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*Attorneys for Appellant*  
*TLK Marketing Co. Ltd.*

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS

DATE: Nov 30, 2018

TIME: 4:44  AM  PM BY: FDJ

FILE NO OPA-PA: 16-003 & 16-005

**IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

In the Appeal of

TLK Marketing Co. Ltd.,

Appellant.

Docket No. OPA-PA-16-003

Docket No. OPA-PA-16-005

**DECLARATION OF JOYCE C.H. TANG IN  
SUPPORT OF TLK MARKETING CO.  
LTD'S OBJECTION TO APPOINTMENT  
OF PETER C. PEREZ AS PRESIDING  
AUDITOR**

I, **JOYCE C.H. TANG**, hereby declare that:

1. I am a member of the firm of Civille & Tang, PLLC, and submit this declaration in support of Appellant TLK Marketing Co. Ltd.'s ("TLK") Objection to Appointment of Peter C. Perez as Presiding Auditor. I have personal knowledge of the facts set forth herein, and if called upon to testify, I would and could competently testify thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of TLK's "Verified Complaint" (without exhibits) filed on October 17, 2016 in *TLK Marketing Co. LTD. vs. Guam Visitors Bureau, Office of Public Accountability, The Territory of Guam, and HIC, Inc.*, Superior Court of Guam Case No. CV0914-16.

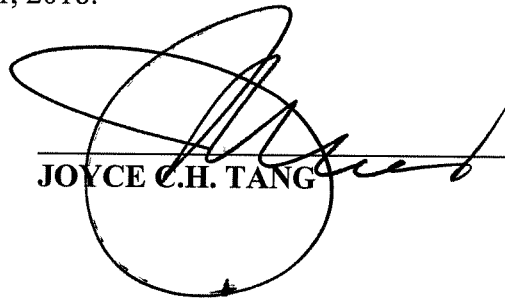
3. Attached hereto as **Exhibit B** is a true and correct copy of "Defendant Office of Public Accountability's Answer to Plaintiff's Verified Complaint" filed on December 16, 2016 in

**ORIGINAL**

*TLK Marketing Co. LTD. vs. Guam Visistors Bureau, Office of Public Accountability, The Territory of Guam, and HIC, Inc.*, Superior Court of Guam Case No. CV0914-16.

I declare under the penalty of perjury under the laws of Guam that the foregoing is true and correct.

DATED this 30<sup>th</sup> day of November, 2018.

  
JOYCE C.H. TANG

# **EXHIBIT A**

1 JOYCE C.H. TANG, ESQ. (jtang@civilletang.com)  
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8 *Attorneys for Appellant TLK Marketing Co. Ltd*

FILED  
SUPERIOR COURT  
OF GUAM

2016 OCT 17 PM 3: 04

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10 **IN THE SUPERIOR COURT OF GUAM**

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12 CIVIL CASE NO. CV **CV 0914-16**

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14 **TLK MARKETING CO. LTD,**

15 **Plaintiff**

16 **v.**

17 **GUAM VISITORS BUREAU, OFFICE OF**  
18 **PUBLIC ACCOUNTABILITY, THE**  
19 **TERRITORY OF GUAM , and HIC, INC.,**

20 **Defendants.**

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**VERIFIED COMPLAINT**

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**I. INTRODUCTION**

1. This civil action brought under 5 GCA § 5480 arises out of the Guam Visitors Bureau (“GVB”) Request for Proposals No. 2016-006 (the “RFP”) issued on November 25, 2016 for a contract to provide Tourism Destination Marketing Representation Services in the Republic of Korea (the “Contract”). TLK Marketing Co. Ltd. (“TLK”) protested of the selection of HIC, Inc. (“HIC”) as the highest ranked offeror and GVB’s purported award of the contract to HIC. GVB’s protests were denied by GVB, and TLK timely appealed the denials to the Guam Public Auditor. The Public Auditor affirmed GVB’s denial of the protests in OPA-PA-16-003 and OPA-PA-16-005, consolidated.

2. This action is for judicial review and appeal of the October 3, 2016 Decision by the Office of Public Accountability in OPA-PA-16-003 and OPA-PA-16-005, which appeals were consolidated, that purports to ratify and affirm the selection of HIC as the highest ranked offeror and the purported award of the contract under the RFP to HIC.

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**II. JURISDICTION**

3. This Court has jurisdiction over this matter under 7 GCA § 3105 and 5 GCA §§ 5480(a) and (c).

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**III. PARTIES**

4. Plaintiff TLK is a corporation organized and existing under the laws of the Republic of Korea, is licensed to do business in the Republic of Korea, has worked as a contractor with the Guam Visitors’ Bureau, and is a person receiving an adverse decision from the Office of Public Accountability (“OPA”).

5. This Action is timely pursuant to 5 G.C.A. §5481(a).

6. The Territory of Guam is a proper party and has waived sovereign immunity pursuant to 5 G.C.A. §5480(a).

7. Defendant, GVB, is a public corporation organized and existing under the Guam Visitors Bureau Act, issued Request for Proposal No. 2016-006 (the “RFP”) for a contract to provide Tourism Destination Marketing Representation Services in the Republic of Korea. GVB is a proper party and has waived sovereign immunity pursuant to 5 G.C.A. §5480.



1 15. Four Offerors timely submitted written proposals in response to the RFP, namely,  
2 TLK, HIC, Promac Partnership Co., Ltd. ("Promac") and Edelman Korea ("Edelman").

3 16. On February 16, 2016, the Evaluation Committee assessed and scored the written  
4 proposals. The Offerors who submitted the three highest ranked written proposals were invited to  
5 give oral presentations. They were TLK, HIC and Promac.

6 17. The three highest-ranking Offerors gave oral presentations on February 25, 2016, and  
7 the Evaluation Committee ranked the three highest-ranking offerors based on their combined scores  
8 for written proposals and oral presentations.

9 18. HIC was ranked highest, TLK was ranked second-highest, Promac was ranked third-  
10 highest, and Edelman was ranked last.

11 19. On March 4, 2016, Gina Kono, a Marketing Officer II with GVB, notified Mr. Sedong  
12 "Don" Park of HIC ("Mr. Park") by email that HIC was selected as the highest-rated most qualified  
13 offeror, and attached contract negotiation documents. GVB did not notify TLK or the other  
14 unsuccessful offerors regarding the status of their proposals at that time.

15 20. On March 9, 2016, Ms. Kono sent Mr. Park an email stating that the GVB General  
16 Manager would like to finalize the contract and finalize all necessary paperwork. The email also  
17 stated:

18 BTW, I was contacted by someone mentioning that HIC is communicating with the  
19 Korea media announcing that they have successfully been awarded the GVB  
20 Marketing Representative contract. Please refrain from publicly mentioning this until  
21 we have finalized negotiations and signed a contract. We do not want any protest from  
the other offerors.

22 21. On March 9, 2016, Mr. Park signed the Scope of Work as Agreed by GVB and HIC,  
23 effectively concluding contract negotiations between GVB and HIC. On the same date, GVB issued  
24 HIC a Notice of Award with an attached contract for signature.

25 22. On March 10, 2016, GVB issued notices of non-selection to TLK, Promac and  
26 Edelman. On the same date, GVB issued TLK a notice terminating TLK's month-to-month contract  
27 with GVB.

1           23.     The Contract was signed by Mr. Park on March 11, 2016, and by GVB General  
2 Manager Jon Nathan Denight on March 14, 2016.

3           24.     On March 31, 2016, GVB terminated TLK's contract.

4     **B.     *TLK'S Protests and Appeals to the Public Auditor***

5           25.     On March 24, 2016, TLK protested GVB's decision to award the Contract to HIC  
6 ("Protest 1"). *See*, Protest 1, a true and correct copy of which is attached hereto as Exhibit 2.

7           26.     Protest 1 was based on the claim that HIC lacked the requisite five years of "extensive  
8 and consistent experience working with the Republic of Korea travel trade..." and was a  
9 nonresponsive offeror. *See*, Exhibit 2 at 2. Protest 1 invoked the Automatic Stay requirements of 5  
10 G.C.A. §5425(g). *Id.*

11          27.     On March 24, 2016, TLK filed a Sunshine Act Request with GVB, seeking documents  
12 related to the procurement. On April 7, 2016, GVB produced documents responsive to TLK's  
13 request.

14          28.     On April 8, 2016, GVB denied TLK's Protest 1 on the ground that it was untimely  
15 because "TLK marketing received and was aware (or should have been aware) of the content of the  
16 RFP as well as the method of procurement more than fourteen (14) days prior to the submission of its  
17 Protest." *See*, Denial of Protest 1, a true and correct copy of which is attached hereto as Exhibit 3.  
18 GVB also noted that it did not agree with TLK's claim that HIC was not a qualified proposer.

19          29.     On April 22, 2016, TLK timely appealed GVB's denial of Protest 1 to the Public  
20 Auditor, in OPA-PA-16-003. *See*, Protest 1 Appeal, a true and correct copy of which is attached  
21 hereto as Exhibit 4.

22          30.     On April 21, 2016, TLK filed its second protest ("Protest 2") based on information  
23 contained in GVB's April 7, 2016 Sunshine Act Response. *See*, Protest 2, a true and correct copy of  
24 which is attached hereto as Exhibit 5.

25          31.     On May 6, 2016, TLK filed in OPA-PA-16-003 a Motion for Orders Confirming the  
26 Automatic Stay and Requiring the Guam Visitors Bureau to Issue a Final Decision on Protest 2  
27 ("Motion to Confirm Stay"). *See*, Motion to Confirm Stay, a true and correct copy of which is  
28 attached hereto as Exhibit 6.









1 proposals and discussions with vendors concerning small purchase procurement. *See* 5 G.C.A. §5249.  
2 It is undisputed that GVB failed to maintain a log of communications, sound recordings of pre-bid  
3 conferences and of negotiations. Thus, the procurement record was incomplete and could not be  
4 certified to meet the requirements of §5249.

5 58. Nathan Denight submitted a Negotiation Memorandum, which is a required as part of  
6 the procurement record, prepared by counsel for GVB, which did not meet the requirements of 2  
7 G.A.R. Div. 4 §3114.

8 59. Nathan Denight, the Chief Procurement Officer, knowingly submitted a false  
9 Certification of Procurement Record that the procurement record is complete under penalty of  
10 perjury.

11 60. TLK raised these deficiencies and the Public Auditor was aware of the deficiencies in  
12 the procurement record through TLK's filings. TLK specifically cited to a recent decision in  
13 *Teleguam Holdings LLC v. Government of Guam*, Superior Court of Guam Case No. CV0334-13 in  
14 which a solicitation was canceled based on an incomplete procurement record, although the  
15 procurement record had not been raised as a protest claim against the agency in that case

16 61. The Public Auditor denied TLK's Consolidated Appeals in spite of the fact that the  
17 procurement record was incomplete and could not be certified under 5 GCA §5249, and failed to  
18 discuss the deficiencies of the procurement record in the October 3, 2016 Decision.

19 62. The Public Auditor's failure to address the deficiencies in the procurement record and  
20 to find it was incomplete precluding an award is arbitrary, capricious, clearly erroneous, or contrary  
21 to law.

## 22 VI. PRAYERS FOR RELIEF

23 WHEREFORE, TLK respectfully requests that this Court issue the following relief:

24 1. Pursuant to the First Claim for Relief, that this Court order, find and declare that HIC  
25 did not meet the five year minimum experience requirement in GVB RFP No. 2016-006, that because  
26 of this HIC's proposal should not have been accepted or considered and the contract purportedly  
27 awarded to HIC should not have been awarded to HIC, and that the Public Auditor's denial of TLK's  
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1 protest based on the failure of HIC to satisfy the experience requirement required the HIC's proposal  
2 not be accepted or considered or the contract awarded is arbitrary, capricious, clearly erroneous, or  
3 contrary to law.

4 2. Pursuant to the First Claim for Relief, that this Court order GVB to commence  
5 negotiations with TLK as the next highest ranked offeror for the contract under GVB RFP No. 2016-  
6 006.

7 3. Pursuant to the Second Claim for Relief, that this Court order, find and declare that  
8 the Public Auditor erred in not holding that the automatic stay remained in effect until at least 14  
9 days after the announcement of the selection of HIC, in not staying the award of GVB RFP No. 2016-  
10 006 and in not finding that the purported award of the contract under GVB RFP No. 2016-006 was  
11 and is void and that the Public Auditor's holding in this respect is arbitrary, capricious, clearly  
12 erroneous, or contrary to law.

13 4. Pursuant to the Second Claim for Relief, that this Court order, find and declare that  
14 the automatic stay remained in effect until at least 14 days after the announcement of the selection of  
15 HIC, that any further action with respect to GVB RFP No. 2016-006 be stayed, and order, find and  
16 declare that the purported award of the contract under GVB RFP No. 2016-006 was and is void;

17 5. Pursuant to the Second Claim for Relief, that this Court order, find and declare that  
18 that GVB was required to give contemporaneous notification to all offerors when it selected HIC as  
19 the highest ranked offeror;

20 6. Pursuant to the Second Claim for Relief, that this Court order that GVB RFP No.  
21 2016-006 be resolicited;

22 7. Pursuant to the Third Claim for Relief, that this Court order, find and declare that the  
23 Public Auditor erred in not addressing the lack of a complete procurement record and in not ordering  
24 the contract to be resolicited, that because a complete procurement record was not created did not  
25 exist no award of a contract under GVB RFP No. 2016-006 could be made, that any purported award  
26 was void, and that GVB RFP No. 2016-006 be cancelled and the contract be resolicited and that such  
27 error is arbitrary, capricious, clearly erroneous, or contrary to law;

28 8. That this Court award TLK attorney's fees and costs; and



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**VERIFICATION**

I, Henry Lee, am the President of Appellant, TLK Marketing Co. Ltd., and I am authorized to make this Verification. I have read the foregoing Complaint, and based on information and belief, and to the best of my knowledge, the facts therein are true and correct.

I declare under penalty of perjury under the laws of Guam, that the foregoing is true and correct.

This Verification was executed on this 17 day of October 2016

TLK MARKETING CO. LTD.



Henry Lee  
President

# **EXHIBIT B**



1 **LAW OFFICE OF PETER C. PEREZ**  
2 Suite 802, DNA Bldg.  
3 238 Archbishop Flores Street  
4 Hagåtña, Guam 96910  
5 Telephone (671) 475-5055/6  
6 Facsimile (671) 477-5445

7 *Attorney for Defendant*  
8 *Office of Public Accountability*

FILED  
SUPERIOR COURT  
OF GUAM

2016 DEC 16 PM 4:48

CLERK OF COURT

9 **IN THE SUPERIOR COURT OF GUAM**

10 TLK MARKETING CO. LTD,

11 Plaintiff,

12 vs.

13 GUAM VISITORS BUREAU, OFFICE OF  
14 PUBLIC ACCOUNTABILITY, THE  
15 TERRITORY OF GUAM and HIC, INC.,

16 Defendants.

CIVIL CASE NO. CV0914-16

**DEFENDANT OFFICE OF  
PUBLIC ACCOUNTABILITY'S  
ANSWER TO PLAINTIFF'S  
VERIFIED COMPLAINT**

17 Defendant, OFFICE OF PUBLIC ACCOUNTABILITY ("OPA"), by and through  
18 counsel, PETER C. PEREZ, ESQ., answers Plaintiff's Verified Complaint filed October 17, 2016,  
19 as follows:

- 20 1. The OPA admits the allegations contained in paragraphs 11, 13, 14, 15, 16, 17, 18, 19, 20,  
21 23, 24, 34, and 49.
- 22 2. The OPA denies the allegations contained in paragraphs 3, 12, 37, 38, 39, 40, 41, 46, 48,  
23 50, 51, 52, 53, 54, 58, 59, 60, 61, and 62.
- 24 3. The OPA is without knowledge sufficient to admit or deny the allegations contained in  
25 paragraphs 5, 6, 27, and 47 and on that basis denies the allegations contained therein.
- 26 4. Regarding the allegations contained in paragraph 1, the OPA admits that TLK protested  
27 the selection of HIC and admits that the Public Auditor affirmed OPA's denial of the

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**RECEIVED**

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DATE: 12/16/16  
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BY: psanchez

1 protests in OPA-PA-16-003 and OPA-PA-16-005. The OPA is without knowledge  
2 sufficient to admit or deny whether this civil action is brought under 5 G.C.A. § 5480 or  
3 from what it arises. The OPA denies “GVB’s protests” were denied by GVB. The OPA  
4 denies the remaining allegations therein.  
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6 5. Regarding the allegations contained in paragraph 2, the OPA admits this action is for  
7 judicial review and appeal of the October 3, 2016 Decision in OPA-PA-16-003 and OPA-  
8 PA-16-005, admits that the appeals were consolidated, and denies the remaining  
9 allegations therein.

10 6. Regarding the allegations contained in paragraph 4, the OPA is without knowledge  
11 sufficient to admit or deny the allegations that TLK is a corporation organized and  
12 existing under the laws of the Republic of Korea or is licensed to do business in the  
13 Republic of Korea. The OPA admits that TLK has worked with GVB. The OPA denies  
14 the remaining allegations therein.  
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16 7. Regarding the allegations contained in paragraph 7, the OPA admits that GVB is a public  
17 corporation organized and existing, admits that GVB issued the RFP for a contract to  
18 provide Tourism Destination Marketing Representation Services in the Republic of Korea,  
19 and denies the remaining allegations therein.  
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21 8. Regarding the allegations contained in paragraph 8, the OPA admits that the OPA is an  
22 instrumentality of the Government of Guam and denies the remaining allegations therein.

23 9. Regarding the allegations contained in paragraph 9, the OPA is without knowledge  
24 sufficient to admit or deny that HIC is a corporation organized and existing under the laws  
25 of the Republic of South Korea and on that basis denies them, and denies the remaining  
26 allegations therein.  
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10. Regarding the allegations contained in paragraph 10, upon information and belief Exhibit 1 is a true and correct copy of the RFP, and the OPA admits the remaining allegations therein.

11. Regarding the allegations contained in paragraph 21, the OPA is without knowledge sufficient to admit or deny the allegation “effectively concluding the contract negotiations between GVB and HIC” and on that basis denies them, and admits the remaining allegations therein.

12. Regarding the allegations contained in paragraph 22, the OPA asserts that GVB’s termination of TLK’s month to month contract with GVB was effective March 31, 2016. To the extent paragraph 22 asserts a different effective termination date, the allegation is denied. The OPA admits the remaining allegations therein.

13. Regarding the allegations contained in paragraph 25, upon information and belief Exhibit 2 is a true and correct copy of Protest 1, and the OPA admits the remaining allegations therein.

14. Regarding the allegations contained in paragraph 26, to the extent the allegations are inconsistent with the actual language of Protest 1, the OPA denies those allegations, and the OPA denies any remaining allegations therein.

15. Regarding the allegations contained in paragraph 28, the OPA admits that on April 8, 2016, GVB denied TLK’s Protest and, upon information and belief, admits that Exhibit 3 is a true and correct copy of the Denial of Protest, and regarding the remaining allegations therein, the OPA responds that the Denial of Protest states the grounds for the denial, and any TLK allegation inconsistent with the Denial of Protest grounds language is denied.

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16. Regarding the allegations contained in paragraph 29, upon information and belief Exhibit 4 is a true and correct copy of the Protest 1 Appeal, and the OPA admits the remaining allegations therein.
17. Regarding the allegations contained in paragraph 30, upon information and belief Exhibit 5 is a true and correct copy of the Protest 2, and the OPA admits that on April 21, 2016, TLK filed Protest 2, and the OPA is without knowledge sufficient to admit or deny the remaining allegations therein and on that basis denies them.
18. Regarding the allegations contained in paragraph 31, upon information and belief Exhibit 6 is a true and correct copy of the Motion to Confirm Stay, and admits the remaining allegations therein.
19. Regarding the allegations contained in paragraph 32, upon information and belief Exhibit 7 is a true and correct copy of the Denial of Protest 2, and the OPA admits the remaining allegations therein.
20. Regarding the allegations contained in paragraph 33, upon information and belief Exhibit 8 is a true and correct copy of the Protest 2 Appeal, and the OPA admits the remaining allegations therein.
21. Regarding the allegations contained in paragraph 35, the OPA denies Plaintiff's reference to "OPA-PA-11-003" and admits the remaining allegations therein.
22. Regarding the allegations contained in paragraphs 43, 44, and 56, the OPA denies any citation to any citation or policy statement that TLK asserts, if inconsistent with the statute and statutory policies stated.
23. Regarding the allegations contained in paragraph 45, the OPA admits that TLK filed a timely protest, and is without knowledge sufficient to admit or deny the remaining allegations therein and on that basis denies them.

1 24. Regarding the allegations contained in paragraph 57, the OPA denies any allegations by  
2 TLK that are inconsistent with the law cited, and denies all other remaining allegations  
3 therein.

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5 25. Regarding the allegations contained in paragraphs 36, 42, and 55, the OPA responds and  
6 answers in the same manner to the paragraphs incorporated therein.

7 26. The OPA denies any and all allegations which it has not expressly admitted.

8 27. The OPA denies that Plaintiff is entitled to the relief requested in the Verified Complaint,  
9 or any relief, even though not requested.

10 **AFFIRMATIVE DEFENSES**

- 11 1. The Verified Complaint fails to state a claim upon which relief may be granted.  
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13 2. Plaintiff failed to establish personal jurisdiction.  
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15 3. Plaintiff failed to establish subject matter jurisdiction.  
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17 4. The relief requested should be denied for insufficiency of process.  
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19 5. The relief requested should be denied for insufficiency of service of process.  
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21 6. Plaintiff failed to name the proper party to this action.  
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23 7. Plaintiff failed to name or to join an indispensable party.  
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25 8. Plaintiff's Third Claim for Relief asserts appeal claims that were not raised in  
26 Procurement Appeals OPA-PA-16-003 and OPA-PA-16-005.  
27  
28 9. With respect to Plaintiff's Third Claim for Relief, the claims have been waived.  
10. With respect to Plaintiff's Third Claim for Relief, the claims are not ripe.  
11. With respect to Plaintiff's Third Claim for Relief, Plaintiff failed to exhaust administrative  
remedies.

