

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROCKIE A. SLATER,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL SECURITY
ADMINISTRATION,

Defendant.

Case No. 2:12-CV-01996-JCM-CWH

ORDER

Presently before the court is Magistrate Judge Hoffman’s Report and Recommendation that plaintiff Rockie A. Slater’s Complaint (doc. # 5) and this action be dismissed with prejudice. (doc. # 21). Plaintiff filed an Objection. (doc. # 22).¹

I. Procedural History

On March 8, 2013, the magistrate ordered plaintiff to file a motion to remand on the basis of new evidence or a motion for reversal and/or remand within thirty days. (See doc. # 18). The magistrate specified that “[f]ailure of a party to file a motion or motion or points and authorities required by this Order may result in dismissal of the action.” (Id.)

On April 16, 2013, more than thirty days after the court’s scheduling order, plaintiff had not yet filed her motion to remand. Magistrate Judge Hoffman recommended that plaintiff’s complaint and this action be dismissed with prejudice for her failure to comply with court order. The magistrate noted that “[a] scheduling order ‘is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril.’” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992) (citing *Gestetner Corp. v. Case Equipment Co.*, 108 F.R.D. 138, 141 (D. Me 1985)).

¹Plaintiff also filed a motion to extend time for plaintiff to file her motion for reversal and/or remand. (Doc. # 23). And plaintiff filed a motion for reversal and/or remand. (Doc. # 24).

1 On April 25, 2013, plaintiff filed a timely objection. The court now considers the
2 magistrate’s report and recommendation and plaintiff’s objection.

3 **II. Legal Standard**

4 A party may file specific written objections to the findings and recommendations of a
5 United States magistrate judge made pursuant to Local Rule IB 1–4. 28 U.S.C. § 636(b)(1)(B);
6 LR IB 3–2. Upon the filing of such objections, the district court must make a de novo
7 determination of those portions of the report to which objections are made. 28 U.S.C. §
8 636(b)(1)(c); LR IB 3–2(b). The district court may accept, reject, or modify, in whole or in part,
9 the findings or recommendations made by the magistrate judge. *Id.*

10 However, the district court need not conduct a hearing to satisfy the statutory requirement
11 that the district court make a “de novo determination.” *United States v. Raddatz*, 447 U.S. 667,
12 674 (1980) (observing that there is “nothing in the legislative history of the statute to support the
13 contention that the judge is required to rehear the contested testimony in order to carry out the
14 statutory command to make the required ‘determination’”).

15 **III. Discussion**

16 Plaintiff represents that due to miscommunication and calendaring issues, the motion to
17 remand was not timely filed. Plaintiff seeks relief under Fed. R. Civ. P. 60(b) requesting relief
18 due to mistake, inadvertence, or excusable neglect. While the court acknowledges the challenges
19 of managing one’s own law practice, it is incumbent on those who choose to practice in federal
20 court to adhere to the Federal Rules of Civil Procedure and follow court orders. Plaintiff has
21 failed to do so here.

22 Because the court agrees with the magistrate judge that a scheduling order cannot be
23 disregarded as failure to do so disrupts the course of litigation, and rewards the indolent and
24 cavalier, *see Johnson.*, 975 F.2d at 610, the court finds dismissal warranted. However, dismissal
25 shall be without prejudice.

26 **IV. Conclusion**

27 After having conducted a de novo review of the matter before the court,

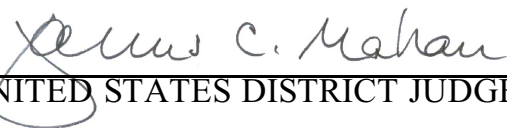
28 ///

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Magistrate Judge
2 Hoffman's Report and Recommendation (doc. # 21) be, and the same hereby is, ADOPTED in
3 part, not inconsistent with this order.

4 IT IS FURTHER ORDERED that plaintiff Rockie A. Slater's Complaint (doc. # 5) and
5 this action be, and the same hereby are, DISMISSED without prejudice.

6 IT IS FURTHER ORDERED that plaintiff's Motion to Extend Time (doc. # 23) and
7 Motion for Reversal and/or Remand (doc. # 24) be, and the same hereby are, DENIED as moot.

8
9 DATED this 20th day of May, 2013.

10
11
12 
13

UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28