

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Raymond P. Moore**

Civil Action No. 12-cv-02993-RM-KLM

HOWARD M. WATTS, JR.,

Plaintiff,

v.

DANIEL WERFEL, Acting Commissioner IRS,<sup>1</sup>  
CAROLYN W. COLVIN, Acting Commissioner SSA,<sup>2</sup>  
CAROLYN SIMMONS, Associate Commissioner,  
ANNETTE STREETER, Appeals Area Director, IRS,  
J TRUJILLO, Collections Agent, IRS, and  
ELLEN DEMITRE, Tax Payer Advocate, IRS,

Defendants.

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**ORDER RETURNING  
ORDER AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE  
(ECF NO. 34) WITH INSTRUCTIONS**

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THIS MATTER is before the Court on the June 10, 2013 Order and Recommendation of United States Magistrate Judge (“Recommendation”) (ECF No. 34) that Defendant Ellen Demitre (“Defendant Demitre”) be dismissed without prejudice due to Plaintiff’s failure to provide information for the Court to effect service on Defendant Demitre. On June 13, 2013, Plaintiff filed a response stating he received a Certificate of Service from the Clerk that Defendant Demitre was served on June 6, 2013.

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<sup>1</sup> Daniel Werfel became acting Commissioner of the Internal Revenue Service on May 22, 2013. Pursuant to Fed.R.Civ.P. 25(d), Daniel Werfel is substituted for Douglas Shulman as the defendant in this action.

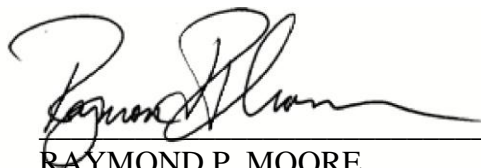
<sup>2</sup> Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2013. In accordance with Fed.R.Civ.P. 25(d), Carolyn W. Colvin is substituted for Michael Astrue as the defendant in this action.

The Court has reviewed the record in this case and finds that on June 6, 2013 the Clerk issued a Certificate of Service which stated, among other things, a Summons and Amended Complaint were forwarded to the United States Marshal Service for service of process on Defendant Demitre. (ECF No. 32.) Subsequently, on June 25, 2013, an executed return of service was filed stating Defendant Demitre was served on that date. (ECF No. 43.) However, on July 16, 2013, Defendants Werfel, Streeter, and Trujillo filed a Motion to Dismiss which stated the motion was not filed on behalf of Defendant Demitre as she had not been properly served. (ECF No. 46, page 1 n.2.) Upon consideration of the foregoing, and being otherwise fully advised, it is hereby

ORDERED that the Recommendation is returned to the Magistrate Judge with instructions to consider such additional information; conduct further proceedings, if appropriate; and issue a recommendation in light of the same.

DATED this 17th day of July, 2013.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Raymond P. Moore", written over a horizontal line.

RAYMOND P. MOORE  
United States District Judge