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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 DAPHNYE S. LUSTER,

12 Plaintiff,

13 vs.

14 RAUL H. AMEZCUA, et al.,

15 Defendants.
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1:16-cv-00554-LJO-GSA-PC

**ORDER VACATING FINDINGS AND
RECOMMENDATIONS
(ECF No. 23.)**

**ORDER DEEMING SECOND AMENDED
COMPLAINT TIMELY FILED
(ECF No. 24.)**

17 Daphnye S. Luster (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
18 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983.

19 On March 26, 2018, the court issued an order dismissing the First Amended Complaint
20 for failure to state a claim, with leave to amend within thirty days. (ECF No. 22.) The thirty-
21 day time period passed, and Plaintiff did not file an amended complaint or otherwise respond to
22 the court’s order.

23 Due to Plaintiff’s failure to respond to the order, on May 22, 2018, the court entered
24 findings and recommendations, recommending that this case be dismissed with prejudice for
25 failure to state a claim. (ECF No. 23.) Plaintiff was granted fourteen days in which to file
26 objections to the findings and recommendations. (Id.)

27 To date, Plaintiff has not filed objections. However, on June 11, 2018, Plaintiff filed the
28 Second Amended Complaint. (ECF No. 24.) Given that the Second Amended Complaint has

1 now been filed, although untimely, the court finds good cause to vacate the findings and
2 recommendations and deem the Second Amended Complaint timely filed.

3 Plaintiff is advised that in the future, if she needs additional time to comply with a court
4 order, she should file a motion for extension of time before the prior deadline expires.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The findings and recommendations, entered on May 22, 2018, are VACATED;
- 7 2. The Second Amended Complaint, filed on June 11, 2018, is deemed timely filed;
8 and
- 9 3. The court shall screen the Second Amended Complaint in due course.

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11 IT IS SO ORDERED.

12 Dated: June 13, 2018

/s/ Gary S. Austin
13 UNITED STATES MAGISTRATE JUDGE
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