

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JOHN P. COSTALES, JR. (#3823)

CIVIL ACTION

VERSUS

DAVID JAMES

NO.: 13-00259-BAJ-SCR

RULING AND ORDER

On May 7, 2013, the United States Magistrate Judge issued a Report and Recommendation, pursuant to 28 U.S.C. § 636(b)(1), recommending that Plaintiff John Costales, Jr. action be dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). (Doc. 7.) Plaintiff claims that his constitutional rights were violated when the defendant made a sexual gesture that plaintiff found to be offensive and humiliating.

The Magistrate Judge's Report and Recommendation specifically notified Plaintiff that, pursuant to 28 U.S.C. § 636(b)(1), he had fourteen (14) days from the date he received the Report and Recommendation to file written objections to the proposed findings of fact, conclusions of law, and recommendations therein. (Doc. 7, at 1.) A review of the record indicates that Plaintiff filed three memoranda in opposition to the Magistrate Judge's Report and Recommendation (Docs. 8, 9, 10), two of which were timely filed on May 15, 2013.¹

¹ Plaintiff filed an untimely objection on June 12, 2013. (Doc. 10.)

Having carefully considered the Magistrate Judge's Report, the record, and the applicable law, the Court concludes that the Magistrate Judge's Report is correct, and hereby adopts its findings of fact, conclusions of law, and recommendation.

Accordingly,

IT IS ORDERED that the **Magistrate Judge's Report (Doc. 7)** is **ADOPTED** as the Court's opinion herein.

IT IS FURTHER ORDERED that the above captioned matter is **DISMISSED**, without leave to amend, because there is no conceivable, non-frivolous federal claim Plaintiff John P. Costales, Jr. could assert against the defendant consistent with the facts alleged in his complaint.

Baton Rouge, Louisiana, this 15th day of November, 2013.



**BRIAN A. JACKSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**