

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

BARB ANNE NYREEN,

Plaintiff,

vs.

POET, L.L.C.,

Defendant.

CIV. 18-4118

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant's motion to dismiss Count III of Plaintiff's complaint alleging defamation/slander, or in the alternative, motion for more definite statement. Doc. 6. For the following reasons, Plaintiff's motion for more definite statement is granted.

BACKGROUND

On August 21, 2018, Plaintiff, Barb Anne Nyreen, served Defendant, POET, L.L.C., with a Summons and Complaint in the case of *Barb Anne Nyreen v. POET, L.L.C.*, Civ. No. 18-2568, pending in the Second Judicial Circuit, Minnehaha County Circuit Court, South Dakota. Doc. 1, 1-1. In her complaint, Plaintiff alleges claims for age discrimination, negligent infliction of emotional distress, and defamation/slander. Doc. 1-1. On September 9, 2018, Defendant filed a notice of removal to the United States District Court for the District of South Dakota, Southern Division. Doc. 1.

This Court has federal question jurisdiction over Count I of Plaintiff's complaint alleging age discrimination in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.* ("ADEA"). The Court has supplemental jurisdiction over the state law claims alleged in Counts II and III of Plaintiff's complaint pursuant to 28 U.S.C. § 1367.

On October 26, 2018, Defendant filed a motion to dismiss Count III of the complaint alleging defamation/slander pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted, or in the alternative, a motion for more definite statement pursuant to Rule 12(e). Doc. 6.

LEGAL STANDARD

Rule 12(b)(6) Standard

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). To state a claim for relief, a complaint must plead more than “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). A plaintiff must demonstrate a plausible claim for relief, that “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.* at 679 (citing Fed. R. Civ. P. 8(a)(2)). “Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* (citation omitted).

Rule 12(e) Standard

Under Rule 12(e) of the Federal Rules of Civil Procedure, “[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e). The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. *Id.* While such motion is permissible under the Rules, “[m]otions for a more definite statement are generally disfavored in light of liberal discovery available under the federal rules and are granted only when a party is unable to determine the issues requiring a response.” *Broin & Associates, Inc. v. Genecor Int’l, Inc.*, Civ. No. 04-4202, 232 F.R.D. 335, 340 (D.S.D. Jul. 26, 2005) (citing *Shaffer v. Eden*, 209 F.R.D. 460, 464 (D. Kan. 2002)).

DISCUSSION

In the present case, Plaintiff alleges that on August 2, 2017, during a meeting at a Perkins restaurant with the Director of Human Resources of POET, L.L.C., the Director told Plaintiff that she had “outgrown her position.” Doc. 1-1, ¶ 20. In Count III of the complaint alleging defamation/slander, Plaintiff alleges that Defendant “defamed and slandered [Plaintiff] by

speaking/writing and circulating malicious, untrue and damaging comments about her job performance.” Doc. 1-1, ¶ 40.

Defamation is either libel or slander, and Plaintiff’s complaint indicates that she is alleging slander. SDCL § 22-11-2. In South Dakota, slander is statutorily defined as “a false and unprivileged publication.” SDCL § 20-11-4. The Eighth Circuit Court of Appeals has stated that “unless [a] complaint[] set[s] forth the alleged defamatory statement and identif[ies] to whom they were published, [the defendant] is unable ‘to form responsive pleadings.’” *Freeman v. Bechtel Contr. Co.*, 87 F.3d 1029, 1031 (8th Cir. 1996) (quoting *Asay v. Hallmark Cards, Inc.*, 594 F.2d 692, 699 (8th Cir. 1979)); *Hernandez v. Avera Queen of Peace Hosp.*, 886 N.W.2d 338, 346 (S.D. 2016) (dismissing defamation claims because plaintiff’s complaint did not allege facts, which, taken as true, raised more than a speculative right to relief); *cf. Mann v. Haley*, Civ. No. 05-0985, 2006 WL 118377, at *3 (E.D. Ark. Jan. 13, 2006) (concluding that a complaint that provides the alleged defamatory statements made by the defendants as well as the specific injuries the plaintiff suffered as a result sufficiently stated a claim upon which relief may be granted). It has also been held that “[i]n an action for slander or libel the words alleged to be defamatory must be pleaded and proved.” *Holliday v. Great Atl. & Pacific Tea Co.*, 256 F.2d 297, 302 (8th Cir. 1958).

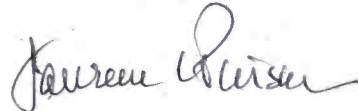
The Court agrees that Count III of the complaint is too vague. While a claim for defamation/slander need not be pleaded with specificity, the Court concludes that Plaintiff has not alleged facts which, taken as true, state a claim for defamation/slander under South Dakota law. Plaintiff does not allege what was said or to whom Defendant published the alleged “malicious, untrue and damaging comments about [Plaintiff’s] job performance.” Without these facts, Defendant cannot defend itself by forming a responsive pleading, nor can this Court say that Plaintiff has adequately stated a claim upon which relief may be granted

Accordingly, it is hereby ORDERED that:

- 1) Defendant’s motion for more definite statement, Doc. 6, is GRANTED; and
- 2) Plaintiff’s claim of defamation alleged in Count III of the complaint will be dismissed without prejudice unless Plaintiff amends her complaint and provides this Court with a more definite statement as to the grounds constituting her defamation/slander claim in Count III of the complaint within thirty (30) days of this order.

Dated this 11th day of September, 2019.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:
MATTHEW W. THIELEN, CLERK

