

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF KENTUCKY,  
NORTHERN DIVISION AT COVINGTON  
CIVIL ACTION NO. 2:12-cv-00035

GARTH KUHNHEIN, ON BEHALF  
OF HIMSELF AND OTHERS  
SIMILARLY SITUATED

PLAINTIFF

v.

KENTON COUNTY PUBLIC LIBRARY  
BOARD OF TRUSTEES

DEFENDANT

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**DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

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Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Kenton County Library Board of Trustees moves to dismiss Plaintiff's Class Action Complaint with Jury Trial Demand and Declaration of Rights ("Complaint"), with prejudice. Plaintiff's Complaint should be dismissed in its entirety because Plaintiff has failed to state a claim upon which relief can be granted. First, Plaintiff has not alleged that he exhausted his administrative remedies prior to filing this lawsuit, as mandated by KRS § 134.590. Second, even if Plaintiff had allegedly exhausted his administrative remedies, he is precluded from asserting a class action for tax refunds under KRS § 134.590. Third, Plaintiff's claims for tax refunds for the years prior to January 20, 2010 should be dismissed because the two-year statute of limitations in KRS § 134.590 has run on those refunds. Finally, Plaintiff's conversion claim should be dismissed because the Library has sovereign immunity from liability on all tort claims.

Respectfully submitted,

/s/ Michael W. Hawkins

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**Attorney for Defendant Kenton County  
Public Library Board of Trustees**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Brandon N. Voelker, THE VOELKER FIRM, 4135 Alexandria Pike , Suite 109, Cold Spring, KY 41076, *Attorney for Plaintiff*.

/s/ Michael W. Hawkins