1		The Honorable Thomas T. Glover Chapter 11
2		Hearing Location: Seattle Hearing Time: 9:30 a.m.
4		Hearing Location: Courtroom 7106 Response Date: January 6, 2009
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7	INITED STATES D	AND IDTOV COLDT
8	UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE	
9	In Re:	Case No. 08-10844-TTG
10	GEN CON LLC,	RESPONSE TO OBJECTION TO THE
11	Debtor.	CONFIRMATION OF THE DEBTORS AMENDED PLAN OF ORGANIZATION
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14	COMES NOW Peter D. Adkison ("Adkis	on"), member of the above captioned Gen
15	Con, LLC ("Gen Con" or "Debtor") by and	through his attorneys of record, Rosen
16	Lewis, PLLC and files this Response ("Re	esponse") to the objection filed by Gen
17	Con Acquisition LLC ("Objector") on or a	bout December 30, 2008 ("Objection") to
18	the Confirmation of Gen Con's Amended Plan of Reorganization ("Plan"). In	
19	support of this Response, Adkison states	s as follows:
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21	I. <u>INTR</u>	<u>ODUCTION</u>
22	1.1 To enable participation in	these proceedings and seek to wrest
23	control of Gen Con, Objector has acquired	a minor claim against Debtor (Objection
24	at Preface).	
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1.2 Objector asserts that the claim holders of Gen Con ("Claimants")
would be best served by discarding the Plan and adopting Objector's letter of
intention outlining general terms under which it would acquire all the equity of
Gen Con and dispose of all of Gen Con's debts solely in consideration for
Claimants having the obligation to receive either a thirty percent (30%) discount
on their claims or a longer term repayment with an as yet to be identified
management team and as yet to be ascertained resources ("Offer").

- 1.3 Objector wrongfully asserts that the Offer has not been fully and fairly considered relative to the Plan by the Creditor's Committee and Gen Con.
- 1.4 This Response undertakes to clarify the value of the Plan and keeping Gen Con intact in its current form, the enormous risk attendant Objector's Offer, the potential for unjust enrichment of Objector and misappropriation of Mr. Adkison's equity in Gen Con if the Offer is accepted, and the careful, thoughtful, and arms length efforts engaged in by the Creditors Committee.

# 16 II. <u>ANALYSIS</u>

#### A. Gen Con's Value.

2.1 Gaming is fundamentally different from playing a game. Playing a game is a momentary diversion from a person's routine. Gaming is what a "Gamer" primarily seeks to do with their life. Gaming is the aspect of a Gamer's life that they use to define who they are. Without understanding this distinction, it is impossible to understand the value of Gen Con and why the Offer would lay waste to that value.

- 2.2 Within the community of Gamers, Mr. Adkison is widely respected as perhaps the most revered community leader. He co-created the most commercially successful hobby game of all time, Magic: The Gathering®; he rescued from imminent demise the most widely known hobby game of all time, Dungeons & Dragons® and actively revitalized that game; and he has poured himself and his resources into growing and keeping Gen Con Indy the most commercially and socially successful Gamer event in the world.
  - 2.3 Objector misguidedly perceives that Gen Con's software (Objection at paragraphs 43-46) is one of, if not the, critical element in operating the business. This software and the computers on which it currently operates is a depreciating commodity item.
  - 2.4 The strength of Gen Con is in the relationship the show has with its volunteers, attendees, sponsors, and exhibitors on whom the entire value of the Gen Con business relies. Mr. Adkison as the industry's "Gaming Mogul" is the critical connective persona between the show's volunteers, attendees, sponsors, and exhibitors and its commercial viability.
  - 2.5 If Gen Con were to lose the services of either Mr. Adkison or its current management team, the overall risk of future viability of the business would increase dramatically. Other industry shows have alienated their exhibitors, volunteers or key participants resulting in permanent or prolonged damage to those events.
  - 2.6 While the Gen Con company has struggled, the Gen Con show has prospered and thrived under Mr. Adkison's stewardship.

### B. Risk and Uncertainty of Offer.

- 2 2.7 Objector's Offer, which was carefully evaluated by the Creditor's
- 3 Committee and Gen Con senior management, presents Claimants with a choice between
- 4 the Scylla and Charybdis, the two sea monsters of Greek mythology laying waste to
- 5 all those forced to pass through that region.
- 6 2.8 Objectors have shown no indication that they understand the value of
- 7 Gen Con is anything more than the sum of equipment such as computers and
- 8 software. Absent an understanding of the value of the Gen Con brand to Gamers as
- 9 a lifestyle event, Objectors are exceedingly likely to rapidly lay waste to this
- 10 asset.

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- 11 2.9 In the best possible circumstance, disposing of Mr. Adkison and the
- senior management team will likely result in a prolonged diminution of Gen Con's
- value to consumers. More likely, particularly in light of the current economic
- climate, it will likely alienate the very Gamers on which it relies, resulting in
- the rapid demise of the business.
- 16 2.10 Thus, if the Objector's Offer is adopted, Claimants who understand
- the value of Gen Con will be forced to choose between receiving only seventy
- 18 cents on the dollar or an extremely uncertain and risky future at the
- inexperienced hand of the Objectors.

## C. Offer Seeks to Unjustly Enrich Objector

- 22 2.11 For an uncertain payment, Objector has managed to purchase a minor
- 23 claim against Debtor in these proceedings.
- 24 2.12 For this paltry sum, Objector seeks to divest Mr. Adkison of any

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- 1 potential equity in the business that Mr. Adkison has created through years of
- 2 personal and financial commitment. Mr. Adkison has made personal guarantees,
- 3 mortgaged his home, and personally invested heavily in Gen Con's business.
- 4 2.13 The goal of these proceedings should be to assure that Gen Con's
- 5 creditors are made as nearly whole as possible. The goal is not to award select
- 6 creditors who have bought their way into these proceedings a potential windfall
- 7 for them to squander.
- 8 2.14 If Objector's Offer is accepted, the result will be to award any
- 9 residual value in the Gen Con brand to one relatively minor Claimant. This Court
- should refuse to be a tool for such misappropriation.

### D. Objectivity of Creditors Committee

- 2.15 Objector insinuates at length that the Creditor's Committee appointed
- by this Court is a mere pawn of Mr. Adkison. (Objection at paragraph 14, 16, and
- 15 49) The Creditor's Committee is composed of the largest debt holders willing to
- serve on the committee who did not have a conflict of interest.
- 17 2.16 It should be noted that two of the members of the Creditor's
- 18 Committee actually forced Mr. Adkison to provide personal guarantees for their
- 19 loans, which is much more the action of a commercial lender than a controlled
- 20 personal associate.
- 2.17 The Creditor's Committee determination of the types of decisions it
- 22 should be involved in during repayment of Gen Con's obligations was not taken
- 23 lightly. These "Major Decisions" balance the critical issues of the company
- being able to actively make decisions in the ordinary course of business without

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- being unduly delayed or constrained.
- 2 2.18 The Creditor's Committee carefully and thoroughly analyzed and
- 3 summarized their consideration of Debtor's assets and liabilities, the Plan,
- 4 treatment of Creditors under the Plan, the Feasibility of the Plan, and
- 5 Alternatives as set forth in the Amended Disclosure Statement for Plan of
- 6 Reorganization dated December 3, 2008.
- 7 2.19 Accordingly, Objector's insinuation that the Creditor's Committee
- 8 relationship in this matter has been anything other than a fair and arms-length
- 9 interaction is disingenuous and inaccurate.
- 2.20 Conversely, Objector seeks to harm and unfairly tarnish Gen Con and
- Mr. Adkison's reputation. Objector devotes over fifteen percent of the entire
- 12 Objection to discussion of the unfortunate situation into which Gen Con was
- thrust with respect to the Make A Wish Foundation. While Gen Con wrestled with
- chaotic financial issues and a major dispute with its licensor, Gen Con remained
- 15 committed to making this payment as soon as prudent. This payment has since been
- made, and Objector's repeated drumming on this now resolved issue (Objection
- 17 paras. 11, 12, 13, 14, 15, 17, 51, 52, 53, 54, 55, and 72) is merely a gratuitous
- 18 effort to damage Mr. Adkison and Gen Con.

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### III. CONCLUSIONS

3.1 Gen Con is a lifestyle brand for its consumers. This brand is best

22 managed and nurtured by Mr. Adkison and Gen Con's current management team. This

team presents the lowest risk plan for assuring that all Plan Claimants receive

24 full repayment.

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1	3.2 Objectors misunderstand the value in Gen Con by failing to understand
2	what attracts volunteers and consumers. This fundamental misunderstanding of the
3	value proposition of Gen Con is a clear indication that Objector is unqualified
4	to operate the Gen Con show. This forces Claimants to choose between a
5	significant reduction in payment or dependence on a business strategy fraught
6	with risk.
7	3.3 The Creditors Committee has not acted at the direction or inclination
8	of Mr. Adkison. They have fully and fairly considered the options available and
9	made a good faith determination in the best interests of the Creditors as a
10	whole. The Creditors Committee has fully evaluated the value of all claims and
11	liabilities, and fully disclosed the relevant considerations to the Claimants to
12	allow them to evaluate the Plan.
13	3.4 Objector seeks to use the Offer to unjustly enrich itself by
14	diverting any residual value in the Gen Con brand to itself at the unfair and
15	inequitable expense of the other Claimants and Mr. Adkison.
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18	DATED this 6 <sup>th</sup> day of January, 2009.
19	ROSEN LEWIS, PLLC
20	Du.
21	By:  Brian E. Lewis, WSBA #23341
22	Attorney for Mr. Peter Adkison

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