## UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA Harrisonburg Division

ROBERT L. PASCO,	)
Plaintiff,	)
	) Civil Action No.: 5:11CV87
<b>v.</b>	)
	)
HANK ZIMMERMAN, et als.	)
	)
Defendant.	)

## **MOTION TO DISMISS**

Defendant Hank Zimmerman ("Defendant Zimmerman"), by counsel, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hereby moves that the Court dismiss with prejudice the Complaint in its entirety as against him for failure to state a claim upon which relief can be granted and lack of subject matter jurisdiction, and states in support as follows:

- 1. The plaintiff fails to state an actionable claim under 42 U.S.C. §§ 1983 and 1988 against Defendant Zimmerman, in either his official or individual capacities.
- 2. As the plaintiff has failed to state a claim for relief against Defendant Zimmerman pursuant to 42 U.S.C. §§ 1983 and 1988, or any other violation of a federal right protected by the United States Constitution, this Court is without subject matter jurisdiction as to the remaining claims alleged against Defendant Zimmerman.
- 3. The plaintiff fails to state sufficient facts showing liability on part of Defendant Zimmerman for the alleged state tort claims committed by Defendant Moore.
  - 4. The plaintiff fails to state a claim for wrongful discharge in violation of public policy.
- 5. There are no compelling reasons or circumstances that would justify this Court's retention of the state law claims raised against Defendant Zimmerman. As such, all of these claims should be dismissed.
- 6. Defendant Zimmerman has set forth the basis for the dismissal in the attached Brief in Support.

WHEREFORE, Defendant Zimmerman, by counsel, respectfully requests that based on all of the reasons set forth in the attached Memorandum in Support of the Motion to Dismiss, and for the reasons to be argued at the hearing of this matter, the Court grant Defendant Zimmerman's Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismiss this matter with prejudice in its entirety as against him, and for any further relief deemed necessary and proper.

HANK ZIMMERMAN

By Counsel

LITTEN & SIPE L.L.P.

By: <u>Mulwale hui (llu</u> Melisa G. Michelsen J. Jay Litten

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Counsel for Defendants Hank Zimmerman, Board of Trustees of the Shenandoah County Library, and Shenandoah County Library.

## **CERTIFICATE**

I certify that on the 22<sup>nd</sup> day of December, 2011, I electronically filed the foregoing Motion to Dismiss with the Clerk of the Court using the CM/ECF system, which wll send notification of such filing to Timothy E. Cupp, Esq., Cupp & Cupp, P.C., 1951-D Evelyn Byrd Avenue, P.O. Box 589, Harrisonburg, Virginia 22803, Cupplaw@comcast.net, Counsel for Plaintiff; and to Julia B. Judkins, Esq., Bancroft, McGavin, Horvath, & Judkins, P.C., 3920 University Drive, Fairfax, Virginia 22030, Jjudkins@bmhjlaw.com, Counsel for Defendant James Dallas Moore.

Counsel for Defendants Hank Zimmerman, Board of Trustees of the Shenandoah County Library, and Shenandoah County Library.