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6 **UNITED STATES DISTRICT COURT**  
7 **EASTERN DISTRICT OF CALIFORNIA**  
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9 ANTHONY SHORTER,  
10

11 Plaintiff,

12 v.

13 R. ROSENTHAL, et al.,

14 Defendants.  
15  
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Case No. 1:10-cv-00610-LJO-DLB PC

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR MODIFICATION OF  
DISCOVERY AND SCHEDULING ORDER**

ECF No. 35

**ORDER DENYING PLAINTIFF'S  
MOTION REGARDING DEFENDANT'S  
COUNSEL**

ECF No. 36

17 Plaintiff Anthony Shorter ("Plaintiff") is a California state prisoner proceeding pro se and in  
18 forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This action is  
19 proceeding on Plaintiff's third amended complaint against Defendants R. Rosenthal, G. Doan, and S.  
20 Wortman for denial of access to the courts. Pending before the Court are: 1) Plaintiff's motion for  
21 extension of time to file discovery, filed August 15, 2012, and 2) Plaintiff's motion regarding  
22 Defendant's counsel, filed August 20, 2012. The matter is submitted pursuant to Local Rule 230(l).

23 **I. August 15, 2012 Motion**

24 Plaintiff moves for an extension of the discovery cutoff date. Plaintiff contends that he was  
25 unaware that the discovery cutoff date was not the date by which discovery was to be served, but  
26 when discovery ended. The Court had set a discovery cutoff date of August 13, 2012. Discovery  
27 and Scheduling Order, filed Dec. 13, 2011, ECF No. 30. On July 23, 2012, Plaintiff had mailed a  
28 request to Defendants' counsel for discovery. On August 7, 2012, Defendants' counsel declined to

1 respond because the request was untimely. Plaintiff contends that these documents are necessary  
2 and that this was error on Plaintiff's part.

3 The decision to modify a scheduling order is within the broad discretion of the district court.  
4 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992) (quoting *Miller v. Safeco*  
5 *Title Ins. Co.*, 758 F.2d 364, 369 (9th Cir. 1985)). Pursuant to Rule 16 of the Federal Rules of Civil  
6 Procedure, a pretrial scheduling order "shall not be modified except upon a showing of good cause,"  
7 and leave of court. Fed. R. Civ. P. 16(b)(4); *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087-88  
8 (9th Cir. 2002). Although "the existence or degree of prejudice to the party opposing the  
9 modification might supply additional reasons to deny a motion, the focus of the inquiry is upon the  
10 moving party's reasons for seeking modification." *Johnson*, 975 F.2d at 609.

11 The Court finds sufficient good cause to grant a modification. Plaintiff was reasonably  
12 diligent in his pursuit of the modification, having filed it prior to the expiration of the deadline, and  
13 soon after he realized his error. Accordingly, the Court will set a discovery cutoff date of November  
14 30, 2012. The Court will also modify the dispositive motion deadline and set it for January 11,  
15 2013. All other provisions of the December 13, 2011 Discovery and Scheduling Order remain  
16 applicable.

17 **II. August 20, 2012 Motion**

18 Plaintiff complains that Defendant's counsel had been counsel in a prior case involving  
19 Plaintiff. Plaintiff contends that he had filed a petition for writ of habeas corpus in Kings County  
20 Superior Court, and upon examining his legal documents discovered that Defendant's counsel in this  
21 action had represented prison officials in his petition. Plaintiff requests that the Court find out if any  
22 court or state bar rules were violated, and whether Defendant's counsel had an affirmative obligation  
23 to make Plaintiff aware of her prior representation.

24 Plaintiff provides no legal basis for his motion, nor does he explain why counsel's previous  
25 representation violates any rules of this Court or the state bar. In both this case and the prior  
26 petition, Defendants' counsel is representing the interests of prison officials. It is unclear how this  
27 would violate any rules. The motion will be denied.

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1 **III. Conclusion and Order**

2 Based on the foregoing, it is HEREBY ORDERED that:

- 3 1. Plaintiff's motion for modification of the Discovery and Scheduling Order, filed August  
4 15, 2012, is granted;
- 5 2. The discovery cutoff date is November 30, 2012, and the dispositive motion deadline is  
6 January 11, 2013;
- 7 3. All other provisions of the Discovery and Scheduling Order remain in effect; and
- 8 4. Plaintiff's motion, filed August 20, 2012, is denied.

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11 IT IS SO ORDERED.

12 Dated: October 9, 2012

/s/ Dennis L. Beck  
13 UNITED STATES MAGISTRATE JUDGE  
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