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Superior Court of Washington, County of King

Zak Smith

No.

Plaintiff,

vs.

GEN CON LLC, a Washington State  
Limited Liability Company, PETER  
ADKISON, an individual, and PETER  
ADKISON AND JANE DOE ADKISON  
and the marital community composed  
thereof

COMPLAINT FOR DEFAMATION AND  
DEFAMATION PER SE, FALSE LIGHT,  
OUTRAGE, INTERFERENCE WITH A  
BUSINESS EXPECTANCY, VIOLATION  
OF THE WASHINGTON CONSUMER  
PROTECTION ACT AT RCW 19.86 *etc.*  
*seq.*,

Defendants.

COMES NOW the Plaintiff herein, Zak Smith, by and through his undersigned attorneys  
of record, Admon Law Firm, and for cause of action against Defendants named herein allege  
and assert as follows:

**I. PARTIES**

1. Plaintiff Zak Smith at all material times hereto is an individual resident in Los Angeles  
County, State of California.

1. Upon information and belief, at all times material hereto, Defendant GEN CON LLC (“Gen  
Con”) is a Washington State limited liability company with UBI Number 602 203 812. All  
acts, errors, and omissions complained of herein were performed for the benefit of Gen Con.

2. Upon information and belief, at all times material hereto, Defendants PETER ADKISON and JANE DOE ADKISON, husband and wife, and the marital community composed thereof, were residents of King County, Washington, constitute a marital community, and all acts complained of herein were performed on behalf of the said marital community.

3. The causes of action arise under Washington State statutory and common law. Thus, this Court has subject matter jurisdiction over this matter.

4. Venue is properly lodged in King County because all of the tortuous activities complained of occurred in King County. RCW 4.12.020/ RCW 4.12.025.

## **II. FACTS**

5. Plaintiff incorporates into this cause of action all allegations contained in paragraphs 1 through 4 of this Complaint as though set forth fully herein.

### **Background**

6. Plaintiff Zak Smith is an artist. He graduated with a Bachelor's in Fine Arts from The Cooper Union and a Masters in Fine Arts from Yale University.

7. Mr. Smith's art has been displayed in venerable museums and galleries. Mr. Smith's art is also in the Museum of Modern Art's permanent collection, the Whitney Museum, the Walker Art Center, and the Saatchi Gallery. Mr. Smith also published several books that feature his art.

8. Beginning in 2010, Mr. Smith expanded his artistic endeavors into developing/authoring tabletop role-playing games ("RPG"), for which he has won multiple prestigious awards.

9. Mr. Smith was hired as a game consultant by various game companies, including the world's most prominent RPG game developer, Dungeons & Dragons. Mr. Smith has also independently developed and successfully sold his own games and game products.

1 10. Mr. Smith generates a substantial portion of his income from RPG consulting,  
2 development, and production.

3 11. Gen Con is the largest RPG trade show in the United States. On Gen Con's website, it  
4 describes itself as "the largest and longest-running tabletop gaming convention in North  
5 America, held annually in Indianapolis, IN."

6 12. The annual Gen Con convention is a 4-day gaming trade show, where an average of  
7 70,000 RPG developers, producers, manufacturers, consultants, and fans network, unveil their  
8 new releases, gain recognition and publicity in the RPG industry, and engage in activities to  
9 promote themselves, their games, and their businesses.

10 13. For consultants, developers, and producers of RPG games to succeed in that industry,  
11 they must attend Gen Con.

12 14. Until 2019, Mr. Smith attended Gen Con for years. He generated a significant amount of  
13 his professional and business relations, consulting jobs, sales, and other business interests in the  
14 RPG industry from the event.

15 15. Defendant Peter Adkison is the co-owner of Gen Con and Chairman of the Board.

16 16. On February 10, 2019, during the zenith of the #MeToo movement, Mr. Smith's  
17 estranged wife published a lengthy Facebook post on her personal Facebook account, accusing  
18 Mr. Smith of sexual assault and transgressions during their marriage. Those accusations are  
19 false.

20 17. In and around February 2019, Defendants Gen Con and Adkison published a statement  
21 about Mr. Smith on the GEN Con website at the URL address

22 [http://www.gencon.com/attend/gencon\\_policies](http://www.gencon.com/attend/gencon_policies) ("Web Post"). **Exhibit 1.**

18. The first paragraph of the Web Post addresses Mr. Smith directly by his first name and last initial, "Zak S." The Web Post published actionable words and/or printed statements and/or published statements which are false and defamatory of Mr. Smith:

At Gen Con we have a policy of not disclosing the names of individuals who have been sanctioned or banned from our events. However, our statements regarding a recent ban have caused confusion and more importantly, made people feel that Gen Con doesn't care about attendee safety. To clarify, I want to state that Zak S has been banned from Gen Con and that we flat-out don't tolerate harassers or abusers in our community or at our convention.

19. On February 21, 2019, Defendant Adkison published a Facebook post, further identifying Mr. Smith as the Gen Con Publication subject. Defendant Adkison's Facebook post reads, "In response to the recent outcry against Zak Smith, I've posted an open letter on the Gen Con website uninviting him to Gen Con." **Exhibit 2.**

20. In response to a comment to Defendant Adkison's Facebook post, he published a Facebook reply ("Facebook Reply") containing actionable words and/or printed statements and/or published statements which are false and defamatory of Mr. Smith:

There was due process, that's why it took us so long to come around. There were many people abused by Zak, the evidence was overwhelming. I don't need a court process to uninvite a abuser to my party. **Exhibit 3.**

21. The Facebook Reply is an admission by Defendant Adkison that he consulted people to inquire about facts relating to Mr. Smith's purported acts of harassment and abuse.

22. On February 21, 2019, Defendants Gen Con and Adkison published a Twitter statement ("Tweet"). **Exhibit 4.**

23. The Tweet published actionable words and/or printed statements and/or published statements which are false and defamatory of Mr. Smith:

1 Last week, we made a statement regarding our stance on abuse &  
2 harassment in gaming. Many of you told us it wasn't clear enough  
3 & we need to take a firmer stand. We hard you & want to be clear:  
4 Zak S is banned from attending. Read the complete statement:  
5 [gencon.com/attend/gencon\\_...](http://gencon.com/attend/gencon_...)”

6 24. The Web Post, Tweet, and Facebook Reply that Mr. Smith engages in abuse or  
7 harassment are false and defamatory.

8 25. These statements contain serious false allegations against Mr. Smith, in their plain and  
9 ordinary meaning or by virtue of the surrounding circumstances which give the statements a  
10 defamatory meaning or by innuendo, in that they:

- 11 a. falsely allege that Mr. Smith is an abuser;
- 12 b. falsely allege that Mr. Smith has committed abuse;
- 13 c. falsely allege that Mr. Smith abused many people;
- 14 d. falsely allege that Mr. Smith is a harasser;
- 15 e. falsely allege that Mr. Smith has committed harassment;
- 16 f. falsely portray Mr. Smith as a menace who puts the public at risk;
- 17 g. falsely portray Mr. Smith as an individual to be feared;
- 18 h. falsely imply that Mr. Smith has committed a criminal offense;
- 19 i. falsely attack Mr. Smith's ethics and professionalism; and
- 20 j. falsely attack Mr. Smith's credibility and integrity.

21 26. These statements were issued with malice and clearly intended to expose Mr. Smith to  
22 hatred, contempt, and ridicule.

23 27. Since Defendants made their publications and banned Mr. Smith from attending Gen  
24 Con, it made role-play gaming news and was reported in Polygon, the major videogame news  
outlet.

1 28. Since Defendants made their publications and banned Mr. Smith from attending Gen  
2 Con, Mr. Smith lost his main game publisher, LOTFP. Multiple LOTFP projects Mr. Smith  
3 completed production of went unpublished.

4 29. A game Mr. Smith was in the course of working on, paying him \$3,000/month, was also  
5 “suspended.”

6 30. Since Defendants made their publications and banned Mr. Smith from attending Gen  
7 Con, it was mentioned on Mr. Smith’s Wikipedia page, which is Mr. Smith’s number one  
8 Google search result, which has caused immeasurable harm to Mr. Smith’s reputation and income.

9 31. Since Defendants made their publications and banned Mr. Smith from attending Gen  
10 Con, OneBookShelf, a digital marketplace company for both major and indie games, fiction,  
11 and comics, announced it would no longer work with Mr. Smith and would donate revenue  
12 generated from existing titles with Mr. Smith to the Rape, Abuse & Incest National Network.

13 32. Since Defendants made their publications and banned Mr. Smith from attending Gen  
14 Con, Mr. Smith was blacklisted and banned from most of the relevant game forums. A presence  
15 at said game forums, particularly Gen Con, is essential because they are a launching pad for  
16 newly developed games to the industry. They would also provide Mr. Smith with an audience to  
17 defend his innocence.

18 33. Since Defendants made their publications and banned Mr. Smith from attending Gen  
19 Con, Mr. Smith has been blacklisted in the game industry and has lost substantial income.

20 34. Since Defendants made their publications and banned Mr. Smith from attending Gen  
21 Con, Mr. Smith has been shunned by book publishers, in the art world, and the film industry,  
22 and has lost substantial income.

1 35. Since Defendants made their publications and banned Mr. Smith from attending Gen  
2 Con, any internet search of Mr. Smith's name returns multiple attacks on his character from  
3 within the game industry and defamatory claims. Mr. Smith has suffered and continues to suffer  
4 significant damage to his personal reputation, business reputation, business goodwill,  
5 livelihood, and reputation in the community.

6 36. Since Defendants made their publications and banned Mr. Smith from attending Gen  
7 Con, Mr. Smith has suffered severe emotional distress.

8 **III. CAUSE OF ACTION - DEFAMATION AND DEFAMATION PER SE**

9 37. Plaintiff incorporates into this cause of action all allegations contained in paragraphs 1  
10 through 34 of this Complaint as though set forth fully herein.

11 38. The Web Post published by Defendants about Mr. Smith was false and unprivileged, and  
12 made intentionally with actual knowledge of their falsity, with reckless disregard as to their  
13 truth or falsity, or negligently without due care and caution. Defendants knew that each of the  
14 statements and depictions set forth above was false, reasonably should have known they were  
15 false, and acted maliciously and with oppression with the intent, or with despicable conduct, to  
16 harm Mr. Smith.

17 39. The Tweet published by Defendants about Mr. Smith was false and unprivileged, and  
18 made intentionally with actual knowledge of their falsity, reckless disregard as to their truth or  
19 falsity, or negligently without due care and caution. Defendants knew that each of the  
20 statements and depictions set forth above was false, reasonably should have known they were  
21 false, and acted maliciously and with oppression with the intent, or with despicable conduct, to  
22 harm Mr. Smith.

1 40. The Facebook Reply published by Defendant Adkison about Mr. Smith was false and  
2 unprivileged, and made intentionally with actual knowledge of their falsity, reckless disregard  
3 as to their truth or falsity, or negligently without due care and caution. The Facebook Reply  
4 asserts that Defendant Adkison inquired into factual allegations and that his statements about  
5 Mr. Smith being a harasser and abuser are factual and not opinion. Defendant Adkison knew  
6 that each of the statements and depictions set forth above was false, reasonably should have  
7 known they were false, and acted maliciously and with oppression with the intent, or with  
8 despicable conduct, to harm Mr. Smith.

9 41. As a direct and proximate result of the Web Post, Tweet, and Facebook Reply, Mr.  
10 Smith has suffered and will suffer emotional distress, and continue to be embarrassed and  
11 humiliated by the false statements and implications, and reasonably fear that he and his work  
12 will be shunned, avoided, and subject to ridicule.

13 42. As a direct and proximate result of the above-described statements and depictions, Mr.  
14 Smith has been and will be exposed to hatred, contempt, ridicule or obloquy, to deprive him of  
15 the benefit of public confidence or social intercourse, or injures him in his business, trade, and  
16 profession and to the reputation and goodwill of his business.

17 43. As a direct and proximate result of the Web Post, Tweet, and Facebook Reply, harm was  
18 caused to Mr. Smith's reputation so as to lower him in the estimation of the community or to  
19 deter third persons from associating or dealing with him.

20 44. As a direct and proximate result of the above-described statements and depictions, Mr.  
21 Smith has suffered and will continue to suffer significant injury and damage to his reputation  
22 and his livelihood.



1 45. As a direct and proximate result of the above-described statements and depictions, Mr.  
2 Smith's business and personal relationships have been and will continue to be adversely  
3 affected as a result of these defamatory statements. Defendants are therefore liable to Mr. Smith  
4 for the tort of defamation and libel.

5 46. Defendants published three statements constituting defamation per se, and Mr. Smith is  
6 entitled to presumed damages.

7 47. Defendants' defamation and libel have caused Mr. Smith damages in an amount to be  
8 determined at trial, plus prejudgement and post-judgment interest, costs, expenses, and  
9 attorneys' fees.

10 **IV. CAUSE OF ACTION – FALSE LIGHT**

11 48. Plaintiff incorporates into this cause of action all allegations contained in paragraphs 1  
12 through 47 of this Complaint as though set forth fully herein.

13 49. The Web Post, Tweet, and Facebook Reply made by Defendants placed Mr. Smith in a  
14 false light that would be highly offensive, and the Defendants knew of or recklessly disregarded  
15 the falsity of the publication and the subsequent false light it would place Mr. Smith in.

16 50. As a direct and proximate result of the above-described statements and depictions, Mr.  
17 Smith has suffered, and will suffer, emotional distress, and continue to be embarrassed and  
18 humiliated by the false statements and implications, and reasonably fears that he and his  
19 professional and creative services and products will be shunned, avoided, and subject to  
20 ridicule.

21 51. As a direct and proximate result of the above-described statements and depictions, Mr.  
22 Smith has suffered and will continue to suffer significant injury and damage to his reputation  
23 and his livelihood, and to the reputation and goodwill of his business.

1 52. As a direct and proximate result of the above-described statements and depictions, Mr.  
2 Smith has suffered, and will continue to suffer, significant damages to his personal reputation in  
3 the community.

4 53. As a direct and proximate result of this damage to his reputation, Mr. Smith's business  
5 and personal relationships have been and will continue to be adversely affected as a result of  
6 these defamatory statements. Defendants are therefore liable to Mr. Smith for the tort of false  
7 light.

8 54. Defendant's false light against Mr. Smith has caused Mr. Smith damages in an amount  
9 to be determined at trial, plus prejudgement and post-judgment interest, costs, expenses, and  
10 attorneys' fees.

11 **V. CAUSE OF ACTION – OUTRAGE**

12 55. Plaintiff incorporates into this cause of action all allegations contained in paragraphs 1  
13 through 54 of this Complaint as though set forth fully herein.

14 56. The Web Post, Tweet, and Facebook Reply made by Defendants were extreme and  
15 outrageous conduct and made with the intentional or reckless infliction of emotional distress  
16 and caused Mr. Smith to suffer severe emotional distress.

17 57. Banning Mr. Smith from Gen Con based on a false accusation was extreme and  
18 outrageous conduct and done with the intentional or reckless infliction of emotional distress and  
19 caused Mr. Smith to suffer severe emotional distress.

20 58. Defendants defamation and libel have caused Mr. Smith damages in an amount to be  
21 determined at trial, plus prejudgement and post-judgment interest, costs, expenses, and  
22 attorneys' fees.

1     **VI. CAUSE OF ACTION - INTERFERENCE WITH A BUSINESS EXPECTANCY**

2     59. Plaintiff incorporates into this cause of action all allegations contained in paragraphs 1  
3 through 58 of this Complaint as though set forth fully herein.

4     60. Mr. Smith had and has the existence of a valid contractual relationship or business  
5 expectancy with customers that attend Gen Con. Mr. Smith also has a prospective contractual or  
6 business relationship with pecuniary value with customers who attend Gen Con.

7     61. Defendants knew about those ongoing relationships, both existing and prospective.

8     62. Defendants' false publications of the above-statements about Mr. Smith were intended  
9 to be an intentional interference inducing or causing a breach or termination of the business  
10 relationship or expectancy.

11    63. Defendants' false publications of the above-statements about Mr. Smith interfered in his  
12 contractual relationships and business expectancies for an improper purpose or used improper  
13 means.

14    64. Defendants' false publications directly and proximately caused resultant damage to Mr.  
15 Smith.

16    65. Defendants' ban on Mr. Smith's attendance at Gen Con was intended to be an  
17 intentional interference inducing or causing a breach or termination of the business relationship  
18 or expectancy.

19    66. Defendants' ban on Mr. Smith's attendance at Gen Con interfered in his contractual  
20 relationships and business expectancies for an improper purpose or used improper means.

21    67. Defendants' ban on Mr. Smith's attendance at Gen Con directly and proximately caused  
22 resultant damage to Mr. Smith.

68. Defendants' tortious interference with Mr. Smith's business expectancy has caused Mr. Smith damages in an amount to be determined at trial, plus prejudgment and post-judgment interest, costs, expenses, and attorneys' fees.

**VII. CAUSE OF ACTION - VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT AT RCW 19.86 *etc. seq.***

69. Plaintiff incorporates into this cause of action all allegations contained in paragraphs 1 through 68 of this Complaint as though set forth fully herein.

70. The conduct described above and throughout this Complaint took place in the State of Washington and constitutes unfair methods of competition or unfair or deceptive acts or practices in violation of §19.86.020 of the Revised Code of Washington ("RCW") and the Washington Consumer Protection Act ("CPA"), RCW 19.86.020, *et seq.*

71. The Washington CPA applies to the claims of Mr. Smith because the conduct which constitutes violations of the CPA by the Defendant occurred within Washington State.

72. Defendants' unfair or deceptive acts or practices occurred in Defendants' trade or business and were capable of deceiving a substantial portion of the public.

73. Defendant used and employed unfair methods of competition and/or unfair or deceptive acts or practices. Such unfair methods of competition and/or unfair or deceptive acts or practices include, but are not limited to, defaming Mr. Smith on the Gen Con website (Web Post), defaming Mr. Smith on the Gen Con Twitter account (Tweet), Facebook (Facebook Reply), and banning Mr. Smith from Gen Con based on false allegations.

74. Mr. Smith has been damaged as a proximate result of Defendant's violations of the CPA and has suffered actual, ascertainable losses.

75. Defendant's unfair or deceptive acts or practices have injured Mr. Smith and have the capacity to harm other persons, and are injurious to the public interest.

1 76. As a direct and proximate result of Defendant's violations of the CPA as set forth above,  
2 Mr. Smith has suffered an ascertainable loss and is therefore entitled to relief, including  
3 prejudgement and post-judgment interest, treble damages, costs, and attorneys' fees.

4 **VIII. PRAYER FOR RELIEF**

5 77. For damages and punitive damages in an amount to be proven at trial;

6 78. For prejudgment interest on all liquidated amounts as allowed by law;

7 79. For Plaintiff's reasonable costs and attorneys' fees incurred herein, pursuant to all  
8 applicable statutory, common law, and equitable theories; and

9 80. For such other and further relief as the Court deems just and proper.

10 Dated this February 7, 2021.

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12 ADMON LAW FIRM, PLLC

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14 By: /s/Moshe Y. Admon  
15 Moshe Y. Admon, WSBA No. 50235  
16 Attorney for Plaintiff  
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