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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA
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9 KEVIN E. FIELDS,) 1:10-cv-01699-AWI-BAM (PC
10 Plaintiff,)
11 v.) ORDER DIRECTING DEFENDANTS TO
12 JOSE MASIEL, et al.,) FILE A RESPONSE TO PLAINTIFF’S
13 Defendants.) NOTICE OF VOLUNTARY DISMISSAL
14) WITHIN SEVEN (7) DAYS
15) (ECF No. 80)
16) Deadline: September 29, 2014
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16 Plaintiff Kevin E. Fields (“Plaintiff”) is a state prisoner proceeding pro se and in forma
17 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on
18 September 17, 2010. Defendants Masiel, Aguirre and Hernandez have answered the complaint.

19 On September 10, 2014, Plaintiff filed the instant notice requesting voluntary dismissal of
20 this action pursuant to Federal Rule of Civil Procedure 41(a). (ECF No. 80.) “[U]nder Rule
21 41(a)(1)(i), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by
22 the defendant of an answer or a motion for summary judgment.” Commercial Space Mgmt. Co.,
23 Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999) (quotation and citation omitted). In
24 this case, Defendants have filed an answer. Therefore, before Plaintiff can dismiss this action,
25 Defendants Masiel, Aguirre and Hernandez must consent in writing to the dismissal.

26 Accordingly, IT IS HEREBY ORDERED that within **seven (7) days** Defendants Masiel,
27 Aguirre and Hernandez shall respond in writing to Plaintiff’s notice of voluntary dismissal,
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1 indicating whether they consent to the dismissal of this action or whether they have any reason to
2 oppose the dismissal.

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4 IT IS SO ORDERED.

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Dated: September 22, 2014

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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