

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

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