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

**ERNEST MERRILL and  
LILA MERRILL,**

**Plaintiffs,**

**v.**

**COUNTY OF MADERA, et al.,**

**Defendants.**

**1: 05 -CV- 0195 AWI SMS**

**ORDER SETTING BRIEFING  
SCHEDULE**

**BACKGROUND**

The complaint in this action alleged that Defendants’ citations and denial of several permits deprived Plaintiffs of their constitutional rights. After several pre-trial motions, this action proceeded to jury trial. On July 10, 2007, the jury returned a verdict in Defendants’ favor. The Clerk of the Court entered judgment.

Plaintiffs appealed. On July 22, 2010, the Ninth Circuit Court of Appeal issued an order concerning Plaintiff’s substantive due process claim in light of a change in the law. The Ninth Circuit ruled:

... We therefore remand for the district court to decide (1) whether the Merrills should, in light of *Crown Point*, be granted leave to amend their complaint to include additional substantive due process claims; and (3) whether the principle of *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed. 383 (1994), bars any of the Merrills’ remaining substantive due process claims, in particular the claim based on Mr. Merrill’s liberty interest.

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Accordingly, the court ORDERS that:

1. The Clerk of the Court is DIRECTED to re-open this action;
2. Plaintiffs are GRANTED leave to file a motion to amend the complaint to add a substantive due process claim that complies with the Ninth Circuit's July 22, 2010 order;
3. Any motion to amend, along with a copy of any proposed amended complaint, SHALL BE FILED by September 20, 2010; and
5. Plaintiffs are forewarned that a failure to file a motion to amend the complaint will result in this action being closed.

IT IS SO ORDERED.

Dated: August 24, 2010

  
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CHIEF UNITED STATES DISTRICT JUDGE