

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

Chris Keen v. Municipality of Anchorage

Keen v. Municipality of Anchorage, Case No. 3:25-cv-00162-SLG (D. Alaska Mar. 30, 2026) · No. 3:25-cv-00162-SLG · Decided March 30, 2026

SUMMARY

The United States District Court for the District of Alaska converts the Municipality of Anchorage’s motion to dismiss into a motion for summary judgment. The court grants summary judgment on contract claims arising before July 17, 2022, and on whistleblower and related state-law tort claims arising before July 17, 2023, while denying summary judgment on the remaining claims. The court also grants leave to supplement the record, denies the plaintiff’s cross-motion to amend, and orders the defendant to answer within 14 days.

CASE DETAILS

COURT	United States District Court for the District of Alaska
WRITING FOR THE COURT	Sharon L. Gleason
JURISDICTION	United States District Court for the District of Alaska
DECIDED	March 30, 2026
DOCKET	3:25-cv-00162-SLG
DISPOSITION	other
PROCEDURAL POSTURE	After removal from Alaska Superior Court, the Municipality of Anchorage moved to dismiss. By agreement of the parties and court order, the motion was converted under Federal Rule of Civil Procedure 12(d) into a motion for summary judgment. The plaintiff opposed the motion, moved in the alternative to amend, and separately moved to supplement the summary-judgment record.
STANDARD OF REVIEW	Summary judgment is proper when the movant shows that no genuine dispute as to any material fact exists and the movant is entitled to judgment as a matter of law. The court views the facts in the light most favorable to the nonmoving party and draws all justifiable inferences in that party's favor. The moving party bears the initial burden of showing an absence of evidence supporting the nonmoving party's case; the nonmoving party must then designate specific facts showing a genuine issue for trial.

PRECEDENTIAL VALUE	unpublished district court order; persuasive authority only
PARTIES	Chris Keen v. Municipality of Anchorage

TOPICS

summary judgment

whistleblower

statute of limitations

affirmative defenses

civil procedure

PRACTICE AREAS

civil procedure

employment law

military law

contracts

municipal law

civil rights

QUESTIONS PRESENTED

1. Whether the defendant's motion to dismiss was properly converted to a motion for summary judgment.
2. Whether the plaintiff should be permitted to supplement the summary-judgment record.
3. Whether the plaintiff's contract claims under the collective bargaining agreement arising before July 17, 2022, were barred by Alaska's three-year statute of limitations.
4. Whether the plaintiff's contract claims arising on or after July 17, 2022, were subject to summary judgment for failure to exhaust contractual or administrative remedies.
5. Whether the plaintiff's whistleblower and related state-law tort claims arising from 2022 events were barred by the applicable two-year statute of limitations.
6. Whether summary judgment was warranted on the plaintiff's 2025 whistleblower and related tort claims.
7. Whether the plaintiff was entitled to amend the complaint.

HOLDINGS

1. The defendant's motion to dismiss was properly converted into a motion for summary judgment because the parties agreed to the conversion and were given an opportunity to submit pertinent materials.
2. The plaintiff's motion to supplement the summary-judgment record was granted.
3. Summary judgment was granted to the Municipality on contract claims arising before July 17, 2022.
4. Summary judgment was denied on the plaintiff's post-July 17, 2022 contract claims because factual questions remained concerning the specific positions at issue and whether pursuing contractual remedies would have been futile.
5. Summary judgment was granted to the Municipality on whistleblower and related state-law tort claims arising from 2022 events.
6. Summary judgment was denied on the plaintiff's 2025 whistleblower and related tort claims because factual questions remained concerning the plaintiff's whistleblower activity and the alleged adverse employment actions.
7. The plaintiff's cross-motion for leave to amend was denied.

KEY QUOTATIONS

“Federal Rule of Civil Procedure 56(a) directs a court to “grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”” (Legal Standard)

“In Alaska, “an employee must first exhaust his contractual or administrative remedies, or show that he was excused from doing so, before he may pursue a direct judicial action against his employer.”” (Discussion § III.C)

“And “[i]n Alaska . . . a municipal employee’s failure to exhaust contractual remedies may be excused by showing that the union refused to participate in the grievance process whether or not the union’s refusal was wrongful.”” (Discussion § III.C)

FACTUAL BACKGROUND

Keen worked as a firefighter/EMT for the Anchorage Fire Department while also serving in the United States Air Force Special Warfare Operations, requiring him to take military leave. He alleged that his military service affected promotional opportunities and that the Municipality retaliated against him after he complained to the Department of Labor about treatment related to his service. His claims involved the applicable collective bargaining agreement, the Alaska Whistleblower Act or corresponding Anchorage municipal ordinance, state-law tort or contract theories, and the Uniformed Services Employment and Reemployment Rights Act. The record included a 2021 letter of counseling, a union refusal to pursue a grievance, a 2021 Department of Labor complaint, and alleged failures to promote or accommodate promotional testing in 2022 and 2025.

PROCEDURAL HISTORY

Keen filed suit in Alaska Superior Court on July 17, 2025, alleging that the Municipality failed to promote him and retaliated or discriminated against him because of his military service. The Municipality removed the action to the United States District Court for the District of Alaska on July 29, 2025. The district court converted the motion to dismiss to summary judgment, granted leave to supplement the record, granted summary judgment on certain time-barred claims, denied summary judgment on other claims, denied leave to amend, and ordered the Municipality to answer within 14 days.

DISPOSITION

other

CASES CITED

- Celotex Corp. v. Catrett, 477 U.S. 317, 324-25 (1986)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49, 255 (1986)
- Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59 (1970)
- Betz v. Trainer Wortham & Co., Inc., 610 F.3d 1169, 1171 (9th Cir. 2010)
- Bell v. City of Los Angeles, 835 F. Supp. 2d 836, 848 (C.D. Cal. 2011)
- Hartzell v. Marana Unified Sch. Dist., 130 F.4th 722, 744 (9th Cir. 2025)
- Coleman v. Quaker Oats Co., 232 F.3d 1271, 1292 (9th Cir. 2000)

- Hitt v. J.B. Coghill, Inc., 641 P.2d 211, 212 (Alaska 1982)
- Jackson v. Municipality of Anchorage, 375 P.3d 1166, 1170 (Alaska 2016)
- Robinson v. Alaska Hous. Fin. Corp., 442 P.3d 763, 769 (Alaska 2019)
- Hebert v. Honest Bingo, 18 P.3d 43, 47 (Alaska 2001)
- Beegan v. State of Alaska, DOT&PF, 195 P.3d 134, 143 (Alaska 2008)
- Beard v. Baum, 796 P.2d 1344, 1348 (Alaska 1990)
- Casey v. City of Fairbanks, 670 P.2d 1133, 1136 (Alaska 1983)
- Grant v. Anchorage Police Dep’t, 20 P.3d 553, 555 (Alaska 2001)
- Romulus v. Anchorage School Dist., 910 P.2d 610, 615 (Alaska 1996)
- Wilson v. Municipality of Anchorage, 977 P.2d 713, 724 (Alaska 1999)
- Higgins v. Municipality of Anchorage, 810 P.2d 149, 150 (Alaska 1991)
- Russell v. Municipality of Anchorage, 743 P.2d 374 (Alaska 1987)
- Smith v. Anchorage School District, 240 P.3d 834, 841 (Alaska 2010)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA CHRIS KEEN, Plaintiff, v. MUNICIPALITY OF ANCHORAGE, Case No. 3:25-cv-00162-SLG Defendant. ORDER ON CONVERTED MOTION FOR SUMMARY JUDGMENT Before the Court at Docket 8 is Defendant Municipality of Anchorage (“MOA”)’s Motion to Dismiss. Plaintiff Chris Keen (“Plaintiff”) filed a response in opposition and an alternative cross-motion for leave to amend the Complaint at Docket 23.

The MOA filed a reply at Docket 26. The Court heard oral argument on March 11, 2026.¹ The parties have agreed and the Court has ordered the conversion of Defendant’s motion to dismiss to a motion for summary judgment.² At Docket 31, Plaintiff requested leave to supplement the record. Defendant opposed the motion at Docket 32. No reply was filed by Plaintiff.

This Court has jurisdiction under 28 U.S.C. § 1331 and § 1441.³ 1 Docket 30. 2 See Docket 23, 26. See also Docket 30, Minute Entry on March 11, 2026. 3 Docket 6 at 13. BACKGROUND On July 17, 2025, Plaintiff initiated this action in the Superior Court for the State of Alaska alleging that he was not promoted at the Anchorage Fire Department (“AFD”) due to alleged discrimination and retaliation based on his military service.⁴ The MOA removed the case to this Court on July 29, 2025.⁵ The facts, viewed in the light most favorable to Plaintiff for purposes of Defendant’s summary judgment motion, are as follows: Plaintiff was an employee of the MOA as a firefighter/EMT with the AFD.⁶ During his employment with the AFD, Plaintiff was also a member of a United States Air Force’s Special Warfare Operations.⁷ As part of his military service, Plaintiff was required to take leave from his employment with AFD.⁸ Plaintiff alleges that he sought promotions within the AFD, but his military service conflicted with certain opportunities for promotion and “was a motivating and/or contributing factor” when he was not promoted.⁹

Plaintiff's Complaint seeks relief under (1) the Collective Bargaining Agreement ("CBA") applicable to Plaintiff's employment at AFD, (2) the Alaska 4 Docket 1-1 (Complaint) ¶¶ 8–16.

5 Docket 1 at 1. 6 Docket 1-1 ¶ 5. 7 Docket 1-1 ¶ 6; Docket 23-1 (Affidavit of Chris Keen) ¶ 2. 8 Docket 1-1 ¶ 7. 9 Docket 1-1 ¶16. Whistleblower Act, AS 39.90.100 et seq., and (3) the Uniform Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 et seq. ("USERRA").¹⁰ LEGAL STANDARD Plaintiff asserts that Defendant's motion to dismiss should be treated as a motion for summary judgment and Defendant does not oppose this conversion.¹¹ Because the parties agree and for the reasons set forth herein, the Court has converted the motion to dismiss to a motion for summary judgment.¹² Accordingly, the Court sets forth the standard for summary judgment here.

Federal Rule of Civil Procedure 56(a) directs a court to "grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The movant bears the burden of showing that "there is an absence of evidence to support the nonmoving party's case."¹³ If the movant meets this burden, the non-moving party must "designate 'specific facts showing that there is a genuine issue for trial.'"¹⁴ The non-moving party may not rely on "mere allegations or denials"; rather, to 10 Docket 1-1 ¶¶ A–G.

11 See Docket 23 at 1–2, Docket 26 at 2–4. 12 As noted above, the Court ordered conversion at oral argument on March 11, 2026. See Docket 30. 13 *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). 14 *Id.* at 324 (quoting Fed. R. Civ. P. 56(e)); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248– 49 (1986). reach the level of a genuine dispute, the evidence must be such "that a reasonable jury could return a verdict for the nonmoving party."¹⁵ When considering a motion for summary judgment, a court views the facts in the light most favorable to the non-moving party and draws "all justifiable inferences" in the non-moving party's favor.¹⁶ DISCUSSION The MOA seeks the dismissal of: (1) Plaintiff's claims under the CBA applicable to Plaintiff's employment with the AFD for failure to exhaust his administrative remedies through the grievance process; (2) Plaintiff's whistleblower claims because the MOA is exempt from the Alaska Whistleblower Act; and (3) any tort or contract claims for failure to state a claim upon which relief may be granted.¹⁷ The MOA does not seek dismissal of Plaintiff's USERRA claims.¹⁸ I. A "Merit Principles" Claim is not before the Court When a motion to dismiss is converted to a motion for summary judgment, "[a]ll parties must be given a reasonable opportunity to present all the material that 15 *Anderson*, 477 U.S. at 248 ().

16 *Id.* at 255 (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158–59 (1970)). 17 Docket 8 at 1–2, 6. 18 Docket 8 at 2. is pertinent to the motion."¹⁹ Here, the Court has considered those materials submitted by the parties that are relevant to the claims raised in Plaintiff's Complaint.

Although Plaintiff attempts to also proceed on a claim based on “merit principles,” this Court previously denied Plaintiff’s leave to amend his Complaint to include this legal theory and does not consider any documents or materials related to this theory.²⁰ II. Motion for Leave to Supplement the Record At Docket 31, Plaintiff requests leave to supplement the record with three documents, Dockets 31-2, 31-3, and 31-4.

The MOA opposes Plaintiff’s proposed submissions as duplicative and untimely.²¹ Because the Court did not convert the motion to dismiss until oral argument on March 11, 2026, the Court will consider the documents appended to Plaintiff’s motion to supplement at Docket 31.²² However, the Court notes that the November 9, 2021 letter at Docket 31-2 was previously lodged by the MOA at Docket 19-2.

The Court also notes that the undated and unsigned application at Docket 31-3 appears to be the Department of Labor (“DOL”) USERRA complaint that Plaintiff references in his filing at Docket 19. See Fed. R. Civ. P. 12(d). ²⁰ See Docket 21 at 2–3. ²¹ Docket 32. ²² See Fed. R. Civ. P. 56(e), Local Civil Rule 7.1(d); see also e.g., *Betz v. Trainer Wortham & Co., Inc.*, 610 F.3d 1169, 1171 (9th Cir.

2010) (“[T]he district court could choose in its discretion to permit the parties to file supplemental affidavits on any fact issues that are relevant....”); *Bell v. City of Los Angeles*, 835 F.Supp.2d 836, 848 (C.D. Cal. 2011). 23-1, ¶ 8.

The third supplement at Docket 31-4 is the DOL’s notification to the MOA of Plaintiff’s DOL Complaint dated December 21, 2021. In his motion to supplement, Plaintiff alleges for the first time that his obligation to exhaust his administrative remedies should be excused because filing further grievances after November 2021 with his union would have been futile.²³ Plaintiff had the opportunity to raise this argument in his opposition to the MOA’s motion to dismiss, but he did not.

Specifically, Plaintiff did not allege futility to counter the MOA’s assertion in its motion to dismiss that Plaintiff “does not claim he attempted to exhaust his administrative remedies available under the... CBA and certainly does not claim he was unable to exhaust those remedies.”²⁴ In general, a plaintiff may not add a new theory of liability at the summary judgment stage of litigation.²⁵ Nonetheless, given the unique procedural posture of this case, in which Defendant has yet to file its answer, the parties have agreed to convert the MOA’s motion to dismiss to a summary judgment motion, the record before the Court is scant, and the conversion to summary judgment was not finalized until oral argument, the Motion for Leave to Supplement Record at 23 Docket 31 at 2.

²⁴ Docket 8 at 8; Docket 23 at 7–9. ²⁵ See *Hartzell v. Marana Unified Sch. Dist.*, 130 F.4th 722, 744 (9th Cir. 2025) (“Adding a new theory of liability at the summary judgment stage would

prejudice the defendant who faces different burdens and defenses under the new theory of liability.” (alterations omitted) (quoting *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1292 (9th Cir.

2000)). Summary Judgment at Docket 31 is granted; and the Court addresses Plaintiff’s futility claim below. III. Plaintiff’s Contract Claims Under the CBA A. Evidence Related to Plaintiff’s Claims Prior to July 17, 2022 The MOA filed excerpts of the CBA for the International Association of Fire Fighters (“IAFF”)²⁶ and maintains that the CBA “governed [Plaintiff]’s employment while he worked at AFD” and that “the exclusive remedy for an IAFF represented employee is through the contractual grievance process found at Article 7 of the IAFF CBA.”²⁷ The MOA also cited provisions in Anchorage Municipal Code’s Personnel Rules, § 3.30.005 et seq. (“Personnel Rules”), to support its contention that exhaustion of remedies was also required for non-represented positions with the MOA, such as the Battalion Chief position.²⁸ The record contains several letters relevant to the parties’ dispute.

On April 17, 2021, AFD issued a letter of counseling to Plaintiff regarding his work performance.²⁹ Plaintiff requested without success on two occasions in 2021 that 26 Plaintiff questions the authenticity of the MOA’s exhibit at 8-1. Docket 23 at 6.

The MOA asserts that “[c]onsidering the public nature of the CBA and [Plaintiff]’s own submission of portions of it, there are no reasonable grounds to contest the CBA’s authenticity.” Docket 26 at 3. ²⁷ Docket 8 at 6. ²⁸ Docket 26 at 10–11. ²⁹ Docket 1-1 ¶ 11; Docket 23-1 ¶ 5. the letter of counseling be removed from his personnel file.³⁰ On November 9, 2021, Plaintiff wrote to his union representative requesting that the union file a formal grievance against the MOA.³¹ Plaintiff’s November 9, 2021 letter states, Yesterday (8NOV2021), I had a meeting with my supervisor, Chief Paulson, and “Matthew from HR.” This meeting was scheduled by Chief Paulson to discuss my recent request for a response to an earlier request that a letter of counseling be immediately removed from any personnel files.

I consider this letter of counseling and its directives to be an adverse administrative action. Since almost all of my recent absences (or historical absences) from work were for military service; and, according to the letter, my “limited attendance at work” was “a contributing factor” in the decision to take this action; I consider this to [be] discriminating and harassing based on my military service.

I requested that a Union representative be present at this meeting. I was told a Union representative would be present, but one did not show for the meeting. The meeting did not result in the resolution I was seeking, so I would now like to file a formal grievance. I ask that you file a grievance on my behalf against the MOA for violations of 14.9 Military Leave in our Labor Contract Agreement (LCA) and the Uniformed Service Employment and Reemployment Rights Act (USERRA).

I am seeking further remedy for a long history of violations under USERRA. Remedies sought include, but are not limited to, corrected personnel files, lost wages and benefits, lost promotional opportunities, future pension adjustments, attorney's fees, and emotional distress.³² On November 30, 2021, union counsel for IAFF wrote to Plaintiff that union 30 Docket 23-1 ¶ 5.

31 Dockets 19-2, 31-2. 32 Dockets 19-2, 31-2. counsel had reviewed Plaintiff's "concerns as to [his] military service, USERRA, and [his] employment with the Anchorage Fire Department" and had elected not to assert Plaintiff's grievance.³³ Counsel stated, "[b]ased upon our review of the facts and law, there is no reasonable chance of success in pursuing a grievance based on the letter of counseling you received last April" and "[i]t is our opinion after... review that a grievance asserting a violation of the CBA would not be successful."³⁴ Additionally, union counsel notified Plaintiff that "IAFF's representation extends to rights under the CBA and not to independent legal claims such as USERRA that are not otherwise covered in the contract."³⁵ Union counsel also informed Plaintiff that "[y]ou now have the right, at your own expense, to retain counsel or otherwise proceed independently to advance a claim with the City."³⁶ On December 2, 2021, Plaintiff lodged a complaint with the DOL.³⁷ He alleged his promotional opportunities for the positions of AFD Safety Officer and AFD Senior Fire Captain were affected by the promotional board's discrimination against him for his military service.³⁸ As noted above, the record also contains a letter dated December 21, 2021, 33 Docket 23-2.

34 Docket 23-2. 35 Docket 23-2. 36 Docket 23-2. 37 Docket 23-1 ¶ 7, Docket 31-3. 38 Docket 31-3 at 2, 5. from the DOL investigator to the MOA regarding Plaintiff's request to the DOL "in determining and exercising his employment rights under USERRA[.]"³⁹ The letter notifies the MOA of Plaintiff's claims, including the claim that his military service was a motivating factor in his lack of promotion at the AFD.⁴⁰ In a letter dated May 2, 2022, the DOL investigator notified Plaintiff that the agency had investigated Plaintiff's USERRA claim against the MOA and did not "find that the evidence supports a violation of USERRA."⁴¹ The DOL informed Plaintiff that he had "the right to request a referral of your claim to the U.S. Attorney General," and "the right to seek private counsel at your own expense, or to file a lawsuit against Municipality of Anchorage (MOA) - Anchorage Fire Department (AFD) in a court of competent jurisdiction."⁴² B. Alaska's Statute of Limitations for Contracts Bars All Plaintiff's Contract Claims Prior to July 17, 2022 In Alaska, a three-year statute of limitations applies to breach of contract claims.⁴³ "Reliance on a statute of limitations is ordinarily an affirmative defense which must be pleaded and proved by the defendant."⁴⁴ And, the Alaska Supreme 39 Docket 31-4 at 1.

40 Docket 31-4 at 1. 41 Docket 23-3. 42 Docket 23-3. 43 Alaska Stat. 09.10.053. 44 Hitt v. J.B. Coghill, Inc., 641 P.2d 211, 212 (Alaska 1982). Court "look[s] upon the defense of statute of limitations with disfavor and will strain neither the law nor the facts in its aid."⁴⁵ But if a claim is not filed within the applicable statute of limitations, dismissal is proper when the plaintiff makes no argument that he was unaware of his claims when they accrued.⁴⁶ And, when the "statute of

limitations defense is apparent on the face of the complaint and no question of fact exists,” dismissal is appropriate.⁴⁷ Plaintiff’s letter to his union representative on November 9, 2021 and the corresponding notice of right to sue letter from union counsel on November 30, 2021 show that Plaintiff asked his union to grieve the April 2021 letter of counseling on his behalf at that time and when the union refused to do so, union counsel notified him of his right to pursue his claims in a lawsuit.⁴⁸ It is undisputed that Plaintiff did not file any further grievances under the CBA after November 9, 2021.

Although Plaintiff alleges that his DOL complaint tolled the statute of limitations, the Court need not decide that issue at this time, for this lawsuit is still untimely for all contract claims that arose prior to July 17, 2022.⁴⁹ Even assuming ⁴⁵ *Jackson v. Municipality of Anchorage*, 375 P.3d 1166, 1170 (Alaska 2016). ⁴⁶ *Robinson v. Alaska Hous. Fin. Corp.*, 442 P.3d 763, 769 (Alaska 2019) (dismissing self-represented plaintiff’s complaint for failure to bring tort and contract claims within the two and three year statutes of limitations when the plaintiff made no argument that he was unaware of his claims when they accrued).

⁴⁷ *Hebert v. Honest Bingo*, 18 P.3d 43, 47 (Alaska 2001). ⁴⁸ Dockets 19-2, 23-2, 31-2. ⁴⁹ Docket 23 at 11 (citing *Beegan v. State of Alaska, DOT&PF*, 195 P.3d 134, 143 (Alaska 2008) (holding the plaintiff’s claim was equitably tolled during the pendency of the proceedings before the statute of limitations was tolled between the time Plaintiff filed his DOL complaint on December 2, 2021 and the time the DOL issued its right to sue letter on May 2, 2022,⁵⁰ the three-year statute of limitations for contracts expired by the time Plaintiff filed this action in Alaska State Court on July 17, 2025 for any breach of contract claims prior to July 17, 2022.⁵¹ Therefore, the MOA’s motion for summary judgment is granted for Plaintiff’s claims under the CBA that predate July 17, 2022, including the April 2021 letter of counseling.

C. Plaintiff’s Contract Claims Under the CBA from late 2022 and 2025 May Go Forward Plaintiff alleges that following his November 2021 grievance, “AFD has either wrongly failed to promote [Plaintiff] like in the 2022 Battalion Chief promotional testing, or AFD has wrongly failed to provide [Plaintiff] reasonable accommodations to compete for promotion after a known conflict with promotional testing due to military service,” including: “(1) the 2022 Senior Fire Captain promotional testing, (2) the 2025 Senior Fire Captain promotional testing, and (3) the 2025 Battalion Chief promotional testing.”⁵² The MOA asserts that because Plaintiff failed to separately grieve his the Alaska State Commission for Human Rights)).

⁵⁰ In its reply, the MOA asserts that the DOL letter relates to Plaintiff’s USERRA claim, not his CBA contract claims. Docket 26 at 11–12. The Court agrees. In its May 2, 2022 letter, the DOL states, “we do not find that the evidence supports a violation of USERRA.” Docket 23-3. ⁵¹ Docket 1-1. ⁵² Docket 23 at 4; see also Docket 23-1 ¶ 8, Docket 26-1 ¶ 4, Docket 31-3 at 2. contract claims for lost promotional opportunities in 2022 and 2025, he failed to exhaust his

remedies under the CBA or Anchorage Municipal Code and cannot maintain these claims in this action.⁵³ In his motion for leave to supplement, Plaintiff maintains that “the evidence shows he need not file repetitive grievances because his union and the DOL heard him, but decided not to act on his behalf” in November 2021 and May 2022 and this “futility issue[]” is “for the jury to resolve.”⁵⁴ The MOA counters that the IAFF grievance process is “rigorous” and “routinely works for represented employees at the Anchorage Fire Department.”⁵⁵ The MOA asserts that the union’s decision not to pursue Plaintiff’s November 9, 2021 grievance “does not illustrate [that] the grievance procedures themselves are inadequate or seeking to access them [are] futile.”⁵⁶ In Alaska, “an employee must first exhaust his contractual or administrative remedies, or show that he was excused from doing so, before he may pursue a direct judicial action against his employer.”⁵⁷ This duty to exhaust also applies to 53 Docket 26 at 10–11 (“[A]pplications for promotions to non-represented positions... had to be grieved under the Anchorage Municipal Code.”) 54 Docket 31 at 2-3.

55 Docket 32 at 5–6. 56 Docket 32 at 6. 57 *Beard v. Baum*, 796 P.2d 1344, 1348 (Alaska 1990) (quoting *Casey v. City of Fairbanks*, 670 P.2d 1133, 1136 (Alaska 1983)). good faith and fair dealing claims.⁵⁸ But, “where the administrative remedy is inadequate or where the pursuit of the administrative remedy would be futile due to the certainty of an adverse decision,” the requirement to exhaust is excused.⁵⁹ And “[i]n Alaska... a municipal employee’s failure to exhaust contractual remedies may be excused by showing that the union refused to participate in the grievance process whether or not the union’s refusal was wrongful.”⁶⁰ The failure to exhaust administrative remedies is an affirmative defense, and the party raising the affirmative defense generally bears the burden of proof as to that issue.⁶¹ In this case, neither party disputes that Plaintiff did not grieve any of the AFD’s alleged denials of promotional opportunities for positions Plaintiff sought in 2022 and 2025.

However, there are factual questions as to which positions he alleges he was denied and whether the pursuit of his contract remedies was futile. On the slim record presently before the Court, summary judgment to the MOA on this issue is unwarranted.

Accordingly, summary judgment is denied as to Plaintiff’s contract claims arising on or after July 17, 2022. 58 *Grant v. Anchorage Police Dep’t*, 20 P.3d 553, 555 (Alaska 2001) (affirming summary judgment against plaintiff’s good faith and fair dealing claim for failure to exhaust his contractual remedies under the collective bargaining agreement). 59 *Romulus v. Anchorage School Dist.*, 910 P.2d 610, 615 (Alaska 1996) (internal quotations and citation omitted).

60 *Wilson v. Municipality of Anchorage*, 977 P.2d 713, 724 (Alaska 1999). 61 *Higgins v. Municipality of Anchorage*, 810 P.2d 149, 150 (Alaska 1991) (“The trial court had denied the municipality’s affirmative defense that Higgins’s claim was barred by his failure to exhaust administrative remedies.”). IV. Municipal Whistleblower Ordinance and Discrimination Claims

Plaintiff alleges the MOA discriminated and retaliated against him because he had filed the complaint with the DOL regarding the negative treatment he received at the AFD due to his military service.⁶² He also alleges that the MOA discriminated and retaliated against him because of his military service.⁶³ The MOA seeks summary judgment for Plaintiff's whistleblower claims.

It asserts that Plaintiff's claim under AS 39.90.130 fails because the MOA is not subject to that state statute.⁶⁴ While this is true, the Court will proceed with an analysis of Plaintiff's whistleblower claim under the Anchorage Municipal Code ("AMC") 3.75.010 et seq., which mirrors AS 39.90.130 and provides in relevant part: The municipality may not discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because: 1.

The employee, or person acting on behalf of the employee, reports to a public body or public official on a matter of public concern; or 2. The employee participates in a court action, an investigation, a hearing or an inquiry held by a public body on a matter of public concern.⁶⁵ 62 Docket 1-1 ¶ 14. 63 Docket 1-1 ¶¶ 13–16, 18, 22–23; Docket 1-1 at 5 ¶ D. 64 Docket 8 at 10–11.

65 AMC 3.75.030 A. Although AMC 3.75.010 et seq. does not include a statute of limitations, the statute of limitations for torts in Alaska is two years.⁶⁶ And, the Alaska Supreme Court has held that the two year statute of limitations governs state law claims of unlawful discrimination.⁶⁷ At oral argument, the parties appeared to agree that the applicable limitations period for Plaintiff's whistleblower and discrimination claims is two years.

While the record is sparse, Plaintiff avers that the AFD failed to promote him to Battalion Chief in August 2022.⁶⁸ He also states that the AFD failed to provide him with reasonable accommodations to compete for a promotion to Senior Fire Captain in 2022 and 2025 and to Battalion Chief in 2025.⁶⁹ Plaintiff alleges the AFD took these actions against Plaintiff due to his military service.⁷⁰ He also alleges the AFD retaliated against him for whistleblower activity — i.e. his DOL complaint.⁷¹ When Plaintiff filed this case in Alaska State Court in July 2025, the two-year statute of limitations for any 2022 whistleblower and related tort claims had run.

66 Alaska Stat. § 09.10.070. 67 Russell, 743 P.2d at 374 ("Russell conceded below, and does not now argue to the contrary, that 09.10.070 governs both her state and federal law claims concerning unlawful discrimination."). 68 Docket 23-1 ¶ 8. 69 Docket 23-1 ¶ 8. 70 Docket 23-1 ¶ 9. 71 Docket 23 at 9–10.

Accordingly, the MOA is entitled to summary judgment on all such claims related to 2022 promotions. With respect to the 2025 promotion claims, the MOA asserts that Plaintiff's DOL complaint in December 2021 is too remote in time to form the basis of any adverse employment actions by AFD in 2025.

The MOA adds that the Complaint fails to plausibly allege a causal connection between the DOL complaint and any promotional actions by the AFD in 2025.⁷² The MOA cites *Smith v. Anchorage School District* in support of its assertion that the greater the interval of temporal proximity between a discrimination complaint and an adverse employment actions, the more “the hint of causation weakens.”⁷³ While there is clearly a considerable interval of time between Plaintiff’s 2021 DOL Complaint and 2025, there remain factual questions regarding Plaintiff’s whistleblower activities and other tort claims related to the 2025 promotions.

On the relatively sparse record before the Court, Defendant has not met its burden of showing that “there is an absence of evidence to support the nonmoving party’s case.”⁷⁴ Accordingly, summary judgment as to Plaintiff’s 2025 whistleblower and related tort claims is denied.

V. Leave to Amend the Complaint Plaintiff requests leave to amend his Complaint in the event the Court elects ⁷² Docket 26 at 17. ⁷³ 240 P.3d 834, 841 (Alaska 2010); Docket 26 at 17 n. 59 ⁷⁴ *Celotex Corp.*, 477 U.S. at 325. not to convert the MOA’s motion to dismiss to a motion for summary judgment.

Because the motion to dismiss has been converted to a summary judgment motion, leave to amend the Complaint on this basis is denied. Moreover, Plaintiff has again failed to demonstrate or meaningfully address good cause to modify the Scheduling and Planning Order’s deadline for amending pleadings as required by Rule 16(b)(4)⁷⁵ and has again failed to comply with Local Civil Rule 15.1, which requires a party moving to amend a pleading to attach the proposed amended pleading as an exhibit to the motion.

Accordingly, Plaintiff’s cross-motion for leave to amend his Complaint is denied. CONCLUSION IT IS HEREBY ORDERED: 1. Defendant’s Motion to Dismiss has been converted to a motion for summary judgment under Federal Civil Rule 12(d). 2. Defendant’s converted motion for summary judgment at Docket 8 is GRANTED in part and DENIED in part as follows: a. Summary judgment is GRANTED to the MOA on all contract claims arising prior to July 17, 2022; b. Summary judgment is GRANTED to the MOA on all Plaintiff’s whistleblower and state law tort claims arising prior to July 17, 2023; ⁷⁵ Docket 11; Docket 21 at 3. c. Summary judgment is DENIED for all other claims.

3. Plaintiff’s cross-motion to amend the Complaint is DENIED. 4. Plaintiff’s Motion for Leave to Supplement Record at Summary Judgment at Docket 31 is GRANTED. 5. Defendant shall file its Answer within 14 days of the date of this order. DATED this 30th day of March, 2026, at Anchorage, Alaska. /s/ Sharon L. Gleason UNITED STATES DISTRICT JUDGE