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

SEAN C. FISHER

Plaintiff,

No. CIV S-05-2217 MCE CKD P

vs.

DIRECTOR OF CDCR, et al.

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with an action under 42 U.S.C. § 1983. On April 23, 2012, he filed a notice of voluntary dismissal with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1). Under that rule, a plaintiff has “an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment. ... The dismissal is effective on filing and no court order is required.”

Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir.1997). “Unless the notice or stipulation states otherwise, the dismissal is without prejudice.” Fed. R. Civ. P. 41(a)(1)(B).

Here, the notice clearly states that this action is dismissed with prejudice. It thus “states otherwise” with respect to the presumption that dismissals under Rule 41(a)(1) are without prejudice. Moreover, plaintiff filed the notice of voluntary dismissal before service of an answer or motion for summary judgment by any defendant. Therefore, plaintiff’s dismissal of

1 his case with prejudice was effective when he filed the notice. See J&J Sports Production, Inc. v.
2 George, 2008 WL 2127990 (E.D. Cal.). In that event, the court need not order dismissal of the
3 complaint, but it will direct the Clerk of Court to close the case. Id.

4 Accordingly, IT IS HEREBY ORDERED that, in light of plaintiff's voluntary
5 dismissal of his action with prejudice pursuant to Fed. R. Civ. P. 41(a)(1), this case be closed.

6 Dated: April 26, 2012

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8 _____
9 CAROLYN K. DELANEY
10 UNITED STATES MAGISTRATE JUDGE

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