

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ELIAS VILLALOBOS,

Plaintiff,

v.

CALUMET CITY POLICE OFFICERS
PICICCO, BRASEWICZ, GUERRERO,
and URBANEK,

Defendant.

No. 16-cv-8510

Judge Franklin U. Valderrama

Magistrate Judge Jeffrey T. Gilbert

ORDER

On December 23, 2021, pursuant to 28 U.S.C. § 636(e)(6)(B)(iii), Magistrate Judge Gilbert submitted a Report and Recommendation (the Report) recommending that third-party subpoenaed witness Ms. Heather Piekarczyk be found in civil contempt of court for failure to appear for her deposition scheduled for November 9, 2021, and recommending that Ms. Piekarczyk be fined \$100.00 per day for each day she fails to appear for her deposition beginning on January 6, 2022,¹ continuing through and including the day before she appears for her deposition if she does appear. R. 129, Report at 1.²

The Report directed Defendants to serve a copy of the Report on Ms. Piekarczyk and to file proof of service via the CM/ECF system. Report at 4. It also states that written objections to the Report may be served and filed within 14 days from the date of service of the Report. *Id.* (citing Fed. R. Civ. P. 72(b)). Defendants filed a proof of service, showing that the Report was mailed to Ms. Piekarczyk on December 23, 2021 via USPS Certified Mail and that it was delivered to Ms. Piekarczyk on December 27, 2022. R. 131, Proof of Service at 1–2. It also shows that a process server attempted to serve the Report on an adult at Ms. Piekarczyk’s address, but the adult refused to accept service. *Id.* at 4–6. However, the Court finds that service of the Report via USPS Certified Mail was sufficient. *See* Fed. R. Civ. P.

¹The Report recommends that the fine begin fourteen days from the date of the Report, which would be January 6, 2022. The Report elsewhere identifies the recommended state date as January 5, 2022. Taken in context, that date appears to be the result of a transcription error. The Court therefore reads the Report to recommend that the fine begin on January 6, 2022.

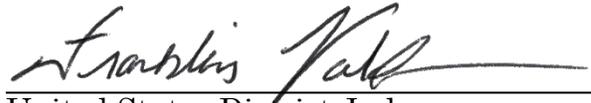
²Citations to the docket are indicated by “R.” followed by the docket number and, where necessary, a page or paragraph citation.

5(a)(1)(A), (b)(2)(C) (service of orders may be made via mail); *Lerro v. Quaker Oats Co.*, 84 F.3d 239, 242 (7th Cir. 1996) (discussing service of report and recommendation via mail); *Ammons-Lewis v. Metro. Water Reclamation Dist. of Greater Chicago*, 2012 WL 5356041, at *1 (N.D. Ill. Oct. 30, 2012), *aff'd*, 543 F. App'x 591 (7th Cir. 2013) (same). Under Rule 6(d), when a party is required to act within a specified time after being served and service is made by mail (as here), three days are added to the time period. Fed. R. Civ. P. 6(d). Therefore, because Defendants mailed the Report to Ms. Piekarczyk on December 23, 2021, any objections were due by January 10, 2022 (fourteen days from December 23, 2021, plus three days, and continuing to the next day that is not a Sunday, *see* Fed. R. Civ. P. 6(a)(1)(C)). January 10, 2022 is also fourteen days from the date the Proof of Service shows that the Report was delivered to Ms. Piekarczyk, December 27, 2021. To date, no objections—from the parties or Ms. Piekarczyk—have been filed.

In the absence of any objections, the Court reviews a Magistrate Judge's report and recommendation for clear error. *See* Fed. R. Civ. P. 72(b); *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999) (citations omitted); *White v. Sloop*, 772 F. App'x 334, 337 (7th Cir. 2019). The Court has reviewed the thorough and carefully considered Report and is satisfied that there is no clear error on the face of the Report or the recommendations stemming therefrom. Indeed, Judge Gilbert's familiarity with the discovery in this case qualified him particularly well to consider the evidence and recommend that this Court find Ms. Piekarczyk in contempt of court and impose a daily fine until she appears for her deposition.

Therefore, the Court finds Ms. Piekarczyk in civil contempt of court and imposes a \$100.00 per day fine on Ms. Piekarczyk for each day she fails to appear for her deposition. However, the Court begins the fine as of January 11, 2022 (the date of this Order). The fine will continue through and including the day before she appears for her deposition if she does appear. Defendants are ordered to promptly serve a copy of this Order on Ms. Piekarczyk, and to file proof of service via the CM/ECF system.

Date: 1/11/2022


United States District Judge
Franklin U. Valderrama