

1 personal knowledge; Lanahan only objects to the exclusion of the discriminatory statements made
2 by Jerry Boyd which do not relate to age or gender. *Id.*

3 **Evidence of Discriminatory Statements**

4 Evidence is relevant if it has “any tendency to make the existence of any fact that is of
5 consequence to the determination of the action more probable or less probable than it would be
6 without the evidence.” FED. R. EVID. 401. Here, Lanahan has filed a civil rights complaint alleging
7 that SNHD, through Jerry Boyd, violated Title VII of the Civil Rights Act of 1964 and the Age
8 Discrimination in Employment Act (“ADEA”) by terminating her because of her gender and age.

9 Mr. Boyd is alleged to have made four nondiscriminatory statements not based on age or
10 gender: (1) the only good Indian is a dead Indian; (2) the U.S. should close the borders to keep all
11 the Mexicans out; (3) fags should be hunting targets; and (4) the KKK had some good ideas but
12 they went about it in the wrong way. The court finds that these statements are relevant because they
13 allude to Mr. Boyd’s general discriminatory bias. Moreover, the statements make it more probable
14 than not that Mr. Boyd made discriminatory statements to Lanahan and fired her solely on the basis
15 of her age and gender.

16 However, the court may exclude otherwise relevant evidence “if its probative value is
17 substantially outweighed by the danger of unfair prejudice.” FED. R. EVID. 403. Evidence may be
18 excluded when there is a significant danger that the jury might base its decision on emotion or
19 when non-party events would distract reasonable jurors from the real issues in a case. *See Tennison*
20 *v. Circus Circus Enterprises, Inc.*, 244 F.3d 684, 690 (9th Cir. 2001); *U.S. v. Layton*, 767 F.2d 549,
21 556 (9th Cir. 1985).

22 In this case, admitting the evidence that Mr. Boyd made discriminatory statements
23 concerning race and sexual orientation raises a significant danger that the jury may find against
24 SNHD solely because of Mr. Boyd’s wide-ranging discrimination rather than any direct evidence of
25 discrimination in SNHD’s decision to fire Lanahan. Accordingly, the court finds that the probative
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1 value of the proposed discriminatory statements is substantially outweighed by the unfair prejudice
2 that would result if the statements were admitted.

3 IT IS THEREFORE ORDERED that defendant's motion in limine (Doc. #54) is
4 GRANTED.

5 IT IS SO ORDERED.

6 DATED this 2nd day of November, 2009.



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9 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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