

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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AMADOU C. DIABATE,

Case No. 13-CV-0918 (PJS/JJK)

Plaintiff,

v.

ORDER ADOPTING REPORT AND  
RECOMMENDATION

DELTA AIRLINE and TSA,

Defendants.

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Amadou C. Diabate, pro se.

Ana H. Voss, UNITED STATES ATTORNEY'S OFFICE, for defendant TSA.

This matter is before the Court on the objection of plaintiff Amadou C. Diabate to the December 3, 2013 Report and Recommendation ("R&R") of Magistrate Judge Jeffrey J. Keyes.<sup>1</sup> In that R&R, Judge Keyes recommends that Diabate's claims against defendant "Delta Airline" ("Delta") be dismissed pursuant to Fed. R. Civ. P. 4(m) for failure to formally serve a copy of the summons and complaint upon Delta within 120 days after the complaint was filed. Judge Keyes also recommends that Diabate's claims against defendant "TSA" (the Transportation Security Administration) relating to the damage of his property be dismissed for failure to exhaust administrative remedies, as is required by the Federal Tort Claims Act, 28 U.S.C. § 1346(b). *See* 28 U.S.C. § 2675. Finally, Judge Keyes recommends that Diabate's discrimination claim against TSA be dismissed because the government has not waived its

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<sup>1</sup>Judge Keyes has also ordered that Diabate's motion to amend his complaint and each of Diabate's motions to stay be denied. It is unclear whether Diabate objects to the denial of those motions. In any event, a magistrate judge's ruling on nondispositive motions may be reversed only if it is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). Upon review, the Court finds that Judge Keyes's denial of these nondispositive motions was neither clearly erroneous nor contrary to law.

sovereign immunity with respect to that claim. The Court has conducted a de novo review. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Based on that review, the Court adopts the R&R.

#### ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, the Court **OVERRULES** plaintiff Amadou C. Diabate's objection [ECF No. 39] and **ADOPTS** the December 3, 2013 R&R [ECF No. 37]. Accordingly, **IT IS HEREBY ORDERED THAT:**

1. The complaint [ECF No. 1] is **DISMISSED** as follows:
  - a. The motion to dismiss of defendant TSA [ECF No. 6] is **GRANTED**.  
Diabate's claims against TSA are **DISMISSED WITHOUT PREJUDICE**.
  - b. Diabate's claims against defendant Delta Airline are **DISMISSED WITHOUT PREJUDICE** pursuant to Fed. R. Civ. P. 4(m).
2. Diabate's motion to amend the complaint [ECF No. 27] is **DENIED**.
3. Diabate's motions to stay [ECF Nos. 16, 34, & 35] are **DENIED**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: January 7, 2014

s/Patrick J. Schiltz  
Patrick J. Schiltz  
United States District Judge