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

MARK S. ALLEN,

No. CIV S-04-0322-LKK-CMK

Plaintiff,

vs.

ORDER

MATTIE MAYHEW, et al.,

Defendants.

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Plaintiff, proceeding pro se, brings this civil action pursuant to 42 U.S.C. § 1981.

Pending before the court is plaintiff's request for leave to proceed in forma pauperis (Doc. 84).

Plaintiff has submitted the affidavit required by 28 U.S.C. § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security therefor. His motion for leave to proceed in forma pauperis will be granted.

There are two defendants remaining in this action, Mattie Mayhew and Ricky Mayhew. Mattie Mayhew has appeared in this action, and has an attorney of record. Therefore, service of the third amended complaint may be accomplished pursuant to Rule 5(b)(1). Plaintiff may serve Ms. Mayhew with the third amended complaint by having any person, at least 18 years of age and not a party to this action, send a copy of the third amended complaint to her attorney

1 of record. See Fed. R. Civ. Proc. 4(c), 4(e), 5(b)(1). Plaintiff remains under the same  
2 obligation to complete service of Ms. Mayhew on or before July 27, 2009, and provide proof of  
3 that service to the court, on or before August 6, 2009.

4           However, Ricky Mayhew has never been properly served to provide this court  
5 with personal jurisdiction over him. If plaintiff desires assistance with serving Mr. Mayhew, he  
6 may obtain assistance from the United States Marshal without pre-payment of costs. If that is  
7 how he wishes to proceed, he must comply with the requirements outlined below. Plaintiff is  
8 warned that failure to comply with this order, or otherwise effect service pursuant to Federal Rule  
9 of Civil Procedure 4 and 5, may result in dismissal of the action for lack of prosecution and  
10 failure to comply with court rules and orders. See Local Rule 11-110.

11           Accordingly, IT IS HEREBY ORDERED that:

- 12           1. Plaintiff's motion to proceed in forma pauperis (Doc. 84) is granted;
- 13           2. The Clerk of the Court shall send plaintiff the summons, one USM-285  
14 forms, and a copy of the third amended complaint (Doc. 59);
- 15           3. Plaintiff shall complete service of the third amended complaint on Mattie  
16 Mayhew pursuant to Rule 5(b)(1), on or before July 27, 2009;
- 17           4. Within 15 days from the date of this order, plaintiff shall complete the  
18 summons by indicating the address of defendant Ricky Mayhew, and shall submit to the United  
19 States Marshal at the address indicated below the following documents:
  - 20           a. The completed summons;
  - 21           b. One completed USM-285 form for defendant Ricky Mayhew; and
  - 22           c. Two copies of the third amended complaint;
- 23           5. Within 20 days of the date of this order, plaintiff shall file a notice  
24 indicating that the documents described above have been submitted to the United States Marshal;
- 25           6. The United States Marshal is directed to serve all process without pre-  
26 payment of costs not later than 60 days from the date of this order, such service of process to be

1 completed by serving a copy of the summons and complaint on the defendant at the addresses  
2 provided by plaintiff; and

3           6.       The Clerk of the Court is directed to serve a copy of this order on the  
4 United States Marshal at 501 "I" Street, Sacramento, CA, 95814.

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DATED: July 20, 2009

  
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**CRAIG M. KELLISON**  
UNITED STATES MAGISTRATE JUDGE