

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

DOUG BECKER,

Plaintiff,

vs.

KIKIKTAGRUK INUPIAT  
CORPORATION

Defendant.

Case No. 3:09-cv-00015-TMB

O R D E R

Granting in Part and Denying in Part Defendant's  
Motion for Summary Judgment Against Plaintiff  
Becker

**I. INTRODUCTION**

At Docket No. 37, Defendant Kikiktagruk Inupiat Corporation ("KIC") moved for summary judgment against Plaintiff Doug Becker ("Becker"). KIC requests that the Court find, as a matter of law, that Becker's claims for violation of Alaska's wage and hour laws, disparate treatment and retaliation under 42 U.S.C. § 1981, and wrongful discharge are unsupported. The motion has been fully briefed and is ripe for decision. For the reasons outlined below, KIC's motion is GRANTED in part and DENIED in part.

**II. BACKGROUND**

KIC is a Native Village Corporation organized under the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-28 (ANCSA). As with other native corporations organized under ANCSA, KIC's shares were originally distributed only to persons of Alaska Native descent. Although ANCSA imposes limits on transfer of corporate shares to non-Alaska Natives, there are no restrictions on who may receive shares through inheritance. No evidence has thus far

been presented to show how many of KIC's shareholders have a non-Alaska Native racial background.

KIC has instituted a policy establishing a hiring preference for its shareholders, as many other native corporations have. The policy reads as follows: "To the extent legally possible, KIC will give preference to its shareholders, shareholder spouses and shareholder dependents, provided they are qualified. Secondly, KIC will also give preference to shareholders of NANA, then to shareholders of other Alaska Native corporations."<sup>1</sup>

Over three years ago, KIC hired Becker to be the General Manager of KIC Hardware, Auto & Lumber, LLC, a hardware and auto parts store located in Kotzebue, AK.<sup>2</sup> The store is a wholly owned subsidiary of KIC. Becker began work in January 2007.<sup>3</sup> Becker is not a shareholder of KIC.

KIC terminated Becker on June 22, 2007. KIC alleges that Becker's termination was due to "ineffective management of personnel, demeaning treatment of employees, insufficient financial oversight of the KIC HAL store, and frequent travel."<sup>4</sup> The "frequent travel" cited was paid for by KIC.<sup>5</sup> After his termination, Becker received an email from KIC President Tim Schuerch in which Schuerch said that Becker was also terminated in part for his disregard of

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<sup>1</sup> Dkt. 37 at 3.

<sup>2</sup> Dkt. 38, Ex. 3 at 1.

<sup>3</sup> Dkt. 37 at 3.

<sup>4</sup> Dkt. 37 at 4.

<sup>5</sup> Dkt. 46, Exhibit A at 10.

KIC's shareholder hiring preference.<sup>6</sup> Becker filed this suit on October 23, 2008, and it was removed to this Court on January 26, 2009.

### III. LEGAL STANDARD

Summary judgment is appropriate if, when viewing the evidence in the light most favorable to the non-moving party, there are no genuine issues of material fact and the moving party is entitled to judgment in its favor as a matter of law.<sup>7</sup> The moving party bears the initial burden of proof as to each material fact upon which it has the burden of persuasion at trial.<sup>8</sup> This requires the moving party to establish, beyond controversy, every essential element of its claim or defense.<sup>9</sup> "When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the same evidence were to be uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case."<sup>10</sup>

Once the moving party has met its burden, the nonmoving party must demonstrate that a genuine issue of material fact exists by presenting evidence indicating that certain facts are so disputed that a fact-finder must resolve the dispute at trial.<sup>11</sup> The court must view this evidence

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<sup>6</sup> Dkt. 38, Ex. 3 at 2.

<sup>7</sup> Fed. R. Civ. P. 56 (c).

<sup>8</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

<sup>9</sup> *S. Calif. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003).

<sup>10</sup> *C.A.R. Transp. Brokerage Co., Inc. v. Darden Rest., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

<sup>11</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986).

in the light most favorable to the nonmoving party, must not assess its credibility, and must draw all justifiable inferences from it in favor of the nonmoving party.<sup>12</sup>

#### IV. DISCUSSION

Becker brought this suit alleging three causes of action. First, he alleged that KIC had violated Alaska's wage and hour laws by failing to pay him for overtime and unused vacation time.<sup>13</sup> Second, Becker brought two claims under 42 U.S.C. § 1981, one for disparate treatment based on his non-Alaska Native status, and one for retaliation due to his refusal to carry out the shareholder preference in his hiring activities.<sup>14</sup> Finally, Becker claims that his termination violates "public policy and federal and state statutes", and therefore violates the covenant of good faith and fair dealing and "constitute[s] the tort of wrongful discharge."<sup>15</sup> KIC argues in its motion for summary judgment that all of these claims fail because they are unsupported in fact or law. The Court will address each cause of action in turn.

##### **A. Becker Was an Executive Employee and Cannot Make a Wage and Hour Claim**

The Alaska Wage and Hour Act exempts from its coverage any person employed "in a bona fide executive, administrative, or professional capacity."<sup>16</sup> Under the Act, which incorporates federal regulations, a person is employed in a "bona fide executive capacity" if he (1) is "compensated on a salary or fee basis at a rate of not less than two times the state minimum

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<sup>12</sup> *Id.* at 225; *Soldano v. United States*, 453 F.3d 1140, 1143 (9th Cir. 2006).

<sup>13</sup> Dkt. 1, Ex. 1 at 5-6.

<sup>14</sup> Dkt. 1, Ex. 1 at 6-7.

<sup>15</sup> Dkt. 1, Ex. 1 at 7-8.

<sup>16</sup> AS § 23.10.055(a)(9)(A).

wage for the first 40 hours of employment each week”; (2) has as his “primary duty” the “management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof”; (3) “customarily and regularly directs the work of two or more other employees”; and (4) “has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.”<sup>17</sup>

It is undisputed that Becker made a salary in excess of the minimum to be considered an “executive employee”. As for the other factors listed above, KIC marshals evidence that Becker, as General Manager of the hardware store, engaged principally in management activities, including a) interviewing, selecting, and training employees, b) setting their pay and work schedules, c) directing the employees’ work, d) conducting performance reviews, e) disciplining employees, f) placing orders of merchandise and determining how much was needed, g) instituting security policies of his own choosing.<sup>18</sup>

This evidence is consistent with some of Becker’s own past statements. For example, in an email dated January 30, 2007, Becker wrote the following to an acquaintance:

The management here has basically given me complete autonomy in the operations of this store. Everything we do and how we do it is on the table without regard to how it may have been done in the past. If you have any suggestions about items we should look into carrying or ideas on how we can make this a more useful store to people in surrounding villages such as yourself, please feel free to share them with me any time.<sup>19</sup>

On Becker’s résumé, he states that, while employed by KIC, he had the duty to “[m]anage and

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<sup>17</sup> AS § 23.10.055(b); 29 C.F.R. § 541.100(a).

<sup>18</sup> *See generally* Dkt. 37 at 7-10.

<sup>19</sup> Dkt. 38, Ex. 1 at 1.

maintain all operations of ACE Hardware and NAPA Auto Parts stores” and to “[h]ire and supervise all store personnel.”<sup>20</sup>

In response to the evidence offered by KIC, Becker cites a few incidents that he believes show that he did not have the “requisite discretion to classify him as an exempt employee.”<sup>21</sup> First, he cites a March 29, 2007 email in which he complained to KIC President Tim Schuerch about employees who failed to show up on time, requiring Becker to spend more time at the store.<sup>22</sup> According to Becker, this email shows that he lacked the discretion to deal with lazy employees, because “if Becker had an option to hire more employees, or fire unproductive employees, he would have done so, thereby minimizing the hours that he had to work.”<sup>23</sup>

Becker also claims that his authority to hire and fire employees was “continually called into question” by his supervisors.<sup>24</sup> He cites as proof the fact that he was terminated at least in part for failing to enforce the shareholder hiring preference.<sup>25</sup> He also cites an incident in which the mother of an employee under his supervision contacted Schuerch to complain about her son’s treatment by Becker. According to Becker, the fact that Schuerch “actually took notice of the

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<sup>20</sup> Dkt. 37 at 10. Apparently the KIC hardware and auto parts store had a franchise agreement with ACE Hardware and NAPA Auto Parts, although the Court can find no mention of this fact in the exhibits submitted.

<sup>21</sup> Dkt. 46 at 9.

<sup>22</sup> Dkt. 46 at 8-9.

<sup>23</sup> Dkt. 46 at 9.

<sup>24</sup> Dkt. 46 at 9.

<sup>25</sup> Dkt. 46 at 9.

mother's complaints" is evidence that Becker lacked discretion to discipline employees.<sup>26</sup>

None of the evidence cited by Becker demonstrates that he lacked managerial authority. His difficulties with employees who failed to show up for work does not support the notion that he could not hire or fire employees. During his very brief tenure as store manager, Becker hired at least one employee, increased the pay rate of another, and changed another employee's status from salaried to hourly.<sup>27</sup> Becker's own brief seems to indicate that he hired several other people as well.<sup>28</sup> In light of this evidence, Becker cannot seriously contend that he lacked the ability to hire or fire employees.

Likewise, Becker's termination for failure to enforce the shareholder preference is irrelevant to the question of whether he had the authority to hire and fire employees. The definition of "authority to hire or fire other employees" for purposes of the Wage and Hour Act cannot possibly be limited to managers with the authority to hire whomever they choose without regard to the most basic corporate policies.<sup>29</sup> The Court notes that an "executive employee" may merely be one "whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight."<sup>30</sup> Surely, then, the definition also includes managers such as Becker who have the authority to hire and fire whomever they choose within the broad parameters of corporate policy.

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<sup>26</sup> Dkt. 46 at 9.

<sup>27</sup> Dkt. 38, Ex. 4 at 6.

<sup>28</sup> Dkt. 46 at 4.

<sup>29</sup> *See* 29 C.F.R. § 541.100(a).

<sup>30</sup> 29 C.F.R. § 541.100(a).

As for the incident with the parent of a store employee, the Court has reviewed the evidence submitted by Becker and concludes that it shows Becker indeed had considerable autonomy in his treatment of employees. After receiving the complaint from the employee's mother, Schuerch forwarded the message to Becker and said "maybe we can discuss at your convenience sometime today."<sup>31</sup> After Becker responded that he had "handled" the matter on his own, Schuerch responded, "I will trust you on this then and I will consider this matter resolved."<sup>32</sup> Schuerch's response can only be understood as deference to Becker's authority to deal with disciplinary issues on his own as store manager.

Becker further argues that the stated reasons for his termination imply that he did not have discretion to manage the store. According to Becker, his superiors' allegations were that he "failed to follow shareholder hiring policy, overly disciplined employees, and took trips on behalf of the company."<sup>33</sup> The Court has already noted that the shareholder policy did not divest Becker of his ability to hire and fire employees. Moreover, Becker's claim that he was accused of "overly disciplin[ing] employees" is not quite accurate. What Becker was accused of was considerably worse. The termination letter sent to Becker by KIC's VP of Operations, Grant Hildreth, told Becker that "[y]our demeaning treatment of employees whom you supervise will no longer be tolerated."<sup>34</sup> Whether or not the allegation of demeaning behavior was true, Becker's termination for such behavior says nothing about his discretion to discipline the

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<sup>31</sup> Dkt. 46, Ex. 1 at 5.

<sup>32</sup> Dkt. 46, Ex. 1 at 5.

<sup>33</sup> Dkt. 46 at 9.

<sup>34</sup> Dkt. 38, Ex. 1 at 1.

employees under his supervision.

Finally, Becker's termination for abuse of travel privileges does not show a lack of managerial discretion. The Court cannot seriously entertain the notion that a manager must have unconditional discretion to travel at corporate expense in order to be considered an "executive employee" for purposes of the Wage and Hour Act.

In summary, a reasonable finder of fact could not conclude that Becker was anything other than as "executive employee" as defined by the Alaska Wage and Hour Act.. He made sufficient wages to meet the definition, his primary responsibility was for managing the store, he supervised several other employees, and he had the authority to hire and fire, subject to corporate policies and the oversight of his superiors. None of the evidence supplied by Becker can reasonably be said to refute this evidence. Therefore, Becker's claim for compensation under the Wage and Hour Act is invalid, and the court must grant summary judgment against him on that cause of action.

**B. The Facts Presented are Insufficient to Determine Whether KIC is Subject to § 1981 Liability for its Application of the Shareholder Hiring Preference**

KIC argues that Becker's claims for disparate treatment and retaliation under 42 U.S.C. § 1981 must fail for multiple reasons, including 1) that Alaska Native Corporations are immune from suit under § 1981; 2) that Becker cannot show any evidence of disparate treatment, and 3) that the shareholder preference is not racially discriminatory.

1. Alaska Native Corporations are Not Immune from Suit Under § 1981

In his Complaint, Becker claims that, by terminating him for failing to implement the shareholder hiring policy, KIC "did violate the protections provided him within federal statute 42

U.S.C. § 1981, as amended by the Civil Rights Act of 1991, which prohibits disparate treatment and retaliation based on race.”<sup>35</sup>

In arguing for § 1981 immunity, KIC relies by analogy on Title VII of the Civil Rights Act of 1964, which exempts Native American tribes and Alaska Native corporations from suit for racial discrimination in employment.<sup>36</sup> KIC cites *Wardle v. Ute Indian Tribe*, 623 F.2d 670 (10th Cir. 1980), in which the Tenth Circuit held that, in employment cases, the tribal exemption of Title VII controls over more general civil rights statutes that do not specifically address employment.<sup>37</sup> Although the *Wardle* court did not discuss the application of § 1981 to Native corporations, its reasoning would seem to extend § 1981 immunity to any entity which is exempt from suit under Title VII.

In opposition, Becker cites *Aleman v. Chugach Support Services, Inc.*, 485 F.3d 206 (4th Cir. 2007), in which the Fourth Circuit refused to extend the same implicit exemption to Alaska Native corporations, even while it held that Indian tribes were exempt because “the sovereign immunity of Indian tribes ‘is a necessary corollary to Indian sovereignty and self-governance[.]’”<sup>38</sup> Given the circuit split on this issue, the Court is left to determine for itself whether entities exempt from Title VII employment discrimination suits should be likewise immune under § 1981.

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<sup>35</sup> Dkt. 1, Ex. 1 at 7.

<sup>36</sup> 42 U.S.C.A. § 2000e(b).

<sup>37</sup> *Wardle* at 673.

<sup>38</sup> *Aleman* at 213.

In interpreting a statute, the Court must first look at its plain language.<sup>39</sup> On its face, § 1981 contains no exemption for Alaska Native corporations. However, the Supreme Court has held that “[i]f a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity.”<sup>40</sup> Thus, the Court may read a Native corporation exemption into § 1981 if and only if any other reading would be absurd. The *Aleman* court held that it would not be absurd for Congress to differentiate between Title VII and § 1981 with regard to Native corporation immunity:

We find nothing implausible about Congress' enacting overlapping causes of action or deciding that Alaska Native Corporations should be exempt from suit under Title VII, but not Section 1981. While both Section 1981 and Title VII provide remedies against racial discrimination, Title VII imposes obligations that are in some ways more expansive. To take the most obvious example, Title VII addresses not simply discrimination based upon race or color but also discrimination based upon “religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a). A legislature could easily desire to subject only certain entities to the additional strictures of Title VII, while leaving in place the more limited cause of action in Section 1981 that has long been a part of our anti-discrimination law.<sup>41</sup>

In addition, the *Aleman* court noted that the enforcement scheme of Title VII gives plaintiffs recourse with the EEOC, which § 1981 does not.<sup>42</sup>

Given the lack of any stated exemptions within the plain language of § 1981, the Court is unwilling to read an exemption for Native corporations into the statute when there is at least some reasonable explanation why Congress might exempt them from one discrimination statute

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<sup>39</sup> *U.S. v. Neal*, 976 F.2d 601, 602 (9th Cir. 1992) (citing *United States v. Van Winrow*, 951 F.2d 1069, 1072 (9th Cir.1991) (per curiam)).

<sup>40</sup> *In re Southwest Aircraft Services, Inc.*, 831 F.2d 848, 852 (9th Cir. 1987) (quoting *Church of the Holy Trinity v. United States*, 143 U.S. 457, 460 (1892)).

<sup>41</sup> *Aleman* at 212.

<sup>42</sup> *Aleman* at 212-13.

and not another. Therefore, KIC's argument for § 1981 immunity fails.

2. Becker Has Failed to Allege Facts Establishing a Disparate Treatment Claim

Even if Becker were fired for failing to implement a policy prohibited by § 1981, he has failed to allege any facts which would establish a claim for disparate treatment. Becker himself seems to have realized that fact, since he states in his brief that he

does not allege that the disparate treatment that he noticed, wherein his supervisors showed Native American preference in job performance, resulted in any adverse employment action. Becker listed the instances of disparate treatment referenced in his complaint in order to establish a clear link to the racial element of his retaliation claim.<sup>43</sup>

The facts as alleged by Becker can at most support a retaliation claim under § 1981, not a disparate treatment claim. Therefore, KIC's Motion for Summary Judgment will be granted as to the cause of action for disparate treatment under § 1981.

3.. There is Insufficient Evidence to Determine if the Shareholder Preference Was Applied in a Racially Discriminatory Manner

Notwithstanding the lack of a blanket exemption from liability under § 1981, KIC cannot be held liable unless its shareholder hiring preference is held to be racially discriminatory. The question of whether a racial preference for native corporation shareholders is racially discriminatory was recently addressed in another District of Alaska case, *Conitz v. Teck Alaska, Inc.*<sup>44</sup> In *Conitz*, Judge Beistline held that the shareholder hiring preference of Teck Alaska, a mining company operating under contract on NANA Regional Corporation lands, was not racially discriminatory under Title VII. Judge Beistline noted that the shareholder preference was

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<sup>43</sup> Dkt. 46 at 14.

<sup>44</sup> Case No. 4:09-cv-0020-RRB (D. Alaska, Jan. 20, 2010).

not racially discriminatory on its face, that in fact a number of NANA shareholders were not Alaska Natives, and that Conitz had not presented evidence that the shareholder preference was applied in a racially discriminatory way.<sup>45</sup> Conitz had asserted that the shareholder preference was a “proxy” for race, given that the overwhelming majority of shareholders were Alaska Natives, but Judge Beistline rejected this argument insofar as the racial disparity between shareholders and non-shareholders was the result of Congressional action, not private discrimination.<sup>46</sup>

KIC correctly notes that while *Conitz* was a Title VII case, its analysis of what constitutes “racial” discrimination is applicable by analogy in this case. KIC’s shareholder preference, like NANA’s, is not racially discriminatory on its face. If Becker had been terminated for failing to implement the preference as written, he could have no § 1981 claim for either disparate treatment or retaliation.

However, the Court’s analysis is complicated by some of Becker’s allegations as to how the shareholder preference was applied. According to Becker, he was asked at a May 21, 2007 KIC board meeting “why KIC HAL shareholder hire percentages were low.”<sup>47</sup> Becker says that he told his supervisors “that he had only hired one Caucasian employee, and that everyone else

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<sup>45</sup> See generally Dkt. 45, Ex. 1.

<sup>46</sup> Dkt. 45, Ex. 1 at 8-9; see also *Bonilla v. Oakland Scavenger Co.*, 697 F.2d 1297, 1302-03 (9th Cir. 1982) (shareholder employment preference held to be racially discriminatory where only Italian-Americans were chosen to be shareholders, and some Italian-Americans benefitted from the policy even though they were only friends of shareholders).

<sup>47</sup> Dkt. 46 at 4.

that had been hired complied with the company preferential hire policy.”<sup>48</sup> Becker then claims he was told at the same meeting “that some of the shareholders he had classified as shareholders were not counted as such by KIC’s board because they were not Native Alaskans.”<sup>49</sup>

If, in fact, KIC has a preference only for shareholders who are Alaska Natives, rather than all shareholders, that would be a classic example of racial discrimination. If Becker were terminated for failing to enforce such a policy, he may indeed be able to make a claim under § 1981.

The Court would have preferred that Becker provide specific examples of non-Alaska Native shareholders that he had hired, or discuss precisely how KIC’s board had told him he should carry out the policy. Nonetheless, on summary judgment, the Court cannot assess the credibility of Becker’s allegations, and must draw all justifiable inferences in his favor.<sup>50</sup> If KIC could supply evidence that in fact Becker had never hired any shareholders of non-Alaska Native descent, then that would prove conclusively that Becker’s allegations are false.<sup>51</sup> Instead, KIC failed to address Becker’s allegation of discrimination between Alaska Native and non-Alaska

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<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> *Anderson v. Liberty Lobby, Inc.* at 225; *Soldano v. United States*, 453 F.3d 1140, 1143 (9th Cir. 2006).

<sup>51</sup> In *Conitz*, only 65 of NANA’s 11,655 shareholders were non-Alaska Natives, or in other words only 0.55% of the shareholder population. Dkt. 46 at 4. Given the strict rules for conveyance of shares to non-Natives, the Court would be rather surprised if the percentage were much different for KIC. Thus, the Court looks with skepticism on Becker’s claim that he had hired what seem to be several non-Alaska Native shareholders during his very brief (less than six months) tenure as store manager. If the claim is untrue, KIC should have little trouble disproving it.

Native shareholders in its reply brief. Despite the vagueness of Becker's allegations, the lack of any evidence to the contrary requires the Court to infer, for purposes of summary judgment only, that the allegation is true.

KIC argues that "Becker has failed to provide facts supporting a causal link between his protest and his termination."<sup>52</sup> But Becker's termination was undisputedly based at least in part on his refusal to follow the shareholder preference to KIC's expectations. KIC's President explicitly so stated in his post-termination email to Becker. Therefore, if indeed Becker was told to discriminate against non-Alaska Native shareholders, then the causal link between his protest and his termination is readily apparent.

Thus, the Court must deny KIC's Motion for Summary Judgment as to Becker's § 1981 retaliation claim. Should KIC be able to supply sufficient evidence to disprove Becker's allegation of discrimination against non-Alaska Native shareholders, the Court will entertain a successive summary judgment motion on this issue without prejudice.

**C. The Court Will Not Dismiss Becker's Tort Claim for Wrongful Termination Until the Racial Discrimination Issue is Resolved**

KIC argues that Becker's tort claim for wrongful termination in violation of public policy is invalid because it is based on an assumption that the shareholder preference violates an explicit public policy. Of course, this argument only carries weight if the Court determines that in fact the policy was permissible under federal discrimination law. Because that issue has not been conclusively resolved, summary judgment on the tort claim for wrongful discharge is not appropriate at this time.

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<sup>52</sup> Dkt. 50 at 11.

**D. Becker's Alleged Failure to Mitigate Damages Does Not Warrant Summary Judgment**

Finally, KIC argues that all of Becker's claims must be dismissed because he allegedly failed to mitigate his damages by refusing to seek work for which he was qualified after KIC terminated him. It is true that in a contract or tort case, the plaintiff has an obligation to mitigate his damages. However, the legal consequence for failure to mitigate damages is a pro tanto reduction in the damages award, not automatic dismissal, and the burden is on the defendant to prove the extent of the plaintiff's failure to mitigate.<sup>53</sup> Thus, the Court has no reason to dismiss all of Becker's claims unless KIC can show as a matter of law that all of Becker's alleged damages are a consequence of his failure to mitigate. KIC has not met this burden, and dismissal is therefore unwarranted.

**V. CONCLUSION**

Becker cannot make any wage and hour claims against KIC because he is an "executive employee" exempt from coverage under the Alaska Wage and Hour Act. He has failed to allege any facts which would prove a claim for disparate treatment based on race. However, he has alleged that he was terminated for failing to carry out a policy which discriminated in favor of Alaska Native shareholders and against non-Native shareholders. Such an allegation, if true, may support a claim for retaliation under 42 U.S.C. § 1981, or a claim for wrongful termination in violation of public policy. For the reasons outlined above, the Court **GRANTS** Defendant's Motion for Summary Judgment at Docket No. 37 with regard to Becker's wage and hour claims, and his claim for disparate treatment under 42 U.S.C. § 1981. The Court **DENIES WITHOUT**

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<sup>53</sup> *Holbrook Chipper, Inc. v. Georgia-Pacific Corp.*, 81 F.3d 168 (Table) at \*1 (9th Cir. 1996).

**PREJUDICE** as to Becker's claims for retaliation under § 1981 and for wrongful termination.

Dated at Anchorage, Alaska, this 12th day of August, 2010.

/s/ Timothy Burgess

Timothy M. Burgess  
United States District Judge