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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LEONARD L. LLAMAS,  
Plaintiff,  
v.  
KIMBERLY A SEIBEL,  
Defendant.

Case No. 16-cv-05812 NC

**ORDER OF SERVICE**

Re: Dkt. No. 1

Petitioner Leonard L. Llamas, a state prisoner incarcerated at Chuckawalla Valley State Prison, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

**I. BACKGROUND**

Petitioner was convicted by a jury of battery with a strike enhancement in the Santa Clara Superior Court of the State of California. In February 2012, he was sentenced to eight years in state prison. Petitioner unsuccessfully appealed his conviction to the California Court of Appeal and the Supreme Court of California, which on September 30, 2015, denied review of a petition allegedly raising the same claims raised here.

**II. DISCUSSION**

**A. Legal Standard**

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.

Case No. 16-cv-05812 NC

1 § 2254(a). It shall “award the writ or issue an order directing the respondent to show cause  
2 why the writ should not be granted, unless it appears from the application that the applicant  
3 or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is  
4 appropriate only where the allegations in the petition are vague or conclusory, palpably  
5 incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491  
6 (9th Cir. 1990).

7 **B. Petitioner’s Legal Claims**

8 Petitioner seeks federal habeas corpus relief by raising the following claims: denial  
9 of the right of self representation and ineffective assistance of counsel. Liberally  
10 construed, the claims appear colorable under 28 U.S.C. § 2254 and merit an answer from  
11 respondent.

12 **III. CONCLUSION**

13 For the foregoing reasons and for good cause shown:

- 14 1. The clerk shall serve by certified mail a copy of this order and the  
15 petition and all attachments thereto upon respondent. The clerk shall also  
16 serve a copy of this order on petitioner.
- 17 2. Respondent shall file with the court and serve on petitioner, within 60  
18 days of the date of this order, an answer showing why a writ of habeas  
19 corpus should not be issued (or -an answer conforming in all respects to  
20 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a  
21 writ of habeas corpus should not be issued). Respondent shall file with  
22 the answer and serve on petitioner a copy of all portions of the  
23 administrative record that are relevant to a determination of the issues  
24 presented by the petition.
- 25 3. If the petitioner wishes to respond to the answer, he shall do so by filing a  
26 traverse with the court and serving it on respondent within 30 days of his  
27 receipt of the answer.

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4. Respondent shall file a consent or declination to magistrate judge jurisdiction within 14 days.

**IT IS SO ORDERED.**

Dated: November 21, 2016

  
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NATHANAEL M. COUSINS  
United States Magistrate Judge

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 LEONARD L. LLAMAS,  
4 Plaintiff,  
5 v.  
6 KIMBERLY A SEIBEL,  
7 Defendant.  
8

Case No. 16-cv-05812-NC

**CONSENT OR DECLINATION TO  
MAGISTRATE JUDGE  
JURISDICTION**

9 INSTRUCTIONS: Please indicate below by checking one of the two boxes whether  
10 you (if you are the party) or the party you represent (if you are an attorney in the case)  
11 choose(s) to consent or decline magistrate judge jurisdiction in this matter. Sign this form  
12 below your selection.

13  **Consent** to Magistrate Judge Jurisdiction

14 In accordance with the provisions of 28 U.S.C. § 636(c), I voluntarily **consent** to  
15 have a United States magistrate judge conduct all further proceedings in this case,  
16 including trial and entry of final judgment. I understand that appeal from the judgment  
17 shall be taken directly to the United States Court of Appeals for the Ninth Circuit.

18 OR

19  **Decline** Magistrate Judge Jurisdiction

20 In accordance with the provisions of 28 U.S.C. § 636(c), I **decline** to have a United  
21 States magistrate judge conduct all further proceedings in this case and I hereby request  
22 that this case be reassigned to a United States district judge.

23 DATE:

24 NAME:

25 COUNSEL FOR:

26 (OR "PRO SE:")

27 \_\_\_\_\_  
Signature