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 PACIFIC GAS AND ELECTRIC COMPANY

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

12 JIMMIE R. CHAMBERS,
 13 Plaintiff,
 14 v.
 15 PACIFIC GAS & ELECTRIC COMPANY, and
 16 DOES 1 through 10, inclusive,
 17 Defendants.

No. C 03-04137 MEJ

**DEFENDANT PACIFIC GAS AND
 ELECTRIC COMPANY'S MOTION
 IN LIMINE TO EXCLUDE
 EVIDENCE OF ALLEGED
 REMARKS REGARDING
 CHAMBERS' AGE**

(Motion In Limine No. 4 of 7)

Date: March 3, 2005
 Time: 10:00 a.m.
 Courtrm: B, 15th Floor
 Before: Hon. Maria Elena James

Trial Date: March 28, 2005

22
 23 Defendant Pacific Gas and Electric Company (PG&E) submits the following motion in
 24 limine for an order excluding any evidence related to alleged statements made by Susan
 25 Cunningham and Ken Bezner, PG&E employees, in reference to Chambers' age. Chambers
 26 seeks to introduce this evidence to establish his claim for age discrimination. Cunningham and

1 Bezner took no part in any adverse employment decisions. Therefore, as a matter of law their
2 alleged comments are irrelevant and inadmissible in this case.

3 4 **ARGUMENT**

5 Chambers claims that Ms. Cunningham, who spoke with Chambers in October 2000 about
6 his desire to return to work, twice asked Chambers how old he was. In his deposition, Chambers
7 stated that he did not know what Ms. Cunningham meant by these questions and that she may
8 have meant nothing at all by the questions. Ms. Cunningham was a human resources advisor at
9 the time and took no part in any decision regarding Chambers' return to work, eligibility for the
10 two jobs he sought, or Chambers' termination in 2004.

11
12 Chambers also claims that he had a conversation regarding his desire to return to work
13 with Ken Bezner, a supervisor at a PG&E facility, during which Mr. Bezner allegedly said,
14 "Maybe this job's passed you up, Jim." Bezner, according to Chambers, then laughed and said,
15 "Oh, I don't think anything would pass you up." Bezner played no role in making decisions
16 regarding Chambers' bidding rights to jobs or Chambers' termination in 20034. Bezner's
17 comment and Ms. Cunningham's question form the entire basis for Chambers' age discrimination
18 claim.

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20 Derogatory comments are relevant only when attributable to the person who made an
21 adverse employment decision. Schreiner v. Caterpillar, Inc., 250 F.3d 1096, 1099 (7th Cir. 2001),
22 citing Cianci v. Pettibone Corp., 152 F.3d 723, 727 (7th Cir. 1998). Furthermore, the comments
23 must be related to the adverse decision. Cianci, 152 F.3d at 727. "Stray workplace comments
24 unrelated to the alleged discriminatory employment decision are not sufficient to support an
25 inference of discrimination." Schreiner, 250 F.3d at 1099 (citations omitted); see also Merrick v.
26 Farmers Insurance Group, 892, F.2d 1434, 1438-39 (9th Cir. 1990).

27
28 In this case, it is undisputed that neither Ms. Cunningham nor Mr. Bezner played any role

1 in the decision regarding Chambers' bidding rights to jobs or to terminate Chambers in 2004.
2 Their alleged comments were made years before Chambers' termination. Finally, these alleged
3 remarks are hardly characterized as derogatory in any manner.

4 Without providing some legal authority in support of the relevance of these remarks, they
5 are inadmissible under Federal Rules of Evidence 401 as irrelevant to the determination of
6 matters alleged in the Complaint. Any claimed relevance is substantially outweighed by the
7 prejudicial effect and, therefore, inadmissible under Fed.R.Evid. 403.

8
9 For these reasons, all evidence concerning the purported remarks of Susan Cunningham
10 and Kenneth Bezner regarding Chambers' age should be excluded.

11
12 DATED: February 11, 2005

13 STEPHEN L. SCHIRLE
14 REBECCA C. HARDIE
15 DARREN P. ROACH

16 By: /s/ REBECCA C. HARDIE
17 REBECCA C. HARDIE

18 Attorneys for Defendant
19 PACIFIC GAS AND ELECTRIC COMPANY
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