 | **the intent to apply for an order of default must be filed and served at least 10 days, unless**
13 | **shortened by the court, prior to applying for the order of default. The notice of intent to apply**
14 | **for an order of default must be in the form prescribed by Uniform Trial Court Rule 2.010 and**
15 | **must be filed with the court and served on the party against whom an order of default is**
16 | **sought.**

17 | [B Entry of judgment by default.

18 | B(1) By the court or the clerk. The court or the clerk upon written application of the party
19 | seeking judgment shall enter judgment when:

20 | B(1)(a) The action arises upon contract;

21 | B(1)(b) The claim of a party seeking judgment is for the recovery of a sum certain or for a
22 | sum which can by computation be made certain;

23 | B(1)(c) The party against whom judgment is sought has been defaulted for failure to appear;

24 | B(1)(d) The party seeking judgment submits an affidavit or a declaration stating that, to the
25 | best knowledge and belief of the party seeking judgment, the party against whom judgment is sought
26 | is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in ORS

1 | *125.005, or a respondent as defined in ORS 125.005;*

2 | *B(1)(e) The party seeking judgment submits an affidavit or a declaration of the amount due;*

3 | *B(1)(f) An affidavit or a declaration pursuant to subsection B(4) of this rule has been*
4 | *submitted; and*

5 | *B(1)(g) Summons was personally served within the State of Oregon upon the party, or an*
6 | *agent, officer, director, or partner of a party, against whom judgment is sought pursuant to Rule 7*
7 | *D(3)(a)(I), 7 D(3)(b)(I), 7 D(3)(c)(I), 7 D(3)(d)(I), 7 D(3)(e), or 7 D(3)(f).*

8 | *B(2) By the court. In cases other than those cases described in subsection (1) of this section,*
9 | *the party seeking judgment must apply to the court for judgment by default. The party seeking*
10 | *judgment must submit the affidavit or declaration required by subsection (1)(d) of this section if, to*
11 | *the best knowledge and belief of the party seeking judgment, the party against whom judgment is*
12 | *sought is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in*
13 | *ORS 125.005, or a respondent as defined in ORS 125.005. If the party seeking judgment cannot*
14 | *submit an affidavit or a declaration under this subsection, a default judgment may be entered against*
15 | *the other party only if a guardian ad litem has been appointed or the party is represented by another*
16 | *person as described in Rule 27. If, in order to enable the court to enter judgment or to carry it into*
17 | *effect, it is necessary to take an account or to determine the amount of damages or to establish the*
18 | *truth of any averment by evidence or to make an investigation of any other matter, the court may*
19 | *conduct such hearing, or make an order of reference, or order that issues be tried by a jury, as it*
20 | *deems necessary and proper. The court may determine the truth of any matter upon affidavits or*
21 | *declarations.*

22 | *B(3) Amount of judgment. The judgment entered shall be for the amount due as shown by the*
23 | *affidavit or declaration, and may include costs and disbursements and attorney fees entered pursuant*
24 | *to Rule 68.*

25 | *B(4) Non-military affidavit or declaration required. No judgment by default shall be entered*
26 | *until the filing of an affidavit or a declaration on behalf of the plaintiff, showing that the defendant is*

1 *or is not a person in the military service, or stating that plaintiff is unable to determine whether or*
2 *not the defendant is in the military service as required by Section 201(b)(1) of the Servicemembers*
3 *Civil Relief Act, 50 App. U.S.C.A. § 521, as amended, except upon order of the court in accordance*
4 *with that Act.]*

5 **C Motion for order of default.**

6 **C(1) The party seeking default must file a motion for order of default. That motion**
7 **must be accompanied by an affidavit or declaration to support that default is appropriate and**
8 **contain facts sufficient to establish the following:**

9 **C(1)(a) that the party to be defaulted has been served with summons pursuant to Rule 7**
10 **or is otherwise subject to the jurisdiction of the court;**

11 **C(1)(b) that the party against whom the order of default is sought has failed to appear**
12 **by filing a motion or answer, or otherwise to defend as provided by these rules or applicable**
13 **statute;**

14 **C(1)(c) whether written notice of intent to appear has been received by the movant and,**
15 **if so, whether written notice of intent to apply for an order of default was filed and served at**
16 **least 10 days prior to the motion or verification that the court shortened the time;**

17 **C(1)(d) that, to the best knowledge and belief of the party seeking an order of default,**
18 **the party against whom judgment is sought is not incapacitated as defined in ORS 125.005, a**
19 **minor, a protected person as defined in ORS 125.005, or a respondent as defined in ORS**
20 **125.005. If the party seeking the order of default cannot submit an affidavit or a declaration**
21 **under this subsection, an order of default may be entered against the other party only if a**
22 **guardian ad litem has been appointed or the party is represented by another person as**
23 **described in Rule 27;**

24 **C(1)(e) that the defendant is or is not a person in the military service, or stating that the**
25 **movant is unable to determine whether or not the party against whom the order is sought is in**
26 **the military service as required by Section 201(b)(1) of the Servicemembers Civil Relief Act, 50**

1 App. U.S.C.A. § 521, as amended, except upon order of the court in accordance with that Act;
2 and

3 C(1)(f) that, if the action arises upon contract, that the summons was personally served
4 within the State of Oregon upon the party, or an agent, officer, director, or partner of a party,
5 against whom judgment is sought pursuant to Rule 7 D(3)(a)(i), 7 D(3)(b)(i), 7D(3)(c)(i),
6 7D(3)(d)(i), 7 D(3)(e), or 7 D(3)(f);

7 C(2) The court may grant an order of default if it appears the motion and affidavit or
8 declaration has been filed in good faith and good cause is shown that entry of such an order is
9 proper.

10 D Motion for Judgment by Default.

11 D(1) A party seeking a judgment by default must file a motion, supported by affidavit
12 or declaration, establishing the relief to be awarded as follows:

13 D(1)(a) stating that an order of default has been granted;

14 D(1)(b) stating the relief sought including any amounts due as claimed in the pleadings;

15 D(1)(c) if costs, disbursements, and/or attorney fees are allowable based on a contract,
16 statute, or rule, or other legal provision, a party may include costs, disbursements, and attorney
17 fees awarded pursuant to Rule 68.

18 D(2) The form of judgment submitted shall comply with all applicable rules and
19 statutes.

20 D(3) The court, acting in its discretion, may conduct a hearing, make an order of
21 reference, or order that issues be tried by a jury, as it deems necessary and proper, in order to
22 enable the court to determine the amount of damages or to establish the truth of any averment
23 by evidence or to make an investigation of any other matter. The court may determine the
24 truth of any matter upon affidavits or declarations.

25 *[C Setting aside default. For good cause shown, the court may set aside an order of default*
26 *and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 71*

1 | *B and C.]*

2 | *[D Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply whether*
3 | *the party entitled to the judgment by default is a plaintiff, a third party plaintiff, or a party who has*
4 | *pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the provisions*
5 | *of Rule 67 B.*

6 | *E “Clerk” defined. Reference to “clerk” in this rule shall include the clerk of court or any*
7 | *person performing the duties of that office.]*

8 | **E Certain Motor Vehicle Cases. No order of default shall be entered against a**
9 | **defendant served with summons pursuant to Rule 7 D(4)(a)(i) unless, in addition to the**
10 | **requirements in Rule 7 D(4)(a)(i), the plaintiff submits an affidavit or a declaration showing:**

11 | **E(1) that the plaintiff has complied with Rule 7 D(4)(a)(i); and**

12 | **E(2) either, if the identity of the defendant's insurance carrier is known to the plaintiff**
13 | **or could be determined from any records of the Department of Transportation accessible to the**
14 | **plaintiff, that the plaintiff not less than 30 days prior to the application for an order of default**
15 | **mailed a copy of the summons and the complaint, together with notice of intent to apply for an**
16 | **order of default, to the insurance carrier by first class mail and by any of the following:**
17 | **certified, registered, or express mail, return receipt requested; or that the identity of the**
18 | **defendant's insurance carrier is unknown to the plaintiff.**

19 | **F Setting aside an order of default or judgment by default.**

20 | **For good cause shown, the court may set aside an order of default and, if a judgment by**
21 | **default has been entered, may likewise set it aside in accordance with Rule 71 B and C.**

1 A(2)(b) either, if the identity of the defendant's insurance carrier is known to the plaintiff
2 or could be determined from any records of the Department of Transportation accessible to the
3 plaintiff, that the plaintiff not less than 30 days prior to the application for default mailed a copy
4 of the summons and the complaint, together with notice of intent to apply for an order of default,
5 to the insurance carrier by first class mail and by any of the following: certified, registered, or
6 express mail with return receipt requested; or that the identity of the defendant's insurance
7 carrier is unknown to the plaintiff.]

8 **B Intent to appear; notice of intent to apply for an order of default.**

9 **B(1) For the purposes of avoiding a default, a party may provide written notice of**
10 **intent to file an appearance to a plaintiff, counterclaimant, or cross-claimant.**

11 **B(2) If the party against whom an order of default is sought has filed an**
12 **appearance in the action, or has provided written notice of intent to file an appearance,**
13 **then **formal** notice of the intent to apply for an order of default must be filed and served at**
14 **least 10 days, unless shortened by the court, prior to applying for the order of default. The**
15 **notice of intent to apply for an order of default must be in the form prescribed by Uniform**
16 **Trial Court Rule 2.010 and must be filed with the court and served on the party against**
17 **whom an order of default is sought.**

18 [B Entry of judgment by default.

19 B(1) By the court or the clerk. The court or the clerk upon written application of the
20 party seeking judgment shall enter judgment when:

21 B(1)(a) The action arises upon contract;

22 B(1)(b) The claim of a party seeking judgment is for the recovery of a sum certain or for
23 a sum which can by computation be made certain;

24 B(1)(c) The party against whom judgment is sought has been defaulted for failure to
25 appear;

26 B(1)(d) The party seeking judgment submits an affidavit or a declaration stating that, to

1 *the best knowledge and belief of the party seeking judgment, the party against whom judgment is*
2 *sought is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in*
3 *ORS 125.005, or a respondent as defined in ORS 125.005;*

4 *B(1)(e) The party seeking judgment submits an affidavit or a declaration of the amount*
5 *due;*

6 *B(1)(f) An affidavit or a declaration pursuant to subsection B(4) of this rule has been*
7 *submitted; and*

8 *B(1)(g) Summons was personally served within the State of Oregon upon the party, or an*
9 *agent, officer, director, or partner of a party, against whom judgment is sought pursuant to Rule*
10 *7 D(3)(a)(I), 7 D(3)(b)(I), 7 D(3)(c)(I), 7 D(3)(d)(I), 7 D(3)(e), or 7 D(3)(f).*

11 *B(2) By the court. In cases other than those cases described in subsection (1) of this*
12 *section, the party seeking judgment must apply to the court for judgment by default. The party*
13 *seeking judgment must submit the affidavit or declaration required by subsection (1)(d) of this*
14 *section if, to the best knowledge and belief of the party seeking judgment, the party against*
15 *whom judgment is sought is not incapacitated as defined in ORS 125.005, a minor, a protected*
16 *person as defined in ORS 125.005, or a respondent as defined in ORS 125.005. If the party*
17 *seeking judgment cannot submit an affidavit or a declaration under this subsection, a default*
18 *judgment may be entered against the other party only if a guardian ad litem has been appointed*
19 *or the party is represented by another person as described in Rule 27. If, in order to enable the*
20 *court to enter judgment or to carry it into effect, it is necessary to take an account or to*
21 *determine the amount of damages or to establish the truth of any averment by evidence or to*
22 *make an investigation of any other matter, the court may conduct such hearing, or make an*
23 *order of reference, or order that issues be tried by a jury, as it deems necessary and proper. The*
24 *court may determine the truth of any matter upon affidavits or declarations.*

25 *B(3) Amount of judgment. The judgment entered shall be for the amount due as shown by*
26 *the affidavit or declaration, and may include costs and disbursements and attorney fees entered*

1 pursuant to Rule 68.

2 *B(4) Non-military affidavit or declaration required. No judgment by default shall be*
3 *entered until the filing of an affidavit or a declaration on behalf of the plaintiff, showing that the*
4 *defendant is or is not a person in the military service, or stating that plaintiff is unable to*
5 *determine whether or not the defendant is in the military service as required by Section*
6 *201(b)(1) of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 521, as amended, except*
7 *upon order of the court in accordance with that Act.]*

8 **C Motion for order of default.**

9 **C(1) The party seeking default must file a motion for order of default. That motion**
10 **must be accompanied by an affidavit or declaration to support that default is appropriate**
11 **and contain facts sufficient to establish the following:**

12 **C(1)(a) that the party to be defaulted has been served with summons pursuant to**
13 **Rule 7 or is otherwise subject to the jurisdiction of the court;**

14 **C(1)(b) that the party against whom the order of default is sought has failed to**
15 **appear by filing a motion or answer, or otherwise to defend as provided by these rules or**
16 **applicable statute;**

17 **C(1)(c) whether written notice of intent to appear has been received by the movant**
18 **and, if so, whether written notice of intent to apply for an order of default was filed and**
19 **served at least 10 days (or any shortened period of time ordered by the court) prior to**
20 **filing the motion or verification that the court shortened the time;**

21 **C(1)(d) that whether, to the best knowledge and belief of the party seeking an order**
22 **of default, the party against whom judgment is sought is or is not incapacitated as defined**
23 **in ORS 125.005, a minor, a protected person as defined in ORS 125.005, or a respondent as**
24 **defined in ORS 125.005: If the party seeking the order of default cannot submit an affidavit**
25 **or a declaration under this subsection, an order of default may be entered against the other**
26 **party only if a guardian ad litem has been appointed or the party is represented by another**

1 person as described in Rule 27; and

2 C(1)(e) that whether the defendant party against whom the order is sought is or is
3 not a person in the military service, or stating that the movant is unable to determine
4 whether or not the party against whom the order is sought is in the military service as
5 required by Section 201(b)(1) of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. §
6 521, as amended., except upon order of the court in accordance with that Act.; and

7 ~~C(1)(f) that, if the action arises upon contract, that the summons was personally~~
8 ~~served within the State of Oregon upon the party, or an agent, officer, director, or partner~~
9 ~~of a party, against whom judgment is sought pursuant to Rule 7 D(3)(a)(i), 7 D(3)(b)(i),~~
10 ~~7D(3)(c)(i), 7D(3)(d)(i), 7 D(3)(e), or 7 D(3)(f);~~

11 C(2) If the party seeking default states in the affidavit or declaration that the party
12 against whom the order is sought:

13 (C)(2)(a) is incapacitated as defined in ORS 125.005, a minor, a protected person as
14 defined in ORS 125.005, or a respondent as defined in ORS 125.005, an order of default
15 may be entered against the other party only if a guardian ad litem has been appointed or
16 the party is represented by another person as described in Rule 27;

17 (C)(2)(b) is a person in the military service, an order of default may be entered
18 against the other party only in accordance with the Servicemembers Civil Relief Act.

19 ~~C(2)(3)~~ The court may grant an order of default if it appears the motion and
20 affidavit or declaration ~~have~~ been filed in good faith and good cause is shown that entry of
21 such an order is proper.

22 D Motion for Judgment by Default.

23 D(1) A party seeking a judgment by default must file a motion, supported by
24 affidavit or declaration, establishing the relief to be awarded as follows:

25 D(1)(a) stating that an order of default has been granted;

26 D(1)(b) stating the relief sought, including any amounts due as claimed in the

1 pleadings;

2 D(1)(c) if costs, disbursements, and/or attorney fees are allowable based on a
3 contract, statute, or rule, or other legal provision, a party may include costs,
4 disbursements, and attorney fees to be awarded pursuant to Rule 68.

5 D(2) The form of judgment submitted shall comply with all applicable rules and
6 statutes.

7 D(3) The court, acting in its discretion, may conduct a hearing, make an order of
8 reference, or order that issues be tried by a jury, as it deems necessary and proper, in
9 order to enable the court to determine the amount of damages or to establish the truth of
10 any averment by evidence or to make an investigation of any other matter. The court may
11 determine the truth of any matter upon affidavits or declarations.

12 *[C Setting aside default. For good cause shown, the court may set aside an order of*
13 *default and, if a judgment by default has been entered, may likewise set it aside in accordance*
14 *with Rule 71 B and C.]*

15 *[D Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply*
16 *whether the party entitled to the judgment by default is a plaintiff, a third party plaintiff, or a*
17 *party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is*
18 *subject to the provisions of Rule 67 B.*

19 *E “Clerk” defined. Reference to “clerk” in this rule shall include the clerk of court or*
20 *any person performing the duties of that office.]*

21 **E Certain Motor Vehicle Cases. No order of default shall be entered against a**
22 **defendant served with summons pursuant to Rule 7 D(4)(a)(i) unless, in addition to the**
23 **requirements in Rule 7 D(4)(a)(i), the plaintiff submits an affidavit or a declaration showing:**

24 **E(1) that the plaintiff has complied with Rule 7 D(4)(a)(i); and**

25 **E(2) either, if whether the identity of the defendant's insurance carrier is known to the**
26 **plaintiff or could be determined from any records of the Department of Transportation**

1 accessible to the plaintiff; and

2 E(3) if the identity of the defendant's insurance carrier is known, that the plaintiff not
3 less than 30 days prior to the application for an order of default mailed a copy of the summons
4 and the complaint, together with notice of intent to apply for an order of default, to the
5 insurance carrier by first class mail and by any of the following: certified, registered, or express
6 mail, return receipt requested; or that the identity of the defendant's insurance carrier is
7 unknown to the plaintiff.

8 F Setting aside an order of default or judgment by default.

9 For good cause shown, the court may set aside an order of default and, if a judgment by
10 default has been entered, may likewise set it aside in accordance with Rule 71 B and C.

1 **DEFAULT ORDERS AND JUDGMENTS**

2 **RULE 69**

3 A [*Entry of order of default.*] **In general.**

4 A(1) [*In general.*] When a party against whom a judgment for affirmative relief is sought
5 has been served with summons pursuant to Rule 7 or is otherwise subject to the jurisdiction of
6 the court and has failed to [*plead or*] **appear by filing a motion or answer, or otherwise to**
7 **defend as provided in these rules or applicable statute,** the party seeking affirmative relief may
8 apply for an order of default **and a judgment by default by filing motions and affidavits or**
9 **declarations in compliance with this rule.**

10 **A(2) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule**
11 **apply whether the party entitled to an order of default and judgment by default is a**
12 **plaintiff, a third party plaintiff, or a party who has pleaded a counterclaim or cross-claim.**

13 **A(3) In all cases a judgment by default is subject to the provisions of Rule 67 B.**

14 [*If the party against whom an order of default is sought has filed an appearance in the action, or*
15 *has provided written notice of intent to file an appearance to the party seeking an order of*
16 *default, notice, in the form prescribed by Uniform Trial Court Rule 2.010, of the intent to apply*
17 *for an order of default must be filed and served upon the party against whom an order of default*
18 *is sought at least 10 days, unless shortened by the court, prior to entry of the order of default.*
19 *These facts, along with the fact that the party against whom the order of default is sought has*
20 *failed to plead or otherwise defend as provided in these rules, shall be made to appear by*
21 *affidavit, declaration, or otherwise and, upon such a showing, the clerk or the court shall enter*
22 *the order of default.*

23 A(2) *Certain motor vehicle cases. Notwithstanding subsection A(1) of this section, no*
24 *default shall be entered against a defendant served with summons pursuant to Rule 7 D(4)(a)(i)*
25 *unless the plaintiff submits an affidavit or a declaration showing:*

26 A(2)(a) *that the plaintiff has complied with Rule 7 D(4)(a)(i); and*

1 *A(2)(b) either, if the identity of the defendant's insurance carrier is known to the plaintiff*
2 *or could be determined from any records of the Department of Transportation accessible to the*
3 *plaintiff, that the plaintiff not less than 30 days prior to the application for default mailed a copy*
4 *of the summons and the complaint, together with notice of intent to apply for an order of default,*
5 *to the insurance carrier by first class mail and by any of the following: certified, registered, or*
6 *express mail with return receipt requested; or that the identity of the defendant's insurance*
7 *carrier is unknown to the plaintiff.]*

8 **B Intent to appear; notice of intent to apply for an order of default.**

9 **B(1) For the purposes of avoiding a default, a party may provide written notice of**
10 **intent to file an appearance to a plaintiff, counterclaimant, or cross-claimant.**

11 **B(2) If the party against whom an order of default is sought has filed an**
12 **appearance in the action, or has provided written notice of intent to file an appearance,**
13 **then notice of the intent to apply for an order of default must be filed and served at least 10**
14 **days, unless shortened by the court, prior to applying for the order of default. The notice**
15 **of intent to apply for an order of default must be in the form prescribed by Uniform Trial**
16 **Court Rule 2.010 and must be filed with the court and served on the party against whom**
17 **an order of default is sought.**

18 *[B Entry of judgment by default.*

19 *B(1) By the court or the clerk. The court or the clerk upon written application of the*
20 *party seeking judgment shall enter judgment when:*

21 *B(1)(a) The action arises upon contract;*

22 *B(1)(b) The claim of a party seeking judgment is for the recovery of a sum certain or for*
23 *a sum which can by computation be made certain;*

24 *B(1)(c) The party against whom judgment is sought has been defaulted for failure to*
25 *appear;*

26 *B(1)(d) The party seeking judgment submits an affidavit or a declaration stating that, to*

1 | *the best knowledge and belief of the party seeking judgment, the party against whom judgment is*
2 | *sought is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in*
3 | *ORS 125.005, or a respondent as defined in ORS 125.005;*

4 | *B(1)(e) The party seeking judgment submits an affidavit or a declaration of the amount*
5 | *due;*

6 | *B(1)(f) An affidavit or a declaration pursuant to subsection B(4) of this rule has been*
7 | *submitted; and*

8 | *B(1)(g) Summons was personally served within the State of Oregon upon the party, or an*
9 | *agent, officer, director, or partner of a party, against whom judgment is sought pursuant to Rule*
10 | *7 D(3)(a)(i), 7 D(3)(b)(i), 7 D(3)(c)(i), 7 D(3)(d)(i), 7 D(3)(e), or 7 D(3)(f).*

11 | *B(2) By the court. In cases other than those cases described in subsection (1) of this*
12 | *section, the party seeking judgment must apply to the court for judgment by default. The party*
13 | *seeking judgment must submit the affidavit or declaration required by subsection (1)(d) of this*
14 | *section if, to the best knowledge and belief of the party seeking judgment, the party against whom*
15 | *judgment is sought is not incapacitated as defined in ORS 125.005, a minor, a protected person*
16 | *as defined in ORS 125.005, or a respondent as defined in ORS 125.005. If the party seeking*
17 | *judgment cannot submit an affidavit or a declaration under this subsection, a default judgment*
18 | *may be entered against the other party only if a guardian ad litem has been appointed or the*
19 | *party is represented by another person as described in Rule 27. If, in order to enable the court to*
20 | *enter judgment or to carry it into effect, it is necessary to take an account or to determine the*
21 | *amount of damages or to establish the truth of any averment by evidence or to make an*
22 | *investigation of any other matter, the court may conduct such hearing, or make an order of*
23 | *reference, or order that issues be tried by a jury, as it deems necessary and proper. The court*
24 | *may determine the truth of any matter upon affidavits or declarations.*

25 | *B(3) Amount of judgment. The judgment entered shall be for the amount due as shown by*
26 | *the affidavit or declaration, and may include costs and disbursements and attorney fees entered*

1 pursuant to Rule 68.

2 *B(4) Non-military affidavit or declaration required. No judgment by default shall be*
3 *entered until the filing of an affidavit or a declaration on behalf of the plaintiff, showing that the*
4 *defendant is or is not a person in the military service, or stating that plaintiff is unable to*
5 *determine whether or not the defendant is in the military service as required by Section 201(b)(1)*
6 *of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 521, as amended, except upon order*
7 *of the court in accordance with that Act.]*

8 **C Motion for order of default.**

9 **C(1) The party seeking default must file a motion for order of default. That motion**
10 **must be accompanied by an affidavit or declaration to support that default is appropriate**
11 **and contain facts sufficient to establish the following:**

12 **C(1)(a) that the party to be defaulted has been served with summons pursuant to**
13 **Rule 7 or is otherwise subject to the jurisdiction of the court;**

14 **C(1)(b) that the party against whom the order of default is sought has failed to**
15 **appear by filing a motion or answer, or otherwise to defend as provided by these rules or**
16 **applicable statute;**

17 **C(1)(c) whether written notice of intent to appear has been received by the movant**
18 **and, if so, whether written notice of intent to apply for an order of default was filed and**
19 **served at least 10 days (or any shortened period of time ordered by the court) prior to filing**
20 **the motion;**

21 **C(1)(d) whether, to the best knowledge and belief of the party seeking an order of**
22 **default, the party against whom judgment is sought is or is not incapacitated as defined in**
23 **ORS 125.005, a minor, a protected person as defined in ORS 125.005, or a respondent as**
24 **defined in ORS 125.005; and**

25 **C(1)(e) whether the party against whom the order is sought is or is not a person in**
26 **the military service, or stating that the movant is unable to determine whether or not the**

1 party against whom the order is sought is in the military service as required by Section
2 201(b)(1) of the Servicemembers Civil Relief Act, 50 App. U.S.C.A. § 521, as amended.

3 C(2) If the party seeking default states in the affidavit or declaration that the party
4 against whom the order is sought:

5 (C)(2)(a) is incapacitated as defined in ORS 125.005, a minor, a protected person as
6 defined in ORS 125.005, or a respondent as defined in ORS 125.005, an order of default
7 may be entered against the party against whom the order is sought only if a guardian ad
8 litem has been appointed or the party is represented by another person as described in
9 Rule 27;

10 (C)(2)(b) is a person in the military service, an order of default may be entered
11 against the party against whom the order is sought only in accordance with the
12 Servicemembers Civil Relief Act.

13 C(3) The court may grant an order of default if it appears the motion and affidavit
14 or declaration have been filed in good faith and good cause is shown that entry of such an
15 order is proper.

16 D Motion for Judgment by Default.

17 D(1) A party seeking a judgment by default must file a motion, supported by
18 affidavit or declaration. Specifically, the moving party must show:

19 D(1)(a) that an order of default has been granted;

20 D(1)(b) the relief sought, including any amounts due as claimed in the pleadings;

21 D(1)(c) whether costs, disbursements, and/or attorney fees are allowable based on a
22 contract, statute, rule, or other legal provision, in which case a party may include costs,
23 disbursements, and attorney fees to be awarded pursuant to Rule 68.

24 D(2) The form of judgment submitted shall comply with all applicable rules and
25 statutes.

26 D(3) The court, acting in its discretion, may conduct a hearing, make an order of

1 reference, or order that issues be tried by a jury, as it deems necessary and proper, in order
2 to enable the court to determine the amount of damages or to establish the truth of any
3 averment by evidence or to make an investigation of any other matter. The court may
4 determine the truth of any matter upon affidavits or declarations.

5 [C Setting aside default. For good cause shown, the court may set aside an order of
6 default and, if a judgment by default has been entered, may likewise set it aside in accordance
7 with Rule 71 B and C.]

8 [D Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply
9 whether the party entitled to the judgment by default is a plaintiff, a third party plaintiff, or a
10 party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is
11 subject to the provisions of Rule 67 B.

12 E "Clerk" defined. Reference to "clerk" in this rule shall include the clerk of court or
13 any person performing the duties of that office.]

14 **E Certain Motor Vehicle Cases. No order of default shall be entered against a**
15 **defendant served with summons pursuant to Rule 7 D(4)(a)(i) unless, in addition to the**
16 **requirements in Rule 7 D(4)(a)(i), the plaintiff submits an affidavit or a declaration showing:**

17 **E(1) that the plaintiff has complied with Rule 7 D(4)(a)(i);**

18 **E(2) whether the identity of the defendant's insurance carrier is known to the plaintiff**
19 **or could be determined from any records of the Department of Transportation accessible to**
20 **the plaintiff; and**

21 **E(3) if the identity of the defendant's insurance carrier is known, that the plaintiff not**
22 **less than 30 days prior to the application for an order of default mailed a copy of the summons**
23 **and the complaint, together with notice of intent to apply for an order of default, to the**
24 **insurance carrier by first class mail and by any of the following: certified, registered, or**
25 **express mail, return receipt requested; or that the identity of the defendant's insurance carrier**
26 **is unknown to the plaintiff.**

1 F Setting aside an order of default or judgment by default.

2 For good cause shown, the court may set aside an order of default. If a judgment by
3 default has been entered, the court may set it aside in accordance with Rule 71 B and C.

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