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4 UNITED STATES DISTRICT COURT  
5 EASTERN DISTRICT OF WASHINGTON

6 MAURIE LEMLEY,

7  
8 Plaintiff,

9 v.

10 CAROLYN W. COLVIN,  
11 Commissioner of Social Security,

12 Defendant.  
13

No. CV-13-0299-JTR

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT, WITHOUT  
PREJUDICE

14 **BEFORE THE COURT** is Plaintiff's October 21, 2013, pleading which the  
15 Court has construed as a motion for summary judgment. ECF No. 11. Plaintiff is  
16 proceeding *pro se* and has consented to proceed before a magistrate judge, ECF  
17 No. 7.

18 The Court file indicates the Office of the United States Attorney has not  
19 filed a notice of appearance in this case, and no Answer to Plaintiff's Complaint,  
20 filed on August 9, 2013, has been filed by Defendant. It appears from a review of  
21 the summons, ECF No. 6, that Defendant has not been properly served in this case.  
22 *See* Fed. R. Civ. P. 4(i)(1)(A). Accordingly, at this time, Plaintiff's motion for  
23 summary judgment, ECF No. 11, is premature. Plaintiff's motion for summary  
24 judgment should only be filed after Defendant has been properly served<sup>1</sup> and after  
25 the Administrative Record has been lodged in the case.  
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27 \_\_\_\_\_  
28 <sup>1</sup>Plaintiff has 120 days from the date of the filing of the Complaint in which  
to effectuate service. Fed. R. Civ. P. 4(m).

1           Once Defendant has been properly served, Defendant will thereafter file an  
2 Answer and lodge the Administrative Record. It can take several weeks for the  
3 Administrative Record to be located and filed with the Court. Upon Plaintiff's  
4 receipt of the Administrative Record, Plaintiff will be responsible for preparing a  
5 proposed stipulated scheduling order and proposed order setting forth the briefing  
6 schedule for the case. Plaintiff will determine the briefing dates, allowing  
7 Defendant 42 days to respond to Plaintiff's motion for summary judgment unless  
8 otherwise requested. With respect to the hearing date for the motions, Plaintiff  
9 shall contact the Office of the United States Attorney for the Judge's next available  
10 date.

11           Plaintiff's motion for summary judgment, **ECF No. 11**, is **DENIED**  
12 **WITHOUT PREJUDICE**, with leave to renew after Defendant is properly served  
13 and the Administrative Record has been lodged in this matter.

14           **IT IS SO ORDERED.** The District Court Executive is directed to file this  
15 Order and provide a copy to Plaintiff.

16           DATED October 23, 2013.



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A handwritten signature in black ink, appearing to be "M" or "Rodgers".

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JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE