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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MONRELL D. MURPHY,

 Petitioner,

 v.

RALPH DIAZ,

 Respondent.

Case No. 1:20-cv-01300-DAD-SAB-HC

ORDER VACATING FINDINGS AND
RECOMMENDATIONS, DENYING AS
MOOT FIRST APPLICATION TO
PROCEED *IN FORMA PAUPERIS*, AND
GRANTING SECOND APPLICATION TO
PROCEED *IN FORMA PAUPERIS*

(ECF Nos. 2, 7, 12, 15)

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On September 3, 2020, Petitioner commenced the instant proceeding by filing a petition for writ of habeas corpus in the Sacramento Division of the United States District Court for the Eastern District of California. (ECF No. 1). On September 11, 2020, the petition was transferred to this Court. (ECF No. 4).

On September 15, 2020, the undersigned issued findings and recommendation to deny Petitioner’s application to proceed *in forma pauperis*. (ECF No. 7). The undersigned found that Petitioner was financially able to pre-pay the entire \$5.00 filing fee to commence this habeas action because “Petitioner’s certified inmate account statement indicates that he currently has an available sum of \$104.30 on account to his credit at the California Correctional Institution. Further, the average monthly balance of Petitioner’s account is \$181.70, and during the past six

1 months the average monthly deposits to Petitioner’s account is \$168.39.” (ECF No. 7 at 2).¹ The
2 findings and recommendation also stated that Petitioner may notify the Court “[s]hould
3 Petitioner have additional information to provide the Court, or should his available balance
4 change by the time he receives this order.” (Id.).

5 The findings and recommendation was served on Petitioner and contained notice that any
6 objections were to be filed within twenty-one days of the date of service of the findings and
7 recommendation. (ECF No. 7 at 3). On October 16, 2020, the Court extended the deadline to file
8 objections to the findings and recommendation to November 8, 2020. (ECF No. 11).

9 On October 25, 2020, the Court received Petitioner’s second application to proceed *in*
10 *forma pauperis*. (ECF No. 12). On November 13, 2020, the Court received Petitioner’s
11 explanation in support of his second application to proceed *in forma pauperis* in response to the
12 Court’s order. (ECF Nos. 13, 14). Petitioner’s certified inmate account statement reflects that
13 Petitioner had \$0 in his account on October 19, 2020, despite an average monthly balance of
14 \$216.76 and average monthly deposits of \$150.08 during the past six months. (ECF No. 12 at 2).
15 Despite multiple \$100 and \$250 deposits being made to Petitioner’s account during May through
16 August, there have been no further deposits since August 14, 2020. (Id. at 4–6). Additionally,
17 despite only having two “sales” expenses of \$9.95 on May 13, 2020 and \$6 on July 15, 2020,
18 there was a “sales” expense of \$44.48 on October 13, 2020 when Petitioner had an account
19 balance of \$45.27, effectively depleting his account. (Id.).

20 On November 19, 2020, the the undersigned issued findings and recommendation to deny
21 Petitioner’s second application to proceed *in forma pauperis* because Petitioner did not explain
22 the stop of deposits to his account and the undersigned was skeptical of Petitioner’s explanation
23 that the October 13, 2020 sales expense of \$44.48 that effectively depleted his account was an
24 innocent purchase of food and hygiene items. (ECF No. 15).

25 On December 3, 2020, Petitioner filed objections to the findings and recommendation.
26 (ECF No. 16). In light of the additional explanations contained in the objections, the undersigned
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28 ¹ Page numbers refer to ECF page numbers stamped at the top of the page.

1 will vacate the findings and recommendations issued on September 15 and November 19, 2020,
2 and authorize Petitioner to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The September 15, 2020 and November 19, 2020 findings and recommendations (ECF
5 Nos. 7, 15) are VACATED;
- 6 2. Petitioner's first application to proceed *in forma pauperis* (ECF No. 2) is DENIED AS
7 MOOT; and
- 8 3. Petitioner's second application to proceed *in forma pauperis* (ECF No. 12) is
9 GRANTED.

10 IT IS SO ORDERED.

11 Dated: December 4, 2020

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13 _____
14 UNITED STATES MAGISTRATE JUDGE