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**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

Thomas Myers,)	
)	
Plaintiff,)	2:17-CV-00002 JWS
)	
vs.)	ORDER AND OPINION
)	
Maniilaq Association,)	[Re: Motions at Dockets 40, 44]
)	
Defendant.)	
)	

I. MOTION PRESENTED

At docket 40 Defendant Maniilaq Association (“Maniilaq”) moves pursuant to Federal Rule of Civil Procedure 56 for summary judgment on all claims brought by Plaintiff Thomas Myers (“Myers”). Maniilaq supports the motion with a memorandum of points and authorities at docket 41 and affidavits at dockets 42 and 43. Maniilaq additionally moves at docket 44 for summary judgment on Myers’ claim that Maniilaq breached the implied covenant of good fath and fair dealing. Maniilaq supports that summary judgment motion with a memorandum at docket 45 and affidavits at

1 dockets 46 and 47.¹ Myers did not file an opposition to either motion. Oral argument
2 was not requested and would not assist the court.

3
4 II. BACKGROUND

5 On December 10, 2013, Maniilaq’s then-President/Chief Executive Officer
6 Patrick Anderson hired Myers as a “Senior Lean Sensei,” tasked with implementing
7 Anderson’s preferred “Lean Management System.”² Five days after Maniilaq
8 terminated Anderson, Maniilaq also terminated Myers by memorandum hand-delivered
9 to Myers on January 29, 2014.³ Myers left Maniilaq that day and did not return to work
10 after that date.⁴ Myers filed the instant suit in this Court on January 31, 2017.⁵ Maniilaq
11 now moves for summary judgment on all claims in Myers’ wrongful discharge complaint
12 as time-barred by the applicable statute of limitations.⁶ Maniilaq additionally moves for
13 summary judgment on the merits of Myer’s claim that Maniilaq breached the implied
14 covenant of good faith and fair dealing.⁷
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21 ¹The affidavits at dockets 46 and 47 are identical to the filings at dockets 42 and 43.

22 ²Doc. 42 at 2 ¶ 5; Doc. 43 at 2 ¶ 4; Doc. 43-2; Doc. 43-3; Doc. 43-4.

23 ³Doc. 42 at 3 ¶¶ 7-10; Doc. 42-2; Doc. 42-3; Doc. 45 at 3.

24 ⁴Doc. 42 at 3 ¶ 10.

25 ⁵Doc. 1.

26 ⁶Doc. 40; Doc. 41.

27 ⁷Doc. 44; Doc. 45.
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1 **III. STANDARD OF REVIEW**

2 Summary judgment is appropriate where “there is no genuine dispute as to any
3 material fact and the movant is entitled to judgment as a matter of law.”⁸ The
4 materiality requirement ensures that “only disputes over facts that might affect the
5 outcome of the suit under the governing law will properly preclude the entry of summary
6 judgment.”⁹ Ultimately, “summary judgment will not lie if the . . . evidence is such that a
7 reasonable jury could return a verdict for the nonmoving party.”¹⁰ However, summary
8 judgment is mandated “against a party who fails to make a showing sufficient to
9 establish the existence of an element essential to that party’s case, and on which that
10 party will bear the burden of proof at trial.”¹¹

13 The moving party has the burden of showing that there is no genuine dispute as
14 to any material fact.¹² Where the nonmoving party will bear the burden of proof at trial
15 on a dispositive issue, the moving party need not present evidence to show that
16 summary judgment is warranted; it need only point out the lack of any genuine dispute
17 as to material fact.¹³ Once the moving party has met this burden, the nonmoving party
18 must set forth evidence of specific facts showing the existence of a genuine issue for
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22 ⁸Fed. R. Civ. P. 56(a).

23 ⁹*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

24 ¹⁰*Id.*

25 ¹¹*Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

26 ¹²*Id.* at 323.

27 ¹³*Id.* at 323-25.

1 trial.¹⁴ All evidence presented by the non-movant must be believed for purposes of
2 summary judgment and all justifiable inferences must be drawn in favor of the
3 non-movant.¹⁵ However, the non-moving party may not rest upon mere allegations or
4 denials but must show that there is sufficient evidence supporting the claimed factual
5 dispute to require a fact-finder to resolve the parties' differing versions of the truth at
6 trial.¹⁶

7
8 The Court cannot grant summary judgment based solely on the fact that no
9 opposition was filed in this case. The Local Civil Rules for the United States District
10 Court for the District of Alaska state that “[n]o unopposed motion for summary judgment
11 will be granted unless the court is satisfied that there are no disputed issues of material
12 fact and that the moving party is entitled to the decision as a matter of law.”¹⁷ In other
13 words, summary judgment motions are not governed by the usual default judgment
14 principles; rather, a court must determine whether the movant is entitled to judgment as
15 a matter of law even if the motion is unopposed.¹⁸ A court must consider the merits of
16 the motion and ensure that the motion is supported by sufficient evidentiary materials.¹⁹
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22 ¹⁴*Anderson*, 477 U.S. at 248-49.

23 ¹⁵*Id.* at 255.

24 ¹⁶*Id.* at 248-49.

25 ¹⁷D. Ak. L.R. 7.1(d)(2).

26 ¹⁸*Vermont Teddy Bear Co. v. 1-800 Beargram Co.*, 373 F.3d 241, 244 (2d Cir. 2004).

27 ¹⁹*United States v. One Piece of Real Property Located at 5800 SW 74th Ave., Miami,*
28 *Fla.*, 363 F.3d 1099, 1101-1102 (11th Cir. 2004).

1 **IV. DISCUSSION**

2 **A. Motion at Docket 40**

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4 Maniilaq first moves for summary judgment on the ground that Myers failed to
5 commence this action in the time allowed by law. In a federal diversity action brought
6 under state law, “the state statute of limitations controls.”²⁰ Under Alaska law, tort
7 actions not arising from a contract are governed by AS 09.10.070(a), which provides a
8 two-year statute of limitations.²¹ Breach of contract claims must be brought within three
9 years pursuant to AS 09.10.053.²²

10
11 Myers’ amended complaint raises wrongful discharge and breach of the implied
12 covenant of good faith and fair dealing claims. In his complaint, Myers avers that, “[i]n
13 early February 2014, [he] was given notice that he was . . . being discharged from his
14 job with Maniilaq Association.”²³ In support of its summary judgment motions, however,
15 Maniilaq has provided uncontroverted evidence that Myers was terminated on
16 January 29, 2014.²⁴ Myers’ initial complaint was not filed until January 31, 2017,²⁵ three
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19 ²⁰*Bancorp Leasing & Fin. Corp. v. Augusta Aviation Corp.*, 813 F.2d 272, 274 (9th Cir.
20 1987); *see also Harvey’s Wagon Wheel, Inc. v. Van Blitter*, 959 F.2d 153, 157 (9th Cir. 1992)
21 (“Statutes of limitations, which dictate the life of state causes of action, are too intimately
22 connected with the substance of the state-created right to be disregarded by the federal courts.”
(citations and internal quotations omitted)).

23 ²¹*Reed v. Municipality of Anchorage*, 741 P.2d 1181, 1185 (Alaska 1987); *see*
24 AS 09.10.070(a).

25 ²²*McDonnell v. State Farm Mut. Auto. Ins. Co.*, 299 P.3d 715, 725 (Alaska 2013); *see*
26 AS 09.10.053.

27 ²³Doc. 12 at 4 ¶ 17.

28 ²⁴Doc. 42 at 3 ¶¶ 7-10; Doc. 42-2; Doc. 42-3.

²⁵Doc. 1.

1 years and two days after Myers was terminated. Myers asserts no basis for tolling, and
2 none is apparent from the record. Thus, Myers' claims are untimely under either the
3 two-year or three-year statute of limitations, and summary judgment is granted as to all
4 claims.
5

6 **B. Motion at Docket 44**

7 Maniilaq additionally moves for summary judgment on Myers' breach of the
8 implied covenant of good faith and fair dealing claim on the grounds that Myers was
9 terminated during his 90-day probationary period, and he cannot establish any legally
10 cognizable damages from the alleged breach. But, because this Court has already
11 determined that the claim is time-barred, it need not determine whether any other
12 ground independently supports granting summary judgment on that claim. The motion
13 for summary judgment at docket 44 is therefore denied as moot.²⁶
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16 **V. CONCLUSION**

17 For the reasons above, the motion for summary judgment at docket 40 is
18 **GRANTED**, and the motion for summary judgment at docket 44 is **DENIED** as moot.
19 The Clerk will please enter judgment for the defendant.
20

21 DATED this 17th day of September 2018.

22 /s/ JOHN W. SEDWICK
23 SENIOR JUDGE, UNITED STATES DISTRICT COURT
24

25 ²⁶Maniilaq filed two separate motions for summary judgment in contravention of this
26 Court's local rules, which provide that summary judgment should be sought in a "[s]ingle
27 [m]otion" that "contain[s] all the grounds upon which the moving party relies and address[es] all
28 causes of action or affirmative defenses raised in the pleading challenged." D. Ak. L.R. 56.1(a).
Because the Court has denied the second summary judgment motion as moot, the Court finds
that Maniilaq's failure to comply with Local Rule 56.1(a) is immaterial.