

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS**

CHRISTOPHER FORBES,  
Plaintiff,

v.

POLY PREP COUNTRY DAY SCHOOL; and  
DOES 1-5 whose identities are unknown to  
Plaintiff,  
Defendants.

Index No. 511956/2020

**SUMMONS**

**TO THE ABOVE NAMED DEFENDANTS:**

**PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED** to answer the Complaint, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned attorneys listed below within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment by default will be taken against you for the relief demanded herein.

The basis of venue is the principal place of business of Defendant Poly Prep Country Day School, which is 9216 7th Avenue, Brooklyn, NY 11228, New York.

Dated: July 8, 2020  
New York, New York

**ABEND & SILBER, PLLC**



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**COMPLAINT**

**DEMAND FOR JURY TRIAL**

In approximately the years of 1969 to 1971, Philip Foglietta (“Foglietta”) sexually abused Plaintiff as a child. While the abuse occurred, Defendant Poly Prep Country Day School was generally negligent, it negligently employed Phillip Foglietta, and gave him access to children, including Plaintiff. This lawsuit arises out of Plaintiff’s significant damages from that sexual abuse, as described below. Plaintiff, by and through Plaintiff’s attorneys, states and alleges as follows:

**PARTIES**

**A. Plaintiff**

1. At all times material to the actions giving rise to this Complaint, Plaintiff resided in the State of New York.
2. This action is brought pursuant to the New York Child Victims Act, CPLR § 214-g. The conduct at issue constituted sexual offense against a minor in violation of Article 130 of the New York Penal Law, or a predecessor statute that prohibited such

conduct at the time of the act, and resulted in physical, psychological, and emotional injuries. As a civil cause of action was previously time-barred prior to August 14, 2019, the terms of the Child Victims Act, CPLR § 214-g, revive the claims set forth below.

3. At all times material, Plaintiff was a minor under 18 years of age when the sexual abuse occurred.

#### **B. Defendants**

4. Whenever reference is made to any Defendant entity, such reference includes that entity, its parent companies, subsidiaries, affiliates, predecessors, and successors. In addition, whenever reference is made to any act, deed, or transaction of any entity, the allegation means that the entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the entity's business or affairs.

5. At all times material, Poly Prep Country Day School ("Poly Prep") was and continues to be an organization or entity authorized to conduct business and conducting business in the State of New York, with its principal place of business at 9216 7th Avenue, Brooklyn, NY 11228, New York. Defendant Poly Prep includes but is not limited to the organization and any other organization and/or entity operating under the same or similar name with the same or similar principal place of business.

6. Defendants Does 1 through 5 are unknown agents whose identities will be provided when they become known pursuant to C.P.L.R. § 1024.

#### **JURISDICTION**

7. This Court has jurisdiction pursuant to C.P.L.R. § 301 as Defendant Poly Prep's principal place of business is in New York and because the unlawful conduct complained of

herein occurred in New York.

8. Venue is proper pursuant to C.P.L.R. § 503 in that Kings County is where Defendant Poly Prep's principal place of business is located.

### **FACTUAL ALLEGATIONS**

9. Poly Prep is an independent private school in Brooklyn, New York.

10. At all times material, Foglietta was employed as football coach at Defendant Poly Prep or otherwise employed by Defendant Poly Prep. Foglietta remained under the direct supervision, employ and control of Poly Prep.

11. Plaintiff attended Poly Prep as a student. Plaintiff and Plaintiff's family came in contact with Foglietta as an agent and representative of Poly Prep.

12. Defendant Poly Prep placed Foglietta in positions where he had access to and worked with children as an integral part of his work.

13. Plaintiff, as a minor and vulnerable child, was dependent on Defendant Poly Prep and Foglietta. Defendant Poly Prep had custody of Plaintiff and accepted the entrustment of Plaintiff and, therefore, had responsibility for Plaintiff and authority over Plaintiff.

14. During Plaintiff's 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> grade years, from approximately 1969 to 1971, when Plaintiff was approximately 11 to 13 years old, Foglietta engaged in unpermitted sexual contact with Plaintiff.

15. Foglietta molested and sexually abused many boys at Poly Prep over a period of many years.

16. Upon information and belief, when Plaintiff met Foglietta, he was an employee and agent of Poly Prep acting within the course and scope of his authority as a Poly Prep employee.

17. Upon information and belief, prior to the sexual abuse alleged herein, Poly Prep

had ample notice of Foglietta's sexually abusive behavior. For example, in or around 1966, Poly Prep was made aware of sexual abuse claims against Foglietta.

18. Upon information and belief, this 1966 complaint was made by a student who reported an incident to his parents, who then reported the incident to J. Folwell Scull (hereinafter "Scull"), the headmaster of Poly Prep at the time, and Harlow Parker (hereinafter "Parker"), Poly Prep's then Athletic Director.

19. Upon information and belief, Scull and Parker told the parents of this Poly Prep student that, if the student persisted in making complaints about Foglietta, punitive action would be taken against the student and the student was not permitted to return the following year.

20. Upon information and belief, in the early 1970s, William Williams (hereinafter "Williams"), the headmaster of Poly Prep from 1970 through 2000 received a letter from a parent or other adult that claimed that Foglietta was "molesting" students at Poly Prep. Williams, however, took no actions against Foglietta in response to this letter.

21. Upon information and belief, despite these above mentioned complaints, Foglietta had no restrictions placed upon him and remained able to have unsupervised contact with children.

### **COUNT I: NEGLIGENCE**

22. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this Count.

23. Defendant Poly Prep owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

24. Defendant Poly Prep owed Plaintiff a duty of care because Defendant Poly Prep had a special relationship with Plaintiff.

25. Defendant Poly Prep also had a duty arising from the special relationship that existed with Plaintiff and Plaintiff's family, and other parents of young, innocent, vulnerable children at Poly Prep to properly train and supervise its agents. This special relationship arose because of the high degree of vulnerability of the children entrusted to its care. As a result of this high degree of vulnerability and risk of sexual abuse inherent in such a special relationship, Defendant Poly Prep had a duty to establish measures of protection not necessary for persons who are older and better able to safeguard themselves.

26. Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendant also had a special relationship with Foglietta.

27. Defendant Poly Prep owed Plaintiff a duty of reasonable care because it solicited youth and parents for participation in its school; undertook custody of minor children, including Plaintiff; promoted its facilities and programs as being safe for children; held its agents, including Foglietta, out as safe to work with children; encouraged children to spend time with its agents; and/or encouraged its agents, including Foglietta, to spend time with students.

28. By accepting custody of the minor Plaintiff, Defendant Poly Prep established an *in loco parentis* relationship with Plaintiff and in so doing, owed Plaintiff a duty to protect Plaintiff from injury. Further, Defendant Poly Prep entered into a fiduciary relationship with Plaintiff by undertaking the custody, supervision of, and/or care of the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendant Poly Prep undertaking the care and guidance of the Plaintiff, Defendant Poly Prep also held a position of empowerment over Plaintiff. Further, Defendant Poly Prep, by holding itself out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. Defendant Poly Prep, through its employees, exploited this power over Plaintiff and, thereby, put the minor Plaintiff at risk for sexual abuse.

29. By establishing and/or operating the Poly Prep School, accepting the minor Plaintiff as a student in its programs, holding its facilities and programs out to be a safe environment for Plaintiff, accepting custody of the minor Plaintiff *in loco parentis*, and by establishing a fiduciary relationship with Plaintiff, Defendant Poly Prep entered into an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for children, who participated in its programs. Defendant Poly Prep owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers. Defendant Poly Prep had the duty to exercise the same degree of care over minors under its control as a reasonably prudent person would have exercised under similar circumstances.

30. By establishing and operating the Poly Prep School, which offered educational programs to children, and by accepting the enrollment and participation of the minor Plaintiff as a participant in those educational programs, Defendant Poly Prep owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers.

31. Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendant Poly Prep invited Plaintiff onto its property and Foglietta posed a dangerous condition on Defendant Poly Prep's property.

32. Defendant Poly Prep breached its duties to Plaintiff. Defendant Poly Prep failed to use ordinary care in determining whether its facilities were safe and/or determining whether they had sufficient information to represent its facilities as safe. Defendant Poly Prep's breach of its duties include, but are not limited to: failure to protect Plaintiff from a known danger, failure to have sufficient policies and procedures in place to prevent child sex abuse, failure to properly implement policies and procedures to prevent child sex abuse, failure to take reasonable measures to ensure that policies and procedures to prevent child sex abuse were working, failure to



adequately inform families and children of the risks of child sex abuse, failure to investigate risks of child molestation, failure to properly train its employees, failure to train the minors at Defendant Poly Prep about the dangers of sexual abuse by educators, failure to have any outside agency test its safety procedures, failure to protect the children in its programs from child sex abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent its programs, leaders and people as safe, failure to train its employees properly to identify signs of child molestation by fellow employees, failure by relying upon mental health professionals, and/or failure by relying on people who claimed that they could treat child molesters.

33. Defendant Poly Prep also breached its duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Foglietta posed and the risks of child sexual abuse in schools. They also failed to warn them about any of the knowledge that Defendant Poly Prep had about child sexual abuse.

34. Defendant Poly Prep additionally violated a legal duty by failing to report known and/or suspected abuse of children by Foglietta and/or its other agents to the police and law enforcement.

35. Prior to the sexual abuse of Plaintiff, Defendant Poly Prep learned or should have learned that Foglietta was not fit to work with children. Defendant Poly Prep, by and through its agents, servants and/or employees, became aware, or should have become aware of Foglietta's propensity to commit sexual abuse and of the risk to Plaintiff's safety. At the very least, Defendant Poly Prep knew or should have known that it did not have sufficient information about whether or not its administrators and people working at Poly Prep were safe.

36. Defendant Poly Prep knew or should have known that there was a risk of child sex

abuse for children participating in its programs and activities. At the very least, Defendant Poly Prep knew or should have known that they did not have sufficient information about whether or not there was a risk of child sex abuse for children participating in its programs and activities.

37. Despite this knowledge, Defendant Poly Prep negligently deemed that Foglietta was fit to work with children; and/or that any previous suitability problems Foglietta had were fixed and cured; and/or that Foglietta would not sexually molest children; and/or that Foglietta would not injure children.

38. Defendant Poly Prep's actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child participating in the programs and activities Defendant Poly Prep offered to minors, Plaintiff was a foreseeable victim. Additionally, as a vulnerable child who Defendant Poly Prep had access to through Defendant Poly Prep's facilities and programs, Plaintiff was a foreseeable victim.

39. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

## **COUNT II: NEGLIGENT HIRING OF EMPLOYEES**

40. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

41. At all times material, Foglietta was employed by Defendant Poly Prep and was under Defendant Poly Prep's direct supervision, employ, and control when he committed the wrongful acts alleged herein. Foglietta engaged in the illegal conduct while acting in the course and scope of his employment with Defendant Poly Prep and/or accomplished the sexual abuse by virtue of his job-created authority.

42. Defendant Poly Prep negligently hired Foglietta and/or negligently placed Foglietta

in a position to cause foreseeable harm which Plaintiff would not have been subjected to had Defendant Poly Prep taken reasonable care in its pre-hiring investigation of Foglietta.

43. Defendant Poly Prep negligently hired Foglietta with knowledge of Foglietta's propensity for the type of behavior which resulted in Plaintiff's injuries in this action.

44. Defendant Poly Prep failed to investigate Foglietta's past history of inappropriate conduct and, through the exercise of reasonable diligence, should have known of Foglietta's propensity for child sexual abuse. Defendant Poly Prep was required to make an appropriate investigation of Foglietta and failed to do so. An appropriate investigation would have revealed the unsuitability of Foglietta for employment and it was unreasonable for Defendant Poly Prep to hire Foglietta in light of the information they knew or should have known.

45. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

**COUNT III: NEGLIGENT TRAINING AND SUPERVISION OF EMPLOYEES**

46. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

47. At all times material, Foglietta was employed by Defendant Poly Prep and was under Defendant Poly Prep's direct supervision, employ, and control when he committed the wrongful acts alleged herein. Foglietta engaged in the wrongful conduct while acting in the course and scope of his employment with Defendant Poly Prep and/or accomplished the sexual abuse by virtue of his job-created authority.

48. Defendant Poly Prep had a duty, arising from its employment of Foglietta, to ensure that he did not sexually molest children.

49. Further, Defendant Poly Prep had a duty to train and educate employees and

administrators and establish adequate and effective policies and procedures calculated to detect, prevent, and address inappropriate behavior and conduct between adults and children.

50. The abuse complained of herein occurred on Defendant's property and/or with the use of its chattels.

51. Defendant Poly Prep was negligent in the training, supervision, and instruction of its employees. Defendant Poly Prep failed to timely and properly educate, train, supervise, and/or monitor its agents or employees with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed. Defendant Poly Prep was additionally negligent in failing to supervise, monitor, chaperone, and/or investigate Foglietta and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Foglietta's sexual abuse of Plaintiff. In failing to properly supervise Foglietta, and in failing to establish such training procedures for employees and administrators, Defendant Poly Prep failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

52. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

#### **COUNT IV: NEGLIGENT RETENTION OF EMPLOYEES**

53. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count.

54. At all times material, Foglietta was employed by Defendant Poly Prep and was under Defendant Poly Prep's direct supervision, employ, and control when he committed the wrongful acts alleged herein.

55. Defendant Poly Prep negligently retained Foglietta with knowledge of Foglietta's

propensity for the type of behavior which resulted in Plaintiff's injuries in this action. Defendant Poly Prep failed to investigate Foglietta's past and/or current history of sexual abuse and, through the exercise of reasonable diligence, should have known of Foglietta's propensity for child sexual abuse. Defendant Poly Prep should have made an appropriate investigation of Foglietta and failed to do so. An appropriate investigation would have revealed the unsuitability of Foglietta for continued employment and it was unreasonable for Defendant Poly Prep to retain Foglietta in light of the information they knew or should have known.

56. Defendant Poly Prep negligently retained Foglietta in a position where he had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had Defendant Poly Prep taken reasonable care.

57. In failing to timely remove Foglietta from working with children or terminate the employment of Foglietta, Defendant Poly Prep failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

58. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

#### **PRAYER FOR RELIEF**

WHEREFORE, based on the foregoing causes of action, Plaintiff prays for judgment against Defendants in an amount that will fully and fairly compensate Plaintiff for Plaintiff's injuries and damages and for any other relief the Court deems appropriate. The amount of damages sought in this Complaint exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

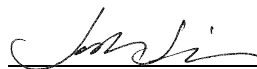
#### **JURY DEMAND**

Plaintiff demands a trial by jury of all issues so triable. Pursuant to §4 of the New York

Child Victims Act, Plaintiff is entitled to a trial preference.

Dated: July 8, 2020  
New York, New York

**ABEND & SILBER, PLLC**



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