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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

SARA RUBINSTEIN,

Plaintiff,

v.

MARY JO FINOCCHIARO,

Defendant.

CASE NO.

DIVISION:

COMPLAINT FOR DEFAMATION

Plaintiff, SARA RUBINSTEIN ("Rubinstein"), through counsel, files her Complaint for Defamation against Defendant, MARY JO FINOCCHIARO ("Finocchiaro"), and alleges:

1. This is a case about Finocchiaro's efforts to ruin Rubinstein's life because Rubinstein would not do Finocchiaro's bidding.
2. At the time Rubinstein began her employment with St. Andrews School ("SAS") in Boca Raton, Florida, Finocchiaro was the chairperson and a member of the Board of Trustees of SAS.
3. Shortly after resigning from the SAS Board in September 2016, Finocchiaro started sending highly offensive and defamatory e-mails against Rubinstein to the SAS community.
4. Finocchiaro eventually caused Rubinstein's ouster from SAS.
5. However, this was not enough for Finocchiaro. In a classic example of "salting the earth," Finocchiaro sent defamatory e-mails to Rubinstein's new employer and its community.

PARTIES, VENUE, AND JURISDICTION

6. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000), exclusive of interest, costs and attorneys' fees.

7. Plaintiff, SARA RUBINSTEIN, is a resident of Hillsboro County, Florida and is *sui juris*.

8. Defendant, MARY JO FINOCCHIARO, is a resident of Palm Beach County, Florida and is *sui juris*.

9. Venue is proper in Palm Beach County, Florida where the Defendant resides and where the events giving rise to this defamation claim arose.

10. SAS, which is not a party to this action, is an Episcopal day and boarding school located in Boca Raton, Florida, with approximately 1,275 students from pre-Kindergarten through twelfth grade.

#### GENERAL ALLEGATIONS

##### Rubinstein is a Dedicated Educator

11. Rubinstein received her Bachelor of Arts degree with honors in English and Women's Studies from the State University of New York at Buffalo.

12. She went on to receive two master's degrees from the University of Michigan, one in English Language and Literature, and the other in Secondary Education.

13. Rubinstein has worked her entire career in the field of education. She started working as a Composition and Literature Instructor at the University of Michigan. She then took a job as a Development Associate for the Boston Center for Adult Education. She was a teacher at Mumford High School in Detroit, Michigan before accepting a position as an English teacher, residential faculty member, and coach at Cranbrook Kingswood Upper School – a private boarding and day school serving 1,700 students – located in Bloomfield Hills, Michigan. Thereafter, Rubinstein became Head of Upper School, Director of Studies, and an English teacher at St. Andrew's School in Savannah, Georgia. She remained in these last roles for five years before accepting the position at SAS.

14. Rubinstein served as Assistant Headmaster for Academics and the Head of Upper School at SAS from August 2014 until December 23, 2016.

**Finocchiaro's Publication of Defamatory Statements**

15. Commencing as early as April 2016, Finocchiaro published or caused to be published inappropriate and defamatory accusations about Rubinstein as set forth below.

16. In April 2016, an SAS faculty member verbally accused Rubinstein of conspiring with Peter Benedict ("Benedict"), SAS's then recently-terminated Headmaster, to cover-up sexual misconduct and/or molestation in the boys' dormitory at SAS.

17. This accusation was false.

18. Upon information and belief, the faculty member's source of information for this accusation was Finocchiaro.

19. Notwithstanding the utter falsity of this accusation, Rubinstein was concerned about its impact and related rumors would have on the SAS community.

20. Rubinstein communicated her concerns to Finocchiaro, whom Rubinstein believed would work to dispel this false accusation.

21. Unbeknownst to Rubinstein, however, Finocchiaro spread and promoted this false accusation.

22. Finocchiaro's true intentions were unknown to Rubinstein until Rubinstein, along with other SAS administrators, objected to the publication of a defamatory communication regarding Benedict's departure from SAS.

23. In April 2016, the SAS Board retained out-of-state lawyer David Wolowitz (Wolowitz") to review allegations of misconduct as well as SAS's policies relating to investigations of such allegations.

24. At the same time, the SAS Board also retained the Holland & Knight law firm (“H&K”) ostensibly to investigate alleged sexual misconduct at SAS.

25. On August 11, 2016, Wolowitz delivered his report (the “Wolowitz Report”) to Finocchiaro and Dr. James Byer (“Byer”), SAS’s Interim Headmaster.

26. The Wolowitz Report,<sup>1</sup> contains false and defamatory statements directed at, among others, Rubinstein.

27. SAS created or directed to be created an internal report titled “Executive Summary of the Investigative Report for the Special Committee of Saint Andrews” (“SAS Report”).

28. On or about August 19, 2016, Finocchiaro caused the Wolowitz Report and the SAS Report to be transmitted to the media, including the Palm Beach Post.

29. The SAS Report contained numerous false statements, including that an unidentified teacher had

made a number of accusations to fellow faculty members that Rubinstein and Benedict knew of sex abuse in the boys’ dorm and that Rubinstein had covered it up. He unleashed a barrage of profanity and reportedly called Rubinstein a felon for not reporting this to authorities.

30. On August 20, 2016, the Palm Beach Post published an article, based on the false content of the SAS Report that Finocchiaro released, which included the following

administrators at [SAS] looked the other way as a teacher engaged in secret sleepovers, private embraces and late-night excursions with boarding students, a pattern that exposed the students repeatedly to “potential abuse,” an investigation commissioned by the school concluded.

31. The information in the Palm Beach Post Article regarding Rubinstein, which was supplied by Finocchiaro, is categorically false.

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<sup>1</sup> Because of the salacious nature of the allegations contained within the Wolowitz Report, Rubinstein has not attached a copy. It will be made available to counsel upon request.

32. On August 22, 2016, television station WPTV published an article on its website which reported:

[a] pair of reports commissioned by the school showed administrators ignored warnings about a faculty member's relationship with students, putting boarding students at risk ... [K]ey administrators knew what was happening, but did not share this information with authorities.

33. On that same date, the Sun Sentinel published a similar article.

34. The information in the WPTV and Sun Sentinel articles is categorically false inasmuch as Rubinstein did not ignore warnings, did not put students at risk to potential abuse, and did not fail to share information required to be reported to authorities.

35. The publication and re-publication of false statements, including in various widely-disseminated media, was reasonably foreseeable and was the direct result of Finocchiaro's defamatory conduct and misleading statements.

36. On or about September 9, 2016, Finocchiaro, in response to pressure from parents and the SAS Board, resigned as Chair of SAS's Board and ceased to occupy any position with the School.

37. Within a few days of Finocchiaro's resignation, a threatening anonymous letter was left at Rubinstein's home.

38. The letter stated:

WE ARE A GROUP THAT KNOWS EXACTLY WHAT YOU'VE BEEN DOING.

MAYBE ITS [sic] TIME FOR YOU TO GO WHILE YOU HAVE SOME DIGNITY LEFT OR THE PETITIONS ARE CIRCULATED THAT LETS [sic] EVERYBODY IN ON THE "SECRETS".

HONOR ABOVE ALL ??????

39. On or about October 22, 2016, Finocchiaro, published or caused to be published an email from [saparents@tutanota.com](mailto:saparents@tutanota.com)<sup>2</sup> to parents of SAS's students.

40. The subject of the October 22, 2016 e-mail was: "New info about the 'Russian' incident in St. Andrew's dorms."

41. The email, which falsely proclaimed to be from a group called "Concerned Parents of St. Andrew's," states in relevant part: "Looks like Sara Rubinstein knew about the sex abuse incident between the two Russian boarding students and did nothing about it ..."

42. The statements in this email were false and defamatory because the incident referred to occurred prior to Rubinstein's employment with SAS and was the subject of an investigation by others.

43. On or about November 6, 2016, Finocchiaro published or caused to be published another email from [saparents@tutanota.com](mailto:saparents@tutanota.com) to parents of SAS's students.

44. The subject of the November 6, 2016 e-mail was: "It's time to clean house at St. Andrew's."

45. The email, which was also falsely signed by "Concerned Parents of St. Andrew's," states (emphases in original):

As concerned parents of St. Andrew's School, we take the recent revelations regarding the racist, homophobic, and retaliatory environment at St. Andrew's very seriously ...

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**... SA administrators put themselves and their own petty interests above the good of our children and our school.** Not only this, but as more and more information regarding the homophobic practices of Ms. Rubinstein and other members of the administration comes out, we run the serious risk of being labeled

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<sup>2</sup> Tutanota.com is an encrypted email service located in Germany, that allows anyone to send and receive emails anonymously.

by the national news media as a hostile place for members of the LGBTQ community ...

We have also heard from Ms. Rubinstein that she and Chris Waite, the teacher responsible for starting this entire mess, was someone whom she did not know very well, but, given the picture many of us just received via email last week (and which we have attached), the reasons why he was given so many chances to harm our children is clear: he and Ms. Rubinstein were friends, and she protects her friends, even if it means putting our children in danger.

The sort of behavior that continues to come to light is unacceptable, and we once again demand the resignation of not only Ms. Rubinstein, but every member of the administration that was involved in the cover-up of Mr. Waite's actions and the firing of Mr. Melton. We send our children to St. Andrew's so that they will be instilled with the concept of Honor Above All, but the actions of our administrative team have been anything but honorable. **St. Andrew's is in crisis. Faculty members, though seemingly buoyed by the departure of Ms. Rubinstein, are still miserable and fearful of retaliation. Our children have become bitter, dejected, and apathetic.**

We urge the Board and the senior administration to take whatever steps are necessary to clean house at St. Andrew's and bring in qualified, principled administrators who will *always* put the needs of the children above their own career goals.

-Concerned Parents of St. Andrew's.

46. The statements contained in the email were false and misleading. Among other things, Rubenstein never put children in danger at SAS (or anywhere else).

47. While Finocchiaro attempted to conceal her identity as the author of e-mails that were sent by saparents@tutanota.com, she failed to remove a signature block at the bottom of the November 6, 2016 e-mail that was routinely included on e-mail that Finocchiaro sent from another e-mail address.

48. The boilerplate provision states in relevant part: "This email communication is privileged ... If you are not the intended recipient, please do not read, copy, use or disclose to others the contents of this communication. **Please notify the sender that you have received this e-mail in error by replying to this email or by phoning + 1-561-447-3155.**" (Emphasis added.)

49. At all times relevant to this action, the phone number 1-561-447-3155 was one of the phone numbers used by Finocchiaro's employer, BRE Hotels and Resorts, LLC.

50. Finocchiaro was at all times relevant to this action the Executive Vice President and Chief Financial Officer of BRE Hotels and Resorts, LLC.

51. On or about November 18, 2016, Finocchiaro published or caused to be published another email from saparents@tutanota.com to parents of SAS students.

52. The subject of the November 18, 2016 e-mail was: "Sara Rubinstein resigns after new abuse reports."

53. The November 18, 2016 email, which was also falsely signed by "Concerned Parents of St. Andrew's," states (emphasis in original):

Dear Fellow Parents:

Many of you have received Dr. Byer's cryptic email about the discovery of a new incident of sexual misconduct and are likely wondering what took place. We have been able to ascertain that in September 2014, a female student was sexually assaulted while she was intoxicated and, instead of reporting this incident to the authorities, Sara Rubinstein decided to keep the matter quiet. As evidenced by numerous emails from Ms. Rubinstein to other members of her administration, she blamed the victim for being intoxicated rather than focusing on the fact that a very serious crime had again taken place. Instead of living up to her responsibility as an educator and helping this young woman deal with an unspeakably tragic event, Ms. Rubinstein decided, once again, to initiate a cover-up.

Only after the investigation ordered by the Board of Trustees did this incident come to light, and the matter has been reported to the Boca Police Department and Florida DCF. Ms. Rubinstein now faces the possibility of serious charges for failing to report knowledge of child abuse. In light of these new revelations, as well as the current ongoing investigation into retaliation, discrimination, and fostering a toxic working environment, Sara Rubinstein has been forced to resign. You will likely get an email from Dr. Byer stating Ms. Rubinstein has left for "personal reasons," but this is a euphemism. She was given the option to either be terminated immediately or submit her resignation. She chose the latter.

We share your frustration at having to re-live some of the more painful moments of last year as yet another case of sexual misconduct has taken place in our community and, yet again, Ms. Rubinstein has chosen silence over responsibility ...



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... As we have mentioned in previous emails, Ms. Rubinstein is the reason why we have been losing so many inspired educators over the past three years. She has fostered an environment of rampant fear and intimidation where faculty members are publicly berated, constantly spied upon, and forced to work in ever-present fear for their jobs. She has written up faculty members for fabricated offenses, discriminated against racial minorities, retaliated against whistleblowers that have exposed her numerous cover-ups, and has treated our faculty members as commodities rather than valued educators and colleagues. She has also been on administrative leave for the past few weeks while an independent investigation into the toxic environment of the Upper School takes place. Since the investigation began, more than forty faculty members have spoken to the investigator to share their stories of intimidation and fear as a result of Ms. Rubinstein ...

Now is the time to clean house in the St. Andrew's administration so that our children are protected and so that our wonderful faculty, who lived in fear under Ms. Rubinstein for three long years, are able to give our children the best education possible.

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54. The substance or gist of the above statements were false. Their falsity was known to Finocchiaro.

55. As a result of the defamatory statements published by Finocchiaro and the publicity generated as a result thereof, Rubinstein was forced to resign her position with SAS, relinquish the free use and enjoyment of the on-campus residence for herself, her husband and children that was a benefit provided with her employment with SAS, and commence a long campaign to locate alternative employment.

56. In or about February 2017, Rubinstein accepted a position as head of the high school at Carrollwood Day School ("Carrollwood") in Tampa, Florida.

57. On or about March 23, 2017, Finocchiaro, published or caused to be published another email from [saparents@tutanota.com](mailto:saparents@tutanota.com) to parents of SAS students.

58. The March 23, 2017 email, which was also falsely signed by "Concerned Parents of St. Andrew's," states in relevant part (emphases in original):

Dear fellow parents at Saint Andrew's School,

We were as shocked as many of you likely were when we saw that, according to the Sun-Sentinel, Christopher Waite, the performing arts teacher whose inappropriate conduct has dragged the school's image through the gutter in the national press, has had the audacity to sue the school for defamation.

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This lawsuit is an obscenity. This man's actions and the actions of Sara Rubinstein and other administrators who covered for him are the reason why Saint Andrew's has seen its image destroyed in the media and why many of us have decided to send our children to different schools, yet for some reason, he thinks he can file a suit and receive a payday because Saint Andrew's doesn't want any more bad press.

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The administration looked the other way for well over a year. We know that Sara Rubinstein protected Waite because they were friends (see attached image), and even when she was told that Waite was at the beach with a student after midnight by Mickey Zitzmann, she decided not to immediately intervene. In a recent faculty meeting, we are told that Jim Byer told the faculty that the "consternation" that happened over the past year (read: the Waite situation) was the result of a residential life faculty member "caring too much" about his students. Can we really qualify grooming and likely abusing one's students as an example of "caring too much?"

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59. The substance or gist of the above statements were false because Rubinstein did not protect any faculty members who engaged in misconduct.<sup>3</sup>

60. On or about June 5, 2017, Finocchiaro published or caused to be published another email from saparents@tutanota.com to the administration, faculty and staff at Carrollwood.

61. The subject of the June 5, 2017 e-mail was: "Important information about your new head of the high school."

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<sup>3</sup> The Wolowitz Report and the SAS Summary both concluded that there was no sexual misconduct involving faculty and students at SAS.

62. The June 5, 2017 email, which was also falsely signed by “Concerned Parents of

St. Andrew’s,” states in relevant part:

Dear Faculty Members of Carrollwood Day School,

We are a group of concerned parents from Saint Andrew’s School in Boca Raton that wanted to reach out to you after we discovered that our former Head of Upper School, Sara Rubinstein, who resigned in disgrace from Saint Andrew’s, was recently hired at Carrollwood to be your new high school principal.

We are frankly shocked that Ms. Rubinstein was able to get another job in education, let alone a leadership position where she will once again be able to create massively toxic environments, cover up potential instances of sexual assault, and retaliate against vulnerable members of the faculty and against the children. ... Here are a few things you should know about your new head of the high school so you can be prepared for her arrival, or you might ask the search committee why they hired an administrator with such a troubled history:

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-Ms. Rubinstein oversaw and worked to cover up two major sex abuse scandals in the Saint Andrew’s Resident Life Program ...

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-Ms. Rubinstein was the sole subject of a 2016 investigation into allegations of professional intimidation, retaliation, and the creation of a hostile work environment. The investigation concluded that Rubinstein was indeed guilty of these misdeeds and she was forced to tender her resignation

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Saint Andrew’s has been the subject of numerous local and national news reports due to Ms. Rubinstein’s terrible handling of the sex abuse allegations ...

You might be tempted to say we “have it in” for Ms. Rubinstein, but our concern has always been the safety of our children and the health of our school. She is a very fine actress. She came to Saint Andrew’s and played the part of an upbeat and concerned educator and quickly became a nightmare. It is our belief that Sara Rubinstein has absolutely no business working in education, let alone in a leadership position, but that is something that now rests on your shoulders. We are still picking up the pieces. You now have all the information, but what you do with that information is up to you ...

-Concerned Parents of Saint Andrew’s School.

63. The above statements were false. Their falsity was known to Finocchiaro.

64. All conditions precedent to bringing this action have been met or have been waived.

**COUNT I**  
**Defamation *Per Se***

65. Plaintiff adopts and re-alleges paragraphs 1 through 64 above.

66. This is an action against Finocchiaro for damages for defamation *per se*.

67. As set forth in greater detail above, both before and after her resignation as Chair of SAS's Board, Finocchiaro published false and defamatory statements about Rubinstein that injured Rubinstein personally and in her profession and/or imputed to Rubinstein conduct, characteristics or a condition that is incompatible with the proper exercise of her lawful business, trade and/or profession.

68. Such false and defamatory statements were published to third parties, including, but not limited to, parents of children attending SAS, members of SAS's Board, and the Carrollwood community:

69. The false and defamatory statements by Finocchiaro were published with malice and intent to injure Rubinstein's personal and professional reputation.

70. Finocchiaro's false and defamatory statements were published with actual knowledge they were false, or with a reckless disregard as to their truth or falsity.

71. As a reasonably foreseeable consequence of Finocchiaro's publication of false and defamatory statements about Rubinstein, those false and defamatory statements were re-published by numerous third parties. Finocchiaro is also liable for all reasonably foreseeable re-publications by any third party of the defamatory statements.

72. As a direct and proximate result of Finocchiaro's statements described above, Rubinstein has been and continues to be damaged, including, but not limited to, impaired

reputation and standing in the community, lost earnings and capacity, lost career opportunities, humiliation, mental anguish and suffering.

WHEREFORE, Plaintiff, SARA RUBINSTEIN, demands judgment against Defendant, MARY JO FINOCCHIARO, for defamation *per se*, and seeks an award of damages, costs, and such other and further relief as this Court deems just and proper.

**COUNT II**  
**Defamation by Implication**

73. Plaintiff adopts and re-alleges paragraphs 1 through 64 above.

74. This is an action against Finocchiaro for damages for defamation by implication, which arises, not from what is stated, but from what is implied when a defendant: (1) juxtaposes a series of facts so as to imply a defamatory connection between them, or (2) creates a defamatory implication by omitting facts. As a consequence, Finocchiaro may be held responsible for the defamatory implication created by her statements.

75. As set forth above, both before and after her resignation, Finocchiaro published false and defamatory statements about Rubinstein that injured Rubinstein personally and in her profession and/or imputed to Rubinstein's conduct, characteristics or a condition that is incompatible with the proper exercise of her lawful business, trade and/or profession.

76. Such false and defamatory statements were published to third parties, including, but not limited to, parents of children attending SAS, members of SAS's Board, and the Faculty of the Carrollwood Day School.

77. Defendant juxtaposed a series of facts so as to imply a defamatory connection between them or, in the alternative, created a defamatory implication by omitting facts when describing the nature and sequence of events on the dates in question.

78. As alleged herein, Finocchiaro's false and defamatory statements were published with actual knowledge that they were false, or with a reckless disregard as to the truth or falsity of the statements and implications thereof.

79. By publishing these false and defamatory statements about Rubinstein, Finocchiaro is responsible for the defamatory implication created by her statements.

80. Despite publishing these false and defamatory statements about Rubinstein, Finocchiaro did not take any action to correct the false impression given of Rubinstein or to otherwise correct the negative light in which the statements portrayed Rubinstein during her tenure at SAS.

81. A reasonable person would understand Finocchiaro's statements to impart the false *innuendo*, which would be highly offensive to a reasonable person.

82. The false statements were published intentionally, negligently or with indifference to Rubinstein's rights, and have caused injury to Rubinstein's personal and professional reputation.

83. As a reasonably foreseeable consequence of Finocchiaro's publication of false and defamatory statements about Rubinstein, and her failure to take appropriate corrective action, those false and defamatory statements were re-published by numerous third parties. Finocchiaro is also liable for all reasonably foreseeable re-publications by any third party.

84. As a direct and proximate result of Finocchiaro's statements described above, Rubinstein has been and continues to be damaged, including, but not limited to, impaired reputation and standing in the community, lost earnings and capacity, lost career opportunities, humiliation, mental anguish and suffering.

WHEREFORE, Plaintiff, SARA RUBINSTEIN, demands judgment against Defendant, MARY JO FINOCCHIARO, for defamation by implication or false light, and seeks an award of damages, costs, and such other and further relief as this Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Rubinstein hereby demands a trial by jury of all issues so triable.

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