

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

<b>LEE J. ROHN,</b>	)	
	)	<b>CASE NO. SX-2010-CV-0000342</b>
<b>Plaintiff,</b>	)	
<b>vs.</b>	)	<b>ACTION FOR DAMAGES</b>
	)	
<b>MICHAEL "REPO" SPRINGER, CRUCIANS</b>	)	<b>JURY TRIAL DEMANDED</b>
<b>IN FOCUS, CLAUDE GERARD, ADELBERT</b>	)	
<b>BRYAN, JEFFREY MOOREHEAD, AND</b>	)	
<b>JOHN DOES,</b>	)	
<b>Defendants.</b>	)	

**MEMORANDUM OPINION**

Pending before the Court are the following motions:

- 1) Defendant Bryan's Motion to Dismiss, for More Definite Statement and Motion to Strike Portions of the Amended Complaint, filed on July 18, 2016;
- 2) Memorandum in Support of Bryan's Motion to Dismiss, for More Definite Statement and to Strike Portions of the Amended Complaint, filed on July 18, 2016;
- 3) Defendant Moorhead's Motion to Dismiss, for More Definite Statement and Motion to Strike Portions of the Amended Complaint, filed on July 21, 2016;
- 4) Memorandum in Support of Moorhead's Motion to Dismiss, for More Definite Statement and to Strike Portions of the Amended Complaint, filed on July 21, 2016;
- 5) Defendant Gerard's Motion to Dismiss, for More Definite Statement and Motion to Strike Portions of the Amended Complaint, filed on July 21, 2016;<sup>1</sup>
- 6) Memorandum in Support of Gerard's Motion to Dismiss, for More Definite Statement and to Strike Portions of the Amended Complaint, filed on July 21, 2016;
- 7) Plaintiff's Opposition to Defendant, Jeffrey Moorhead's, Motion to Dismiss, Motion for More Definite Statement and Motion to Strike Portions of Plaintiff's Amended Complaint, filed on August 11, 2016;
- 8) Plaintiff's Opposition to Defendant, Clause [sic] Gerard's, Motion to Dismiss, Motion for More Definite Statement and Motion to Strike Portions of Plaintiff's Amended Complaint, filed on August 11, 2016;

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<sup>1</sup> The Motion filed by Defendant Claude Gerard indicates his last name is spelled "Gerard." However, in the First Amended Complaint, Plaintiff has spelled Defendant's last name as "Gerard."

- 9) Plaintiff's Opposition to Defendant, Adelbert Bryan's, Motion to Dismiss, Motion for a More Definite Statement and Motion to Strike Portions of Plaintiff's Amended Complaint, filed August 11, 2016; and
- 10) Defendant Bryan's Rely [sic] to Plaintiff's Opposition to Bryan's Motion to Dismiss, for More Definite Statement and to Strike Portions of the Amended Complaint, filed on September 12, 2016.

Having considered the pending motions, the Court will: (1) deny Defendants' Motions to Dismiss because Plaintiff has stated a claim for defamation and has sufficiently plead actual malice; (2) deny Defendants' Motions for a More Definite Statement because Paragraphs 14-25 of the First Amended Complaint are not so vague and ambiguous that Defendants cannot file a responsive pleading; and (3) deny Defendants' Motions to Strike Paragraphs 10-13 and Paragraphs 16-18 of the First Amended Complaint because Rohn's allegations of malice are not redundant, immaterial, impertinent, or scandalous matter.<sup>2</sup>

## **I. PROCEDURAL HISTORY**

On July 23, 2010, Plaintiff Lee J. Rohn ("Rohn") filed an initial Complaint and an Ex Parte Application for Temporary Restraining Order, Writ of Seizure, and Order to Show Cause Regarding Preliminary Injunction, alleging slander and defamation of character by Defendants Michael "Repo" Springer ("Springer"), Crucians in Focus, Inc. ("Crucians in Focus"), Claude Gerard, Albert Bryan ("Bryan"), Edwin Callwood, Dwayne Callwood, Jeffrey B.C. Moorhead ("Moorhead"), and John Does-I-X.<sup>3</sup>

At the outset, there were a series of recusals by Superior Court Judges for various reasons.<sup>4</sup> However, on August 3, 2010, Judge James S. Carroll III acting in Judge Dean Donahue's stead, ordered that Rohn's Ex Parte Application be denied because, "[i]n the absence of an affidavit or verified complaint clearly showing that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition, and in the absence of a

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<sup>2</sup> Plaintiff is represented by Lee J. Rohn & Associates, LLC. Defendants Michael Springer, Crucians in Focus, Inc. and Jeffrey Moorhead are represented by Jeffrey B.C. Moorhead, P.C. (Jeffrey Moorhead, of counsel); Defendant Claude Gerard is appearing *pro se*. Defendant Adelbert Bryan is represented by Joel H. Holt, Esquire.

<sup>3</sup> Defendant Crucians in Focus, Inc. is a non-profit organization. Defendant Claude Gerard is a resident of St. Croix, U.S. Virgin Islands. Defendant Adelbert Bryan is a resident of St. Croix, U.S. Virgin Islands. Defendants, John Does and others that were allegedly involved in a website referred to as DemManSay.com.

<sup>4</sup> Judge Dean Donahue recused himself on July 28, 2010. Judge Harold L. Willocks recused himself on July 29, 2010. Judge Julio A. Brady recused himself on July 31, 2010 because he was the then Attorney General referred to in Rohn's Application. Judge Donahue filed a second and more detailed recusal on August 13, 2010 because he has a "friendship relationship with Defendants Claude Gerard, Edwin Callwood, and Dwayne Callwood." By September 15, 2010, all of the Superior Court Judges in the District of St. Croix had recused themselves, and the file was sent to the Superior Court on St. Thomas for assignment. Judge Adam G. Christian recused himself on October 4, 2010, because he had previously served as legal counsel to Honorable John P. de Jongh Jr., Governor of the U.S. Virgin Islands. On November 12, 2010, Judge Brenda J. Hollar filed an Order of Recusal because Dwayne Callwood was currently a Marshal assigned to her chambers. Judge James S. Carroll recused himself on January 29, 2011, because Dwayne Callwood is occasionally assigned to his chambers and because Rohn regularly appear in his courtroom. Judge Hollar

certificate in writing demonstrating why notice should not be required, Petitioner's statements on information and belief are insufficient to support issuance of a temporary restraining order without notice to the adverse parties."<sup>5</sup>

On August 12, 2010, Rohn filed an Amended Application for Temporary Restraining Order, Writ of Seizure, and Order to Show Cause Regarding Preliminary Injunction. On August 12, 2010, Defendants Edwin and Dwayne Callwood filed a Motion to Dismiss, in which they alleged Rohn failed to establish any factual support that they were directly or indirectly involved in the alleged publication of false and defamatory statements on the radio, television, or the Internet.<sup>6</sup> Further, Rohn failed to establish the time or place of the allegedly false and defamatory statements.<sup>7</sup>

On August 16, 2010, Defendant Bryan filed an Answer to Rohn's Complaint along with affirmative defenses, in which Bryan argues that Rohn is a public figure and, as such, his actions are protected by the First Amendment.<sup>8</sup> On August 27, 2010, Defendant Claude Gerard filed a motion to dismiss for the same reasons set forth in the Motion to Dismiss filed by Defendants Edwin and Dwayne Callwood (collectively, the "Callwoods"). Similarly, on the same date, Defendants Crucians in Focus, Springer, and Moorhead filed their own motions to dismiss by way of incorporating the motion to dismiss filed by the Callwoods. Thereafter, on August 23, 2010 Defendant Bryan filed a post-answer motion to dismiss for the same reasons set forth in the Callwoods' motion to dismiss.

On September 1, 2010, Rohn filed both a Motion for Leave to file First Amended Complaint and Brief in Support and a Response in Opposition to Defendants Edwin and Dwayne Callwoods' Motion to Dismiss and Brief in Support.

On September 10, 2010, the Callwoods filed a Motion to Strike Amended Application for Temporary Restraining Order for Failure to Properly Support with an Affidavit Duly Authorized.

On September 27, 2010, the Callwoods filed a Reply to Plaintiff's Response in Opposition to Defendants Edwin and Dwayne Callwood's [sic] Motion to Dismiss.

On September 28, 2010, Rohn filed an Opposition to the [Callwoods'] Motion to Strike contending that the Callwood Defendants' motion to strike was improper because, as defined in the Rule 12(f), motions to strike are directed to pleadings only.<sup>9</sup>

On August 14, 2012, Rohn filed a Motion to Amend the Complaint to remove the allegations against the Callwood Defendants. The proposed Amended Complaint asserts that a

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<sup>5</sup> See Order dated August 3, 2010 signed by the Judge James S. Carroll.

<sup>6</sup> See Mot. to Dismiss Pursuant to FRCP 12(b)(6), 1, August 12, 2010.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Answer to Compl., 3, August 16, 2010.

<sup>9</sup> Opp. to Mot. to Strike, 1, September 28, 2010.

series of defamatory statements were knowingly and falsely published on the website DemManSay.com ("Dem Man Say").<sup>10</sup>

By Order entered March 2, 2016, Plaintiff was directed to notify the Court whether she still sought to Amend her Complaint in order to remove the Callwood Defendants. In addition, the Defendants were directed to notify the Court of their respective positions on the Plaintiff's Motion to Amend.

On March 7, 2016, Defendant Bryan filed a Response with the Court indicating that he had no objection to the relief sought by Rohn. On March 21, 2016, Rohn notified the Court that she still sought the relief sought in her August 14, 2012 Motion to Amend the Complaint. On March 17, 2016, Defendant Dwayne Callwood notified the Court that he had no objection to granting Rohn leave to amend her complaint so as to remove Edwin Callwood and Dwayne Callwood as Defendants.

On June 29, 2016, the Court issued an Order granting Rohn's Motion to Amend the Complaint, which removed Edwin Callwood and Dwayne Callwood<sup>11</sup> as Defendants.

On July 5, 2016, Rohn filed her First Amended Complaint. Thereafter, Defendants Bryan, Moorhead, and Gerard filed motions to dismiss, motions for a more definite statement, and motions to strike.<sup>12</sup> Defendants Springer and Crucians in Focus, however, have not filed a Response to the First Amended Complaint. Therefore, the Court will consider each of the arguments raised by Defendants Bryan, Moorhead, and Gerard herein.

## **II. ANALYSIS**

### **A. Motion to Dismiss**

"The adequacy of a complaint is governed by Rule 8 of the Federal Rules of Civil Procedure."<sup>13</sup> A complaint must set forth "a short and plain statement of the claim showing that the pleader is entitled to relief."<sup>14</sup> To survive a motion to dismiss for failure to state a claim upon which relief can be granted, "a complaint must contain sufficient factual matter, accepted as true, 'to state a claim for relief that is plausible on its face.'"<sup>15</sup> All material allegations in the complaint are taken as true, and the Court must construe all facts in a light most favorable to the non-moving

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<sup>10</sup> The expression "dem man say" is colloquially used in the U.S. Virgin Islands to refer to statements made by a group of people regarding a certain topic of discussion.

<sup>11</sup> On November 2, 2014, Dwayne Callwood was appointed Chief Marshal of the Superior Court of the Virgin Islands creating a possible conflict for any Superior Court Judge to preside over this matter.

<sup>12</sup> See pending motions listed above.

<sup>13</sup> *Brady v. Cintron*, 55 V.I. 802, 822 (V.I. 2011). Federal Rule of Civil Procedure 8 applies to this proceeding through the operation of Superior Court Rule 7.

<sup>14</sup> FED. R. CIV. P. 8(a)(2).

<sup>15</sup> *Id.* 550 U.S. 672, 677 (2000); *Twombly*, 550 U.S. 544, 550 (2000).

party.<sup>16</sup> However, a plaintiff is obliged to provide "more than labels and conclusions."<sup>17</sup> 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."<sup>18</sup> In making the plausibility determination, the Supreme Court of the Virgin Islands instructs that:

First, the court must take note of the elements a plaintiff must plead to state a claim so that the court is aware of each item the plaintiff must sufficiently plead. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. These conclusions can take the form of either legal conclusions couched as factual allegations or naked assertions devoid of further factual enhancement. Finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief.<sup>19</sup>

If the remaining facts are sufficient enough for the Court to draw a reasonable inference that the defendant is liable based on the elements the plaintiff must plead, then the claim is considered plausible.<sup>20</sup>

#### **B. Motion for a More Definite Statement**

In accordance with FED. R. CIV. P. 12(e), a party may move for a more definite statement of a pleading to which a responsible pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsible pleading and must identify the defects complained of and the details desired.

#### **C. Motion to Strike**

In accordance with FED. R. CIV. P. 12(f), the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act: (1) on its own; or (2) on motion made by a party either before responding to the pleading, or if a response is not allowed, within 21 days after being served with the pleading.

#### **D. Defendants' Motions to Dismiss will be denied because Rohn has stated a claim for defamation and has sufficiently plead actual malice.**

A plaintiff may only prevail on a defamation claim by pleading: (1) the existence of "a false and defamatory statement concerning another;" (2) the existence of "an unprivileged publication [of the false and defamatory statement] to a third party;" (3) "fault amounting to at

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<sup>16</sup> *L'Henri, Inc. v. Vulcan Materials Co.*, Civ. No. 206-170, 2010 WL 924259, at \*1 (D.V.I. Mar. 11, 2010) (citing *Christopher v. Harbury*, 536 U.S. 403, 406 (2002)).

<sup>17</sup> *Twombly*, 550 U.S. at 555.

<sup>18</sup> *Iqbal*, 559 U.S. at 679.

<sup>19</sup> *Brady v. Cintron*, 55 V.I. at 822-23.

<sup>20</sup> *Id.*

least negligence on the part of the publisher;” and (4) “either the actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.”<sup>21</sup>

With respect to the first element concerning a false and defamatory statement, Rohn alleges a series of false and defamatory statements were made by Defendants. Specifically, Rohn alleges that Defendants asserted the following: (1) Rohn “was involved in drugs and almost arrested in Santo Domingo”; (2) Rohn is going to plead guilty to crack cocaine charges; (3) Rohn is a “cocaine addict/dealer”; (4) Rohn is going to “ditch her client Senator Adlah ‘Foncie’ Donastorg” (“Senator Donastorg”); (5) that “the Governor [John de Jongh] required [Rohn] to bring this law suit”; (6) Rohn was smuggled out of a hotel room in Santo Domingo just as the room was about to be raided; (7) Rohn hired a pilot to smuggle her out of Santo Domingo; (8) Rohn is a fugitive from criminal charges in Santo Domingo; (9) Rohn received preferential treatment by being allowed to pay fine; (10) “other similar defamatory and slanderous statements such as Rohn arranged for a pardon from the Governor if she stopped representing her client Senator Donastorg”; and (11) that Rohn faced fifteen (15) years’ incarceration for drug charges.<sup>22</sup> Further, Rohn alleges Defendants “knew full well [Rohn] had paid a fine for two (2) joints to take to her ‘husband’ in Puerto Rico whose father had been terminally injured in a hit and run accident and the charges brought against her had been politically arranged by Jeffrey Prosser and Kenneth Mapp.”<sup>23</sup> Given the specificity of the allegations, which allege criminal conduct, the Court finds that Rohn has met her burden with respect to pleading false and defamatory statements.

With respect to the second element of publication, Rohn alleges that “all Defendants have made similar such statements to the public over the past two (2) years.”<sup>24</sup> Further, Rohn alleges Defendants caused to be published false “‘stories’ and e-mails.”<sup>25</sup> Concerning Defendant Bryan, Rohn asserts that Bryan has made false accusations against her on various radio shows and with others in the community and on television.<sup>26</sup> Given that Rohn has alleged that such defamatory statements were made to a third party, the Court finds that Rohn has met her burden with respect to pleading publication.

With respect to the third element of fault, the necessary degree of fault depends on whether a plaintiff is a private individual or a public figure.<sup>27</sup> If the plaintiff is a private individual, a negligence standard of fault applies.<sup>28</sup> If the plaintiff is a public figure, the plaintiff must prove “actual malice” in order to recover.<sup>29</sup> Actual malice requires proof by “clear and convincing evidence” of “knowledge of the falsity or reckless disregard of the truth or falsity of the

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<sup>21</sup> *Donastorg v. Daily News Publishing Co., Inc.*, 63 V.I. 196, 223 (V.I. Super. Ct. 2015) (citing *Joseph v. Daily News Publishing Co., Inc.*, 57 V.I. 566, 585-88 (V.I. 2012)).

<sup>22</sup> First Amended Compl. ¶¶ 20-22.

<sup>23</sup> *Id.* ¶ 22.

<sup>24</sup> *Id.* ¶ 23.

<sup>25</sup> *Id.* ¶ 21.

<sup>26</sup> *Id.* ¶ 20.

<sup>27</sup> *Joseph*, 57 V.I. at 587.

<sup>28</sup> *Id.*

<sup>29</sup> *Joseph v. Daily News Publishing Co., Inc.*, 57 V.I. 566, 585-88 (V.I. 2012).

statement.”<sup>30</sup> The First Amendment to the Constitution defines the boundaries of fault in an action for defamation involving a public figure.<sup>31</sup>

Whether or not a party is a public figure is a question of law, which must be decided by the court.<sup>32</sup> Further, the public figure designation rests on either of two alternative bases.<sup>33</sup> In some instances an individual may achieve such pervasive fame or notoriety that she becomes a public figure for all purposes and in all contexts.<sup>34</sup> More commonly, an individual voluntarily injects herself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.<sup>35</sup> In either case, such persons assume special prominence in the resolution of public questions.<sup>36</sup> Such figures known as either public or limited purpose public figures must plead actual malice.<sup>37</sup>

Rohn has not admitted to voluntarily engaging in public controversy, however, she has plead actual malice in her First Amended Complaint. With respect to actual malice, Rohn contends that the “motive of the defamation *per se* was to irretrievably ruin” her “reputation in the community such as to satisfy the malice Defendants have” for Rohn.<sup>38</sup> Defendant Springer has malice towards Rohn due to Rohn rejecting his sexual advances and explaining to him that she finds him “unattractive and repulsive which has angered Springer and caused him to feel malice against her.”<sup>39</sup> Defendant Bryan has shown extreme malice.<sup>40</sup> Rohn asserts “that at a hearing in the St. Thomas District Court in the matter of *Anderson v. VIPD*, Defendant Bryan threatened to throw [Rohn] over the third floor balcony and had to be restrained.”<sup>41</sup> Defendant Bryan “developed malice against [Rohn] based on her knowledge and evidence of his illegal acts and has historically attempted to defame and discredit her to attempt to protect his own reputation.”<sup>42</sup> Rohn alleges she has in her possession the FBI Investigation into former police chief Ramon Dilva’s cover up of Defendant Bryan’s murder of his son with an illegal, unlicensed weapon.<sup>43</sup> Given the very detailed and specific allegations, the Court finds that Rohn has sufficiently plead actual malice.

With respect to the fourth element of special harm, the term is defined as having to prove “the loss of something having economic or pecuniary value ... [which] must result from the

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<sup>30</sup> *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 659 (1989) (quoting *New York Times Co.*, 376 U.S. at 279-80)).

<sup>31</sup> See e.g. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 499 (1991).

<sup>32</sup> *Wolston v. Reader's Digest Ass'n, Inc.*, 188 U.S. App. D.C. 185, 578 F.2d 427, 429 (D.C. Cir. 1978), *rev'd on other grounds*, 443 U.S. 157, 99 S. Ct. 2701, 61 L. Ed. 2d 450 (1979).

<sup>33</sup> *Gertz v. Robert Welch*, 418 U.S. 323, 351 (1974).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Rohn v. Daily News Publ. Co.*, 2015 V.I. LEXIS 126, at \*15-16 (V.I. Super. Ct. Oct. 21, 2015) (“Rohn is a public figure or limited public figure, she must also prove “actual malice” instead of mere negligence on the part of the publisher.”).

<sup>38</sup> First Amended Compl. ¶ 24.

<sup>39</sup> *Id.* ¶ 13.

<sup>40</sup> *Id.* ¶ 17.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* ¶ 16.

<sup>43</sup> *Id.* ¶ 15.



conduct of a person other than the defamer or the one defamed and must be legally caused by the defamation.”<sup>44</sup> In essence, this element refers to two general categories of liability-producing statements.<sup>45</sup> First, there are those statements that the Plaintiff is able to demonstrate caused him special harm.<sup>46</sup> Second, there are those statements for which Plaintiff need not plead the existence of special harm because they are actionable on their face.<sup>47</sup> This case involves allegations of both written defamation [*i.e.* libel] and oral defamation [*i.e.* slander].

Concerning libel, Rohn need not plead special damages because written defamation is actionable *per se*.<sup>48</sup> Rohn asserts that Defendants Springer, Moorhead, Gerard, Crucians in Focus, John Does, and Dem Man Say caused to be published false stories and emails on DemManSay.com including an “unflattering photograph of [Rohn] and text that falsely stated [Rohn] had plead guilty to possession of crack cocaine. It also falsely stated that Rohn had unethically abandoned her client Adlah ‘Foncie’ Donastorg in order to obtain probation on her crack cocaine charges and other similarly defamatory statements.”<sup>49</sup> Defendants are also alleged to have published on the website a myriad of statements detailed in Paragraph 22 of the First Amended Complaint.<sup>50</sup>

Concerning slander, Rohn must plead special damages unless such statements fall within one of the limited classes of speech which are actionable *per se* such as: (1) a criminal offense, (2) a loathsome disease, (3) a matter incompatible with his business, trade, profession, or office or (4) serious sexual misconduct.<sup>51</sup> Rohn asserts that “upon information and belief all Defendants have made similar statements to the public over the past two (2) years.”<sup>52</sup> Rohn need not plead special harm because the allegedly false and defamatory statements made by Defendants are actionable *per se* as they relate to alleged criminal conduct, such as hiring a pilot to smuggle her out of Santo Domingo to avoid criminal charges. In addition, all of the allegedly false and defamatory statements are incompatible with her profession as an attorney. Therefore, the Court finds that under the circumstances Rohn need not plead special damages.<sup>53</sup>

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<sup>44</sup> *Joseph*, 57 V.I. at 587 (citing RESTATEMENT (SECOND) OF TORTS § 575, cmt. b)).

<sup>45</sup> *Joseph*, 57 V.I. at 587.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> RESTATEMENT (SECOND) OF TORTS § 569 (“One who falsely publishes matter defamatory of another in such a manner as to make the publication a libel is subject to liability to the other although no special harm results from the publication.”).

<sup>49</sup> First Amended Compl. ¶ 21.

<sup>50</sup> *Id.* ¶ 22.

<sup>51</sup> *Joseph*, 57 V.I. at 587 (“The classes of speech that are actionable *per se* are outlined in RESTATEMENT (SECOND) OF TORTS, §§ 570-574).

<sup>52</sup> First Amended Compl. ¶ 23.

<sup>53</sup> Nevertheless, Rohn’s First Amended Complaint does address damages. Rohn has plead that “Defendants’ actions have damaged her economically, caused her mental anguish, pain and suffering and loss of enjoyment of life which are likely to continue into the foreseeable future.” See First Amended Compl. ¶ 26.



**E. Defendants’ Motions for a More Definite Statement will be denied because Paragraphs 14-25 of the First Amended Complaint are not so vague and ambiguous that Defendants cannot file a responsive pleading.**

Defendants Bryan, Moorhead, and Gerard have moved the Court for an order for a more definite statement pursuant to Rule 12(e), Federal Rules of Civil Procedure.<sup>54</sup> That rule provides:

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. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.<sup>55</sup>

As courts in this jurisdiction have noted, the appropriate avenue to gain specificity with respect to a plaintiff’s pleading is either through a motion for a more definite statement or the discovery process.<sup>56</sup> Further, the propriety of granting a motion for a more definite statement lies completely within the discretion of the trial court.<sup>57</sup>

Defendants Bryan, Moorhead, and Gerard seek a more definite statement with respect to both factual allegations and dates related to Paragraphs 14-25 of the First Amended Complaint.

Rohn counters that the First Amended Complaint is: (1) “neither vague nor ambiguous to warrant ordering a more definite statement under Superior Court Rule 31”; (2) Rohn need not identify Defendants with more particularity in Paragraph 23; (3) Defendants failed to show how dates, certain names, and other missing information is necessary to respond to the First Amended Complaint; and (4) the Virgin Islands is a notice pleading jurisdiction and Defendants cannot argue that the First Amended Complaint is “bare bones” because there are “over 28 paragraphs describing the [alleged] defamation and emotional distress inflicted upon [ ] Rohn.”<sup>58</sup>

Having considered the arguments raised by Defendants Bryan, Moorhead, and Gerard, the Court will deny the motions for a more definite statement to the extent that the First Amended Complaint fails to provide specific dates or factual allegations regarding Paragraphs 14-25.<sup>59</sup> Such

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<sup>54</sup> SUPER. CT. R. 31 (“Upon application by any party on notice, the court may order the filing and serving of a more certain and definite pleading. Rule 12(e) of the Federal Rules of Civil Procedure shall govern such applications.”).

<sup>55</sup> FED. R. CIV. P. 12(e).

<sup>56</sup> *In re Manbodh*, 2002 V.I. LEXIS 40, at \*1-2 (V.I. Super. Ct. Oct. 4, 2002) (“These issues may properly be addressed in a Motion for a More Definite Statement or by the discovery process.”).

<sup>57</sup> *Hobson v. Gov’t of the V.I.*, 20 V.I. 413, 417 (V.I. Super. Ct. 1984).

<sup>58</sup> Pl. Opp. to Def., Jeffrey Moorhead’s, Mot. to Dismiss, Mot. for More Definite Statement and Mot. to Strike Portions of Pl. Amended Compl., 7-12, August 11, 2016; Pl. Opp. to Def., Clause [sic] Gerard’s, Mot. to Dismiss, Mot. for More Definite Statement and Mot. to Strike Portions of Pl. Amended Compl., 7-12, August 11, 2016; and Pl. Opp. to Def., Adelbert Bryan’s, Mot. to Dismiss, Mot. for a More Definite Statement and Mot. to Strike Portions of Pl. Amended Compl., 9-14, August 11, 2016.

<sup>59</sup> *Manbodh*, 47 V.I. at 274 (“Such specific information [facts, time periods, precise causes of action and the existence of a causal relationship] where not already contained in the complaint, is not required to be included in the complaint.”).

information may be revealed in the discovery process, and Paragraphs 14-25 are not so vague or ambiguous that the Defendants cannot reasonably be required to frame a responsive pleading.

**F. Defendants' Motions to Strike Paragraphs 10-13 and Paragraphs 16-18 will be denied because Rohn's allegations of malice are not redundant, immaterial, impertinent, or scandalous matter.**

Defendants Bryan, Moorhead, and Gerard seek to strike Paragraphs 10-13 and Paragraphs 16-18. Rohn counters that: (1) Defendants have not asserted a claim for prejudice; (2) Defendants have not shown how the identified allegations present no possible issue of fact to support Rohn's claims; and (3) Defendants "mere assertions that the proposed matter to be stricken is scandalous or irrelevant without more is insufficient."<sup>60</sup>

In accordance with FED. R. CIV. P. 12(f), the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act: (1) on its own; or (2) on motion made by a party either before responding to the pleading, or if a response is not allowed, within 21 days after being served with the pleading. As a general principle, such motions are highly disfavored and infrequently granted.<sup>61</sup> "To be granted the moving party must not only show that the matters to be stricken present no possible issues of fact or law, but also that they will result in prejudice to his case."<sup>62</sup>

In filing her First Amended Complaint, Rohn has provided very specific and detailed allegations with respect to actual malice. While Defendants take issue with Paragraphs 10-13 and Paragraphs 16-18, mere disagreement with the veracity of Rohn's allegations of malice, is not grounds for granting a motion to strike. Therefore, the Court will not strike Paragraphs 10-13 or Paragraphs 16-18, because such language relates to Rohn's allegations of actual malice and are not redundant, immaterial, impertinent, or scandalous matter.

An Order consistent with this Memorandum Opinion will follow.

DATED: 10/25/2016

ATTEST:

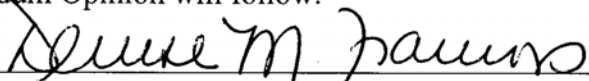
ESTRELLA H. GEORGE

Acting Clerk of the Court

By:

Lori Boynes-Tyson

Acting Chief Deputy Clerk

  
DENISE M. FRANCOIS

Judge of the Superior Court of the Virgin Islands

decision relied primarily on considerations of judicial economy and the determination that the efforts expended refining the pleading further would be better spent facilitating the discovery process to achieve a more expedient resolution of this matter.").

<sup>60</sup> Pl. Opp. to Def., Jeffrey Moorhead's, Mot. to Dismiss, Mot. for More Definite Statement and Mot. to Strike Portions of Pl. Amended Compl., 12-14, August 11, 2016; Pl. Opp. to Def., Clause [sic] Gerard's, Mot. to Dismiss, Mot. for More Definite Statement and Mot. to Strike Portions of Pl. Amended Compl., 12-14, August 11, 2016; and Pl. Opp. to Def., Adelbert Bryan's, Mot. to Dismiss, Mot. for a More Definite Statement and Mot. to Strike Portions of Pl. Amended Compl., 14-16, August 11, 2016.

<sup>61</sup> *Hobson*, 20 V.I. at 418.

<sup>62</sup> *Id.*