

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**Thomas Leroy Hampton v. Kiwana Hill, Ulysses Baniga, Nancy
Hiolmes, Tiffany Gabbard, and S. Onyango**

Hampton · No. 1:22-cv-00518-HBK (PC) · Decided March 7, 2025

SUMMARY

The United States District Court for the Eastern District of California disregarded Plaintiff Thomas Leroy Hampton’s brief disputing an affirmative defense of non-exhaustion. The court held that the filing was premature because Defendants had not yet filed an exhaustion-based motion for summary judgment, and stated that Plaintiff could refile or respond if such a motion were filed.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 THOMAS LEROY HAMPTON, Case No. 1:22-cv-00518-HBK (PC) 12
Plaintiff, ORDER DISREGARDING PLAINTIFF’S 13 v. PLEADING 14 KIWANA HILL,
ULYSSES BANIGA, Doc. No. 27 NANCY HIOLMES, TIFFANY 15 GABBARD, and S.
ONYANGO, 16 Defendants. 17 18 On March 6, 2025, Plaintiff filed a pleading titled “Brief in
Dispute of Affirmative 19 Defen[s]e of Non-Exhaustion” with exhibits.

(Doc. No. 27). In his pleading, Plaintiff asserts he 20 has properly and fully exhausted his
administrative remedies with respect to his claims 21 referencing the exhibits attached to his
pleading. (See generally *Id.*) Plaintiff asks the Court to 22 “reject defendants defen[s]e of non-
exhaustion.” (*Id.* at 3). 23 Plaintiff’s pleading is a pre-emptive opposition to an exhaustion-based
summary judgment 24 motion and is premature.

The defense of exhaustion is an affirmative defense that must be raised 25 and proven by a
defendant. *Jones v. Bock*, 549 U.S. 199, 212-18 (2007). Defendants have not yet 26 filed an
exhaustion-based summary judgment motion. (See Docket).

Thus, Plaintiff’s pleading is 27 premature. If Defendants file an exhaustion-based motion for
summary judgment, Plaintiff may 28 refile his pleading or file an appropriate response at that
time. 1 ACCORDINGLY, it is ORDERED: 2 The Court DISREGARDS (Doc. No. 27) Plaintiffs
“Brief in Dispute of Affirmative 3 | Defen[s]e of Non-Exhaustion” as premature. 4 > | Dated: _
March 7, 2025 Mihaw. ☐☐☐ foareA Zacks 6 HELENA M. BARCH-KUCHTA UNITED STATES
MAGISTRATE JUDGE 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

