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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

DONTE L. KELLY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MATANUSKA ELECTRIC ASSOCIATION, )  
 INC., TUCKERMAN BABCOCK, and )  
 WAYNE D. CARMONY, )  
 )  
 Defendants. ) Case No. 3:09-CV-00027-HRH  
 )  
 \_\_\_\_\_ )

**STIPULATION RE IME/EMOTIONAL DISTRESS CLAIMS**

Plaintiff Donte L. Kelly ("Kelly"), by and through counsel of record Ingaldson, Maassen & Fitzgerald, P.C., and defendants Matanuska Electric Association, Inc. ("MEA"), Tuckerman Babcock ("Babcock") and Wayne D. Carmony ("Carmony") (MEA, Babcock and Carmony collectively "Defendants"), by and through counsel of record Turner & Mede, P.C., hereby stipulate and agree as follows ("Stipulation"):

Defendants agree to refrain from requiring that Kelly undergo a FRCP 35(a) psychological independent medical examination ("IME"), either voluntarily or pursuant to a court order, in return for Kelly agreeing to each of the following conditions:

- A. Kelly's emotional distress and humiliation (together "Emotional Distress") claims do not include any of the following:
  - 1. any claim for intentional or negligent infliction of Emotional Distress;
  - 2. any claim of any mental, psychological, or psychiatric injury or disorder;
  - 3. any claim of any unusually severe Emotional Distress; or
  - 4. any claim for anything more than garden-variety Emotional Distress.
- B. Kelly will not offer any expert (or treating health professional) testimony to support any of his Emotional Distress claims.
- C. Any Emotional Distress Kelly allegedly suffered that was legally caused by any alleged racial discrimination, civil rights violation, retaliation, harassment, and/or hostile working environment by Defendants ceased on December 2, 2009.

D. This Stipulation shall be set forth in a jury instruction.

s/ James M. Boardman (consent)  
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**Certificate of Service**

I hereby certify that on 22<sup>nd</sup> day of March, 2010, a copy of the foregoing Stipulation re IME/Emotional Distress Claims was served on William H. Ingaldson electronically.

s/ Patricia A. Vecera