



Recommendation (“R&R”) that the Court deny Covenant’s motions to strike the Amended Complaint; that Covenant’s motions to strike the initial Complaint be closed as moot; and that Plaintiff’s motion to dismiss be closed, as it is not a motion but rather Plaintiff’s opposition to the motion to strike. No objections to the R&R were filed. For the reasons that follow, the Court adopts R&R in its entirety.

### **BACKGROUND**<sup>3</sup>

Castro, a 45 years old Hispanic male, alleges that Covenant gave preferential hours and work to younger employees and withheld vacation time, holiday hours, and other monetary considerations that Castro was owed. Covenant forced Castro and a Hispanic coworker to work outdoors in freezing conditions while other employees were allowed to rotate to protect them from the weather. While other employees were allowed to use a vehicle to get to the nearest restroom, Castro was denied this amenity. Instead, Castro had to use a “paddy box which had no paper and was filthy,” and in which he was unable to use his prescribed eye medication, which resulted in Castro having to undergo eye surgery. (Am. Compl. at 2–3). Castro also alleges that he was denied use of his prescribed safety glasses, that his car was set on fire while he was at work, and that Covenant did not properly discipline a security guard who took an “illegal picture” of him. (*Id.* at 3-4.) When Castro complained, his manager retaliated by attempting to have Castro fired, writing Castro up for absences necessitated by medical appointments, and asking Castro sign a disciplinary form, all of which created a hostile work environment.

### **DISCUSSION**

District courts are empowered to “accept, reject, or modify, in whole or in part, the findings or recommendations made by [a] magistrate judge.” 28 U.S.C. § 636(b)(1)(C). The

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<sup>3</sup> All facts are taken from the R&R, unless otherwise indicated.

Court may adopt those portions of the R&R to which “no objections have been made and which are not facially erroneous.” Wilds. v. United Parcel Serv., Inc., 262 F. Supp. 2d 163, 170 (S.D.N.Y. 2003). Because Castro is proceeding pro se, the Court reads his filings and supporting papers<sup>4</sup> liberally, construing them to raise the strongest arguments that they suggest. Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994).

Covenant argues that the Amended Complaint’s reference to the settlement of a union arbitration should be struck because it is not admissible as evidence under Fed. R. Evid. 408. At this stage, however, “the court . . . has only allegations and no evidence before it.” D.H. Blair & Co., Inc. v. Gottdiener, 462 F.3d 95, 107 (2d Cir. 2006). While the Court need not currently take a position on the admissibility on any evidence that the parties may wish to submit at a future date, Covenant’s motion to strike this information from the Amended Complaint is rejected because the Federal Rules of Evidence are inapposite at this stage of the proceedings.

More broadly, the Amended Complaint can be divided into two sections. First, Covenant concedes that paragraph 1 of the Amended Complaint includes “some scant references to age discrimination.” (Def. Mot. to Strike Original Compl. & Am. Compl. at 6.) Since such allegations are relevant to Castro’s claims, striking paragraph 1 is not warranted. See Lipsky v. Commonwealth United Corp., 551 F.2d 887, 893 (2d Cir. 1976).

Second, paragraphs 2 through 9 of the Amended Complaint address Covenant’s alleged racial discrimination. These paragraphs and the inferences reasonably drawn from them are sufficient to establish that Castro is a member of a protected class and that Covenant created a hostile work environment under Title VII. Since the allegations are not “redundant, immaterial,

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<sup>4</sup> On December 27, 2012, Castro filed what he styled as a “Motion to Deny Defendant’s Strike.” The Court treats this document as his opposition to Covenant’s motions, rather than a separate motion in its own right.

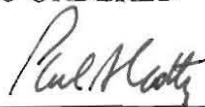
impertinent or scandalous," they will not be struck. Fed. R. Civ. P. 12(f).

**CONCLUSION**

Having reviewed the R&R for clear error and finding none, the Court hereby adopts Magistrate Judge Fox's R&R in full. Covenant's motions to strike are DENIED. The Clerk of Court is directed to terminate the motions at docket numbers 13, 27, 35 and 42. The reference to Magistrate Judge Fox continues for further disposition of this matter.

Dated: New York, New York  
July 22, 2013

SO ORDERED



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PAUL A. CROTTY  
United States District Judge

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