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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

SHANNON LEWIS AVERY,

Plaintiff,

v.

CDCR DIRECTOR, et al.,

Defendants.

NO. 1:07-cv-01175 -OWW-GSA-PC

ORDER VACATING FINDINGS AND
RECOMMENDATIONS

(Doc. 68)

Plaintiff is a state prisoner proceeding pro se in this civil rights action. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 14, 2010, findings and recommendations were entered, recommending that this action be dismissed for failure to state a claim upon which relief may be granted. The recommendation was based on an earlier order dismissing the operative complaint with leave to file an amended complaint. Plaintiff failed to do so, and the Court recommended dismissal. On July 20, 2010, Plaintiff filed a second amended complaint, on which this action proceeds.

Accordingly, IT IS HEREBY ORDERED that the July 14, 2010, recommendation of dismissal is vacated.

IT IS SO ORDERED.

Dated: August 26, 2010

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE

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