

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:14-CV-83-F

U.S. COMMODITY FUTURES)
TRADING COMMISSION,)
Plaintiff,)
v.)
RONALD EARL MCCULLOUGH)
and DAVID CHRISTOPHER MAYHEW,)
Defendants.)
_____)

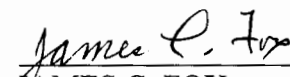
ORDER

This matter is before the court on the CFTC's motion for entry of default [DE-7] and motion for service by publication [DE-13]. Both motions are ALLOWED. With respect to service by publication on Defendant McCullough, the court finds that CFTC has made a sufficient showing that "deliberate avoidance and obstruction by the defendant [has] made the giving of notice impossible" under other means of service. *S.E.C. v. Tome*, 833 F.2d 1086, 1092 (2d Cir. 1987); *see also Standard Oil Co. v. New Jersey*, 341 U.S. 428, 433 (1951) ("This court has not hesitated to approve of resort to publication as a customary substitute in another class of cases where it is not reasonably possible or practicable to give more adequate warning."). CFTC has amply demonstrated that it has diligently pursued service by other means and that the defendant is deliberately avoiding service. *See* Mem. in Supp. of Mot. for Service by Publication [DE-14]. Accordingly, the motion for service by publication [DE-13] is ALLOWED. CFTC has also shown good cause to extend the deadline for effecting service to and including 60 days from the day the CFTC's notice is first published.

Because Mayhew has failed to plead or otherwise defend, the court is required to enter his default. Fed. R. Civ. P. 55. The motion for entry of default [DE-7] is therefore ALLOWED and the Clerk of Court is DIRECTED to enter a default as to Defendant Mayhew. However, if CFTC pursues a default judgment against Mayhew and not McCullough, the court requests the CFTC's position on whether default judgment is appropriate in these circumstances. *See, e.g., Frow v. De La Vega*, 82 U.S. 552 (1872).

SO ORDERED.

This the 2nd day of September, 2014.



JAMES C. FOX
Senior United States District Judge