

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CLARENCE ABNEY,	:	
Plaintiff	:	No. 1:13-cv-01418
	:	
v.	:	(Judge Kane)
	:	
CALEB YOUNKER, et al.,	:	(Magistrate Judge Schwab)
Defendants	:	

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Before the Court is the Report and Recommendation of Magistrate Judge Schwab (Doc. No. 112), in which she recommends denying Defendants’ motion for partial summary judgment (Doc. No. 98), as untimely and denying Defendants motion for leave to file a statement of facts (Doc. No. 104), as moot. Magistrate Judge Schwab also recommends referring the action back to her to set a deadline for a plenary hearing on the issue of administrative exhaustion, should the parties request one. (Doc. No. 112 at 19-20.)

Defendants filed objections to the report and recommendation on April 3, 2015. (Doc. No. 118.) Defendants do not object to Magistrate Judge Schwab’s recommended disposition of their pending motions. (Id.) Rather, Defendants object to the recommendation that Magistrate Judge Schwab preside over a plenary hearing on the issue of exhaustion, because the issue of exhaustion could be dispositive to some claims and because the Magistrate Act, 28 U.S.C. § 636, does not permit United States Magistrate Judges to rule on dispositive motions absent the consent of the parties. (Doc. No. 119 at 4-8.) Defendants’ objection lacks merit, because even absent consent, a United States Magistrate Judge may hold hearings on dispositive motions and recommend dispositions, as they are statutorily authorized to do with any potentially dispositive

motion. 28 U.S.C. § 636(b)(1)(B).

ACCORDINGLY, on this 24th day of February 2016, **IT IS HEREBY ORDERED** **THAT** the Report and Recommendation of Magistrate Judge Schwab (Doc. No. 112), is **ADOPTED**. Defendants' motions for summary judgment (Doc. No. 98), and to file a statement of facts (Doc. No. 104), are **DENIED**. This action is referred back to Magistrate Judge Schwab for resolution of pending motions and further pretrial management.

s/ Yvette Kane _____
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania