

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RUTH RICHTER,

Plaintiff,

vs.

UNITED STATES POSTAL SERVICE,

Defendant.

8:14CV71

ORDER

This matter is before the court on the parties' responses, [Filing No. 18](#), [Filing No. 19](#), [Filing No. 20](#) and [Filing No. 21](#), to the Findings and Recommendation ("F&R") of the magistrate judge, [Filing No. 17](#). The court will consider the plaintiff's responses to be objections to the F&R. This action was removed from state small-claims court under [28 U.S.C. §§ 1346\(b\)\(1\)](#), [1441\(a\)](#), and [39 U.S.C. § 409\(a\)](#). In her pro se complaint, the plaintiff makes various allegations against the United States Postal Service involving an alleged incident of misdelivery of mail. Her complaint contains allegations of evidence tampering, perjury, slander, discrimination and retaliation. The magistrate judge recommends denial of the plaintiff's motions to strike and to remand, [Filing No. 10](#) and [Filing No. 11](#), but recommends that court grant the defendant's motion to dismiss, [Filing No. 7](#).

The Supreme Court has construed the statutory grant of authority conferred on magistrate judges under [28 U.S.C. § 636](#) to mean that nondispositive pretrial matters are governed by § 636(b)(1)(A) and dispositive matters are covered by § 636(b)(1)(B). [Gomez v. United States](#), 490 U.S. 858, 873-74 (1989); see also [Fed. R. Civ. P. 72\(a\)](#). On review of a decision of the magistrate judge on a nondispositive matter, the district court may set aside any part of the magistrate judge's order that it finds is clearly

erroneous or contrary to law. [28 U.S.C. § 636\(b\)\(1\)\(A\)](#); [Fed. R. Civ. P. 72\(a\)](#). With respect to dispositive motions, a magistrate judge's findings and recommendations are subject to de novo review. [United States v. Lothridge](#), 324 F.3d 599, 600 (8th Cir. 2003); [28 U.S.C. § 636\(b\)\(1\)](#).

The court has conducted a de novo review and has considered the plaintiff's objections. The court agrees with the magistrate judge's finding that the plaintiff's claims are barred by sovereign immunity and that, if immunity were waived, the claims are barred for failure to exhaust administrative remedies, arise within the exclusive jurisdiction of the Postal Regulatory Commission and are barred by collateral estoppel. Accordingly, the court adopts the magistrate judge's recommendation and find this action should be dismissed.

IT IS ORDERED:

1. The plaintiff's objections to the F&R, [Filing No. 18](#), [Filing No. 19](#), and [Filing No. 21](#), are overruled.
2. The F&R of the magistrate judge ([Filing No. 17](#)) is adopted in all respects.
3. The plaintiff's Motion to Strike Defendant's Notice of Filing Notice of Removal Document ([Filing No. 10](#)) is denied.
4. The plaintiff's Motion to Remand ([Filing No. 11](#)) is denied.
5. The defendant's Motion to Dismiss ([Filing No. 7](#)) is granted.
6. This action is dismissed.

Dated this 13th day of August, 2014.

BY THE COURT:

s/ Joseph F. Bataillon

United States District Judge