

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF RECORD IN THIS ACTION ON THIS DATE.

DATED: 3-31-15
 [Signature]
 DEPUTY CLERK
CV 66 also mailed

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

ANDRE JOHNSON,
 Plaintiff,
 vs.
 WEST VALLEY DETENTION
 CENTER, et al.,
 Defendants.

Case No. EDCV 14-1632-CJC (RNB)
 ORDER ACCEPTING IN PART
 FINDINGS AND
 RECOMMENDATIONS OF UNITED
 STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed all the records and files herein, including the Magistrate Judge’s Report and Recommendation (R&R”), and a document filed by plaintiff on March 20, 2015 that the Court construes as plaintiff’s objections to the R&R. Further, the Court has made a de novo determination of those portions of the R&R to which objections have been made.

In the operative Fifth Amended Complaint (“5AC”), plaintiff has named two defendants: West Valley Detention Center and Officer Carnell, who is named solely in his official capacity. Plaintiff is purporting to allege a claim against West Valley Detention Center for the loss of funds from his inmate account due to the negligence of County Sheriff employees in allowing the misappropriation by plaintiff’s cellmate to take place, and purporting to allege claims against Officer Carnell based on his alleged willful failure to provide plaintiff with clean clothing for approximately one

1 month and for discrimination on the basis of race.

2 The Court concurs with and accepts the Magistrate Judge's findings that the
3 allegations of the 5AC are insufficient to state a federal civil rights claim against
4 West Valley Detention Center based on the misappropriation of funds from plaintiff's
5 inmate account; and that this pleading deficiency is incapable of being cured by
6 amendment. Accordingly, that claim is dismissed without leave to amend.

7 The Court also concurs with and accepts the Magistrate Judge's finding that
8 the allegations of the 5AC are insufficient to state federal civil rights claims against
9 Officer Carnell in his official capacity. However, based on the statement in plaintiff's
10 objections that he would like to amend his second claim to name Officer Carnell
11 solely in his individual capacity, the Court declines at this time to accept the
12 Magistrate Judge's recommendation that plaintiff's claim(s) against Officer Carnell
13 also be dismissed without leave to amend.

14 Instead, plaintiff's claim(s) against Officer Carnell are dismissed with leave to
15 amend and plaintiff is ORDERED to file a Sixth Amended Complaint within thirty
16 (30) days of the service date of this Order that is limited to his claims against Officer
17 Carnell based on Officer Carnell's alleged willful failure to provide plaintiff with
18 clean clothing for approximately one month and for discrimination on the basis of
19 race, and which names Officer Carnell solely in his individual capacity.

20 The Sixth Amended Complaint should bear the docket number assigned in this
21 case; be labeled "Sixth Amended Complaint"; and be complete in and of itself
22 without reference to any of plaintiff's previous complaints. The clerk is directed to
23 send plaintiff a blank Central District civil rights complaint form, which plaintiff is
24 encouraged to utilize.

25 //


26 //

27 //

28 //

1 Plaintiff is admonished that, if he fails to timely file a Sixth Amended
2 Complaint in compliance with this Order, this action will be subject to dismissal
3 without prejudice for failure to diligently prosecute.

4
5 DATED: March 27, 2015

6
7 
CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28