



CASE NO: A-19-800547-C  
Department 26

CMPT  
MITCHELL POSIN, ESQ.  
Nevada Bar No. 002840  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

GLEN GAROFANO, an individual;	)	CASE NO.:
	)	DEPT.
Plaintiff,	)	
	)	
v.	)	
	)	
RODERICK D. STEWART, aka ROD	)	
STEWART, an individual; CAESAR'S	)	
ENTERTAINMENT CORPORATION,	)	
a Nevada Corportion, DOES I	)	
through V, inclusive, ROE BUSINESS	)	
ENTITIES VI through X, inclusive	)	
	)	
Defendants.	)	

COMPLAINT

(verified)

(Jury Trial Requested)

COMES NOW Plaintiff, GLEN GAROFANO, by and through his attorney,  
MITCHELL POSIN, ESQ., of the Law Offices of MITCHELL POSIN, CHTD, and  
complaining against the Defendants, and each of them, alleges, as follows.

**GENERAL ALLEGATIONS.**

1. Plaintiff, GLEN GAROFANO, is and, at all times relevant and material hereto, was a resident of Clark County, Nevada.

2. Defendant, RODERICK D. STEWART, aka ROD STEWART, hereinafter "STEWART," is and, at all times relevant and material hereto, an entertainer, and was physically present in Clark County, Nevada, at the time of the incident complained of herein.

3. Defendant CAESARS ENTERTAINMENT CORPORATION, hereinafter "CAESARS," a Nevada corporation, is and, at all times relevant and material hereto, was, a Nevada corporation that operates numerous properties, including The Colosseum at Caesar's Palace, located in Clark County Nevada, hereinafter "The Colosseum;"

4. That the true names or capacities, whether corporate, associate, individual or otherwise, of Defendants, DOES I through V, inclusive, are unknown to Plaintiff who, therefore, sues said Defendants by such fictitious names. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the events and happenings herein referred to and proximately caused injury and damages thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of the Court to amend this Complaint to insert the true names and capacities of DOES I through V when the same have been ascertained and to join such Defendants in this action.

5. That the true names or capacities of Defendants, ROE BUSINESS ENTITIES VI through X, inclusive, are unknown to Plaintiff who, therefore, sues said Defendants by such fictitious names. Defendants designated herein as ROE BUSINESS ENTITIES VI through X, and each of them, are predecessors-in-interest,

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4 successors-in-interest, and/or agencies otherwise in a joint venture with, and/or  
5 serving as an alter ego of, any and/or all Defendants named herein; and/or are entities  
6 responsible for the supervision of the individually named Defendants at the time of  
7 the events and circumstances alleged herein; and/or are entities employed by and/or  
8 otherwise directing the individual Defendants in the scope and course of their  
9 responsibilities at the time of the events and circumstances alleged herein; and/or are  
10 entities otherwise contributing in any way to the acts complained of and the damages  
11 alleged to have been suffered by the Plaintiff herein. Plaintiff is informed and, on that  
12 basis believe and thereon allege, that each of the Defendants designated as a ROE  
13 BUSINESS ENTITY is in some manner negligently, vicariously, and/or statutorily  
14 responsible for the events and happenings referred to and caused damages to Plaintiff  
15 as herein alleged. Each reference hereinafter to any specific Defendant is intended  
16 to include any such DOE or ROE Defendant. Plaintiff will seek leave of the Court to  
17 amend this Complaint to insert the true names of such Defendants when the same  
18 have been ascertained.

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20 6. Each of the Defendants, including those herein designated as Does and  
21 Roe Business Entities, are the agents, successors, assigns, supervisors, subordinates or  
22 advisors of each other Defendant, and in doing the things herein alleged, were acting  
23 within the course and scope of their agency.

24 7. That on or about August 27, 2017, STEWART was performing a concert  
25 for the general public at The Colosseum, hereinafter "the Concert."

26 8. That Plaintiff attended the Concert, and was seated at Seat Number 305  
27 at Row CC, when STEWART threw or kicked a soccer ball into the crowd, directly  
28 toward Plaintiff. As the other concert spectators reacted to the approaching ball,  
Plaintiff was knocked over, causing him to sustain injuries, as hereinafter alleged.

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4 9. That STEWART has intentionally thrown and kicked multiple soccer  
5 balls into the crowd as his promotional act at his concerts for many years. These  
6 actions have caused injuries to concertgoers since a date no later than July 5, 1989  
7 when STEWART injured Patricia Boughton with a soccer ball by throwing or kicking  
8 a ball into the concert audience, allegedly causing permanent disfigurement to Patricia  
9 Boughton, which injury resulted in a lawsuit against STEWART.

10 10 That STEWART had previous knowledge that his action of throwing  
11 and/or kicking soccer balls into the concert audience had injured concert attendees in  
12 the past, since a date no later than approximately 1991, when he was served with Ms.  
13 Boughton's lawsuit.

14 11. That despite STEWART'S knowledge of the danger of STEWART'S  
15 actions in throwing or kicking soccer balls into the concert audience, STEWART  
16 continued to throw and/or kick soccer balls into the concert audience in a manner that  
17 caused injuries to audience members, and did so again at the Concert.

18 12. That CAESARS had previous knowledge that STEWART'S action of  
19 throwing and kicking soccer balls into the concert audience had injured concert  
20 attendees in the past, since a date no later than November 20, 2014, when they were  
21 served with a Summons and Complaint in Eighth Judicial District Court case no. A-  
22 14-707316-C, for injuries caused by a soccer ball kicked by STEWART into the  
23 audience at a concert at the Colloseum.

24 13. That despite CAESARS' knowledge of the danger of STEWART'S  
25 actions, CAESARS continued to allow STEWART to throw and/or kick soccer balls  
26 into the concert audience in a manner that caused injuries to audience members.

27 14. As a direct and the aforesaid negligence and carelessness of the  
28 Defendants, the Plaintiff sustained injuries.

**FIRST CLAIM FOR RELIEF  
(NEGLIGENCE)**

11. Plaintiff repeats, restates and incorporates herein by reference as though fully set forth at length, each and every allegation set forth in the General Allegations section, above.

12. STEWART's conduct at his concert, as described in Paragraph 8, above, was negligent, careless and reckless.

13. STEWART owed a duty to all persons attending his concert, including the Plaintiff, to conduct himself in such a manner as to avoid the foreseeable risk of harm or injury to such persons.

14. In throwing and kicking soccer balls into the concert audience, STEWART breached this duty, which breach was the proximate cause of the injuries sustained by Plaintiff.

15. As a direct and proximate result of the aforesaid negligence and carelessness of the Defendants, and each of them, Plaintiff suffered injury to his back, groin, legs, and other body parts. Plaintiff thereby experienced great pain to his body, and anxiety and suffering of mind, sustaining injuries and damages for a sum in excess of \$15,000.00.

16. As a further direct and proximate result of the aforesaid negligence and carelessness of the Defendants, and each of them, Plaintiff has incurred damages, both general and special, including medical expenses as a result of the necessary treatment of his injuries, and will continue to incur damages for future medical treatment necessitated by the injuries he has suffered at the concert.

17. As a further direct and proximate result of the aforementioned negligence and carelessness of the Defendants, and each of them, Plaintiff, was required to, and

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4 did, employ physicians, surgeons, and other health care providers to examine, treat,  
5 and care for him, and did incur medical and incidental expenses thereby. The exact  
6 amount of such expenses is presently unknown, but Plaintiff alleges that he has  
7 suffered special damages in excess of \$15,000.00.

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9 18. As a further direct and proximate result of the aforementioned  
10 negligence and carelessness of the Defendants, and each of them, Plaintiff has been  
11 prevented, in part, from his usual recreational, social, and work activities and will be  
12 prevented, in part, from doing so in the future, all to his damage for a sum in excess  
13 of \$15,000.00, according to the Plaintiff's proof at trial.

14 19. It has been necessary for Plaintiff to retain service of counsel to  
15 prosecute this action, and he is entitled to a reasonable attorney's fee and costs of suit  
16 incurred.

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18 **SECOND CLAIM FOR RELIEF**  
19 **(GROSS NEGLIGENCE)**

20 20. Plaintiff repeats, restates, and incorporates herein by reference as though  
21 fully set forth at length, each and every allegation set forth in the General Allegations  
22 section, above.

23 21. On or about August 27, 2017, STEWART intentionally threw and/or  
24 kicked one or more soccer balls into the concert audience, knowing that said action  
25 had caused injuries to multiple members of concert audiences in the past. Despite this  
26 knowledge, STEWART continued his practice, in direct disregard to the safety and  
27 well-being of members of the concert audience, including the Plaintiff. Such an act,  
28 committed once he was on notice of the danger it represented, amounted to  
indifference to his present legal duty, and to utter forgetfulness of legal obligations so  
far as other persons may be affected.

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5 21. On or about August 27, 2017, CAESARS allowed STEWART to  
6 continue his custom and practice of throwing and/or kicking soccer balls into the  
7 concert audience, despite their knowledge that throwing and/or kicking soccer balls  
8 into the concert audience had caused injuries to multiple members of concert  
9 audiences in the past. CAESARS' failure, at a time when CAESARS was on notice of  
10 the danger it represented, amounted to indifference to their present legal duty, and to  
11 utter forgetfulness of their legal obligations so far as other persons may be affected.

12 22. As a direct and proximate result of the aforesaid gross negligence and  
13 carelessness of the Defendants, and each of them, Plaintiff has incurred damages, both  
14 general and special, including medical expenses as a result of the necessary treatment  
15 of his injuries, and will continue to incur damages for future medical treatment  
16 necessitated by the injuries he has suffered at the concert.

17 24. It has been necessary for the Plaintiff to retain service of counsel to  
18 prosecute this action, and he is entitled to a reasonable attorney's fee and costs of suit  
19 incurred.

20 **THIRD CLAIM FOR RELIEF**  
21 **(WANTON MISCONDUCT)**

22 25. Plaintiff repeats, restates, and incorporates herein by reference as though  
23 fully set forth at length, each and every allegation set forth in the General Allegations  
24 section, above.

25 26. On or about August 27, 2017, STEWART intentionally threw and/or  
26 kicked one or more soccer balls into the concert audience, knowing that said action  
27 had caused injuries to multiple members of concert audiences in the past. Despite this  
28 knowledge, STEWART continued his practice, in direct disregard to the safety and  
well-being of members of the concert audience, including the Plaintiff. Such an act,

committed once he was on notice of the danger it represented, amounted to despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person, pursuant to NRS 42.001(4).

27. On or about August 27, 2017, CAESARS allowed STEWART to continue his custom and practice of throwing and/or kicking soccer balls into the concert audience, despite their knowledge that throwing and/or kicking soccer balls into the concert audience had caused injuries to multiple members of concert audiences in the past. CAESARS' failure, at a time when CAESARS was on notice of the danger it represented, amounted to despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person, pursuant to NRS 42.001(4).

28. On or about August 27, 2017, STEWART intentionally threw and/or kicked one or more soccer balls into the concert audience, knowing that said action had caused injuries to multiple members of concert audiences in the past. Despite this knowledge, STEWART continued his practice, in direct disregard to the safety and well-being of members of the concert audience, including the Plaintiff. Such an act, committed once he was on notice of the danger it represented, amounted to despicable conduct which is engaged in with a conscious disregard of the rights or safety of others, pursuant to NRS 42.001(3).

29. On or about August 27, 2017, CAESARS allowed STEWART to continue his custom and practice of throwing and/or kicking soccer balls into the concert audience, despite their knowledge that throwing and/or kicking soccer balls into the concert audience had caused injuries to multiple members of concert audiences in the past. CAESARS' failure, at a time when CAESARS was on notice of



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4 the danger it represented, amounted to despicable conduct which is engaged in with a  
5 conscious disregard of the rights or safety of others, pursuant to NRS 42.001(3).

6 30. Wanton misconduct involves an intention to perform an act that the actor  
7 knows, or should know, will very probably cause harm. STEWART intentionally  
8 threw multiple soccer balls into the crowd, knowing that said action had caused  
9 injuries to multiple patrons in the past. Despite this knowledge, STEWART  
10 continued his practice, in direct disregard to patrons safety and well- being, including  
11 the Plaintiff. Such an act, committed once he was on notice of the danger it  
12 represented, amounted to wanton misconduct.

13 31. On or about August 27, 2017, CAESARS allowed STEWART to  
14 continue his custom and practice of throwing and/or kicking soccer balls into the  
15 concert audience, despite their knowledge that throwing and/or kicking soccer balls  
16 into the concert audience had caused injuries to multiple members of concert  
17 audiences in the past. CAESARS' failure, at a time when CAESARS was on notice of  
18 the danger it represented, amounted to wanton misconduct.

19 32. As a direct and proximate result of the aforesaid wanton misconduct,  
20 oppression and malice of the Defendants, and each of them, Plaintiff has incurred  
21 damages, both general and special, including medical expenses as a result of the  
22 necessary treatment of his injuries, and will continue to incur damages for future  
23 medical treatment necessitated by the injuries he has suffered at the concert.

24 33. It has been necessary for the Plaintiff to retain service of counsel to  
25 prosecute this action, and he is entitled to a reasonable attorney's fee and costs of suit  
26 incurred.

27 WHEREFORE, Plaintiff, expressly reserving his right to amend this  
28 Complaint at the time of trial to include all items of damage not yet ascertained,

demands judgment against the Defendants, and each of them, jointly and severally, as follows:

1. For Plaintiff, general, special and compensatory damages, according to Plaintiff's proof at trial, for a sum in excess of \$15,000.00;
2. For Plaintiff, punitive and exemplary damages pursuant to NRS 42.005;
2. For Plaintiff, attorney's fees and costs of suit incurred; and
3. For such other and further relief as to the Court seems just and proper in the premises.

Dated this 7 day of August, 2019.

Submitted by:

LAW OFFICES OF MITCHELL POSIN, CHTD.

      /s/ Mitchell Posin      

MITCHELL POSIN, ESQ.

Nevada Bar No. 002840

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VERIFICATION

Under penalties of perjury, the undersigned declares that he is the Plaintiff named in the foregoing COMPLAINT, and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes them to be true.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 14 day of August, 2019

  
GLEN GAROFANO, Plaintiff