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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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DONALD CORY DEHAR,

No. CV 11-1735-PHX-RCB (MHB)

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Plaintiff,

ORDER

10

vs.

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WARDEN DIAZ, et al.,

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Defendants.

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Plaintiff Donald Cory Dehar, who is confined in the Arizona State Prison Complex, Barchey Unit, in Buckeye, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. (Doc. 1, 2.) In an Order filed on October 17, 2011, the Court granted Plaintiff leave to proceed *in forma pauperis* and dismissed his Complaint for failure to state a claim with leave to amend within 30 days. (Doc. 6.) On November 1, 2011, Plaintiff filed a motion to dismiss “with prejudice” and that this Court’s Order “be set aside for the Amended Complaint and that the entire claims be dismissed all with prejudice.” (Doc. 8.) The Court construes the motion to dismiss as a notice of dismissal pursuant to Rule 41(a) of the Federal Rules of Procedure.

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Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure provides in relevant part that a “plaintiff may dismiss an action without a court order by filing: a notice of dismissal before the opposing party serves either an answer or a motion for summary[.]” Rule 41(a)(1)(B) provides in relevant part that “[u]nless the notice ... states otherwise, the dismissal is without prejudice.”

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The Court will construe Plaintiff’s motion to dismiss as a notice of voluntary dismissal

1 pursuant to Rule 41 of the Federal Rules of Civil Procedure. Further, because Plaintiff
2 specifically seeks to voluntarily dismiss this action with prejudice, the case will be dismissed
3 with prejudice.

4 **IT IS ORDERED:**

5 (1) The Court construes Plaintiff's motion to dismiss as a notice of voluntary
6 dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure. (Doc. 8.)

7 (2) The Clerk of Court must enter a judgment of dismissal of this action with
8 prejudice pursuant to Plaintiff's notice, doc. 8.

9 DATED this 7th day of November, 2011.

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Robert C. Broomfield
Senior United States District Judge