

1 Victor A. Sahn (CA Bar No. 97299)
vsahn@sulmeyerlaw.com
2 **SulmeyerKupetz**
A Professional Corporation
3 333 South Hope Street, Thirty-Fifth Floor
Los Angeles, California 90071-1406
4 Telephone: 213.626.2311
Facsimile: 213.629.4520

5 Alex Weingarten, Esq. (CA Bar No. 204410)
aw@wbllp.com
6 Eric J. Bakewell (CA Bar No. 241529)
ejb@wbllp.com
7 Weingarten Brown LLP
8 10866 Wilshire Blvd Ste 500
Los Angeles, CA 90024
9 Telephone: 310.229.9300
Facsimile: 310.229.9380

10 Attorneys for Pangea Media Holdings, Ltd
11 (UK)

12 **UNITED STATES BANKRUPTCY COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **LOS ANGELES DIVISION**

15 In re

16 R2D2, LLC,

17 Debtor.

18 PANGEA MEDIA HOLDINGS LIMITED
19 (UK),

20 Plaintiff,

21 vs.

22 DARO FILM DISTRIBUTION AND
RONALD L. DURKIN, CHAPTER 11
23 TRUSTEE,

24 Defendants.

CASE NO. 2:10-bk-19924-BR

Adv No.
Chapter 11

**COMPLAINT OF PANGEA MEDIA
HOLDINGS LIMITED (UK) FOR: (1)
DECLARATORY RELIEF; (2)
INTENTIONAL INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE; AND (3) FOR
PRELIMINARY AND PERMANENT
INJUNCTION**

Date: Not Applicable
Time: Not Applicable
Place: Courtroom 1668
255 East Temple Street
Los Angeles, CA 90012

1 Plaintiff Pangea Media Holdings Limited (UK) hereby alleges as follows:

2 **Introduction**

3 1. This action arises out of yet another unlawful and improper attempt by the
4 bankruptcy trustee (Ronald L. Durkin) and his counsel (Leonard Gumport) (collectively,
5 the “Trustee”) to frustrate legitimate business operations engaged in by David Bergstein
6 and Bergstein-affiliated entities that are not in bankruptcy and should have nothing to do
7 with these proceedings. This time, the Trustee has frustrated efforts by Bergstein and
8 Pangea Media Holdings Limited (UK) (“Pangea UK”) to collect film licensing fees from
9 Daro Film Distribution (“Daro”) pursuant to a license agreement based on the Trustee’s
10 misguided claim that he has some right to money owed to Pangea UK.

11 2. The Trustee’s actions with respect to Daro come as no surprise given that
12 the Trustee has spent over two years: (1) waging a personal and vindictive war against
13 Bergstein; and (2) doing the bidding of David Molner, Screen Capitol International, and
14 other Molner-affiliated entities (collectively, “Aramid”) as part of Aramid’s broad and wide
15 ranging attempt to destroy Bergstein and Bergstein-affiliated entities. After years of
16 litigation that has seen the production of hundreds of thousands of physical documents,
17 the imaging of multiple computer servers containing millions of files and examined
18 countless witnesses – the Trustee has presented the sum total of zero evidence to
19 support his outlandish charges. When confronted with this fact, the Trustee’s counsel
20 just repeats the same allegations with greater zeal and volume, as if that can
21 compensate for a dearth of actual evidence.

22 3. From inception, the Trustee has spent his time seeking to force Bergstein
23 into a settlement on extortionate, egregious, and outrageous terms. If the Trustee
24 succeeded, he would not need to perform his duties. The Trustee expected that the
25 harm he caused and threatened would force Bergstein to pay sums that are not (and
26 never have been) due. Despite the fact that these proceedings have gone on for years,
27 the Trustee still has absolutely no evidence to support his specious claims and has done
28 nothing to actually recover anything for any of the estates he is administering. The

1 Trustee's lengthy list of improper activities include:

- 2 • Obtaining Bergstein's confidential information from his former attorney
3 (Susan Tregub) in violation of the attorney-client privilege and using that
4 information in these proceedings;
- 5 • Delivering the confidential information provided by Tregub to Aramid for
6 Aramid's use in its campaign to destroy Bergstein;
- 7 • Publicizing the confidential information provided by Tregub to the world and
8 making clear that anyone aligned with Bergstein will be punished;
- 9 • Obtaining confidential information about the debtors in this proceeding over
10 Bergstein's objection and in disregard of Court orders affirming that
11 Bergstein was the holder of the debtors' privilege prior to orders of relief
12 (based on discovery terminating sanctions) being entered against debtors;
- 13 • Improperly attempting to remove the state court proceedings against
14 Tregub to this Court in an effort to frustrate Bergstein's efforts to uncover
15 the scope of Tregub's treachery and betrayal (and the efforts of her co-
16 conspirators and those who aided and abetted her efforts);
- 17 • Interfering with the rights of Bergstein and his affiliated entities to obtain
18 funds that are not (and never could be considered) property of the
19 bankruptcy estate;
- 20 • Publishing Bergstein's confidential information regardless of whether the
21 information had anything to do with the bankruptcy in an attempt to further
22 tarnish Bergstein and his affiliated entities;
- 23 • Making knowing material misrepresentations to the Court about false facts
24 (provided with zero evidence) in furtherance of his campaign to tar and
25 feather Bergstein;
- 26 • Threatening Bergstein with criminal prosecution (and relying on his former
27 employment as an agent with the Federal Bureau of Investigation ("FBI")) to
28 add teeth to the threat;

- 1 • Failing to consummate a lucrative settlement with Ronald Tutor whereby
2 Tutor would pay \$4 million and remove his liens;

3 Unfortunately, the above list represents but a few examples of the constant deluge of
4 improper activities by the Trustee with no end in sight.

5 4. The Trustee has taken no steps to recover any funds. Instead, the Trustee:
6 (1) repeatedly interfered with other legitimate attempts to recover funds; (2) entered into
7 an improper agreement with Aramid; and (3) refused to pursue claims against any
8 individual or entity he perceives as helpful to or aligned with Aramid. For example, the
9 Trustee has interfered with recovery efforts based on his belief that any funds would
10 ultimately go to secured creditors controlled by Tutor. The Trustee's agreement with
11 Aramid is nothing more than a disguised plan that releases the bankruptcy estate's
12 valuable claims against Aramid and other parties while granting Aramid 50% of any
13 recovery by the bankruptcy estate – recoveries that would otherwise be due to the
14 secured creditors. The agreement with Aramid provides (among other things) that: (1)
15 Aramid can sue other parties; (2) Aramid can receive money that would otherwise be
16 payable to the secured creditors; and (3) Bergstein is prohibited from further litigation.
17 Not surprisingly, the secured and major creditors of the bankruptcy debtors were neither
18 consulted about nor asked to approve the plan with Aramid. This despite the fact that
19 Aramid previously released any conceivable direct claims it had against Bergstein and
20 any of the debtors.

21 5. Aramid continues to abuse the entire bankruptcy process after being
22 emboldened over and over again by the Trustee. For example, as Aramid had no
23 legitimate claims against any of the bankruptcy debtors, because, *inter alia*, it has
24 executed a waiver and general release in exchange for receipt of millions of dollars,
25 Aramid acquired claims specifically for the purpose of placing the debtors into
26 bankruptcy.

27 6. Aramid, in conjunction with the Trustee, also has filed approximately fifty
28 lawsuits against entities or individuals, many of which were calculated to punish people

1 supporting Bergstein, run further expenses up for Bergstein, harass Bergstein by seeking
2 to vex his business associates or, others who could then pressure Bergstein and even his
3 wife. None of the complaints in these lawsuits has any, much less the requisite,
4 specificity. Several of the actions appear designed to do nothing more than injure
5 Bergstein or those supportive of him. They are all cookie cutter suits that cost virtually
6 nothing to file, have no specifics or evidence and yet will cost defendants hundreds of
7 thousands of dollars to defend.

8 7. Conversely, the Trustee and his counsel are taking no legitimate steps to
9 recovery any actual money for the creditors. Concentrating on harassing Bergstein has
10 kept the Trustee and his counsel so occupied that they have sought to simply abandon
11 undisputed claims that are worth millions. For example, certain distributors like Lions
12 Gate and Image Entertainment licensed approximately 500 film titles from the debtors
13 and has paid nothing in four years. Both Bergstein and Tutor have urged the Trustee to
14 pursue recovery since nearly inception of this case. No action was ever taken because
15 the Trustee perceives that the senior creditor will ultimately be the beneficiary or any
16 recovery.

17 8. The Trustee has taken his improper activity to new heights with respect to
18 Daro's payment of license fees. Daro owes money under a contract¹ to Pangea UK— an
19 entity that is: (1) indisputably not in bankruptcy as is obvious from publicly accessible
20 records; and (2) a subsidiary of another non-bankrupt entity, Veritum. Bergstein has
21 attempted to explain this to Daro and resolve the issue without additional litigation.
22 However, the Trustee has interfered with Daro's payment obligations by telling Daro that:
23 (1) Daro should not make payment to Pangea UK; (2) Pangea UK is in bankruptcy and/or

24 _____
25 ¹ Because Daro failed to pay the consideration owed upon execution of the Agreement
26 and indeed has never paid any money owed whatsoever and because it fraudulently
27 induced Pangea UK to entered into the Agreement, the Agreement is void *ab initio*.
28 Pangea UK will be pursuing all appropriate claims and remedies against Daro in the
appropriate forum.

1 a direct subsidiary of other entities in bankruptcy; (3) there is a United States “Pangea”
2 entity that is in bankruptcy and/or a direct subsidiary of other entities in bankruptcy; (4)
3 there is no legal distinction between any United States “Pangea” entity and Pangea UK;
4 and (5) the Trustee reserves all of his rights to pursue Daro’s overdue licensing fees even
5 if Daro pays in full to Pangea UK.

6 9. In the simplest terms, enough is enough. The Trustee’s improper conduct
7 must be stopped. In this instance, that means that Pangea UK must be paid the money it
8 is owed by Daro without any interference by the Trustee. Moreover, the Trustee and his
9 counsel must be enjoined from continuing to harass Bergstein and related business
10 entities that are not parties to these proceedings.

11 **Jurisdiction and Venue**

12 10. Plaintiff Pangea Media Holdings Limited (UK) (“Pangea UK”) is a United
13 Kingdom company organized and existing pursuant to the laws of the United Kingdom.
14 Its address is Suite 321, 5 Richmond Mews, London W1D 3DB, United Kingdom.
15 Pangea UK is wholly owned by Veritum Ltd (UK).

16 11. Defendant Daro Film Distribution GmbH (“Daro”) is a corporation organized
17 and existing pursuant to the laws of Monaco with a business address of 41 Av. Hector
18 Otto, 98000 Monaco or Topferstrasse 5, Weggishaus, MF Luzern Consulting AG, CH-
19 6004 Luzern, Switzerland and is doing business in Los Angeles County, California.

20 12. Defendant Ronald L. Durkin (“Durkin” or “Trustee”) is the Chapter 11
21 Trustee in the bankruptcy case in which this adversary proceeding has been
22 commenced. On information and belief, Durkin is a resident of the State of California,
23 County of Los Angeles.

24 13. This Court has jurisdiction over this matter pursuant to 28 United States
25 Code Section 1334 and venue is proper in this judicial district pursuant to 28 United
26 States Code Section 1409. This is an adversary proceeding commenced pursuant to
27 Bankruptcy Rule 7001, et. seq. of the Federal Rules of Bankruptcy Procedure.

1 **Background Allegations**

2 **I. Pangea UK Is Not Part Of The Bankruptcy**

3 14. Pangea UK is not a named debtor in these bankruptcy proceedings.

4 15. Pangea UK is not in bankruptcy in the United Kingdom, United States, or
5 any other jurisdiction.

6 16. Pangea UK is owned by Veritum Ltd. (UK) ("Veritum"). Veritum is likewise
7 not in bankruptcy in the United Kingdom, United States, or any other jurisdiction.

8 17. Veritum's ownership of Pangea UK is a matter of public record.
9 Specifically, "Companies House" – the official registrar of corporate ownership companies
10 in the United Kingdom – contains the corporate ownership records for United Kingdom
11 entities. Attached hereto as Exhibit "1" are documents generated from "Companies
12 House" which is in the United Kingdom demonstrating that Veritum is the undisputed
13 owner of Pangea UK.

14 18. The Trustee knows Companies House is the official registrar for companies
15 doing business in the UK.

16 **II. Pangea UK's Licensing Agreement With Daro Requires Daro To Pay Money**

17 19. On or about December 7, 2010, Pangea UK entered into an International
18 Multiple Rights Distribution Agreement ("Agreement") with Daro. A true and correct copy
19 of the signed Agreement is attached hereto as Exhibit "2" and is incorporated herein by
20 this reference.

21 20. Generally stated, under the terms and conditions of the Agreement, Pangea
22 UK licensed to Daro the rights to distribute the films listed as an exhibit to the Agreement.
23 Under the Agreement, Daro is obligated to pay Pangea UK certain particular sums both
24 at the time of signing and at various intervals thereafter.

25 21. Daro has not paid Pangea UK the money that is due under the Agreement
26 – payments that were due in at least December 2010, March 2011, and June 2011. Daro
27 did not even pay the sums due upon execution of the Agreement – it has never paid a
28 dime. However, Daro continues to distribute the Films and continues to collect payment

1 on account of such distribution and, for the reasons provided below, has refused to remit
2 payments to Pangea UK. Because Daro failed to pay the consideration owed (not even
3 making the payment that was due upon execution of the Agreement) and fraudulently
4 induced Pangea UK into entering the Agreement, the Agreement is void *ab initio*.

5 22. Daro's newest excuse for not paying the money it owes Pangea UK is that
6 the Trustee is claiming he is entitled to the payments owed to Pangea UK. The Trustee's
7 claim that he is entitled to seek and recover the money Daro owes to Pangea UK comes
8 despite the clear evidence that: (1) Pangea UK is not in bankruptcy; and (2) Pangea UK's
9 owner – Veritum – is also not in bankruptcy.

10 23. The Trustee's actions with respect to Daro come as no surprise given the
11 Trustee's wrongful conduct throughout this litigation including the Trustee's prior improper
12 conduct with respect to money owed to Mobius Music. Specifically:

- 13 • A "Complaint for Interpleader and Injunctive Relief," ("Interpleader") was
14 filed with this Court on August 5, 2010 in which a party owing funds to
15 Mobius Music, attempted to interplead funds to this Court on the theory that
16 the funds due and owing to Mobius Music were instead owed to one or
17 more of the bankruptcy debtors. Attached as Exhibit "3" is a true and
18 correct copy of the Interpleader which is incorporated herein by reference.
- 19 • The Interpleader alleged that the filing party was subject to conflicting
20 demands for payment from Mobius and the Trustee. The pleadings filed in
21 connection with the Interpleader included a motion to interplead the funds
22 owed to Mobius. A true and correct copy of this motion is attached hereto
23 as Exhibit "4" and is incorporated herein by this reference. Attached as part
24 of Exhibit "4" is the declaration of Sindee Levin which on page 2 of her
25 declaration at paragraph 12, lines 23-26 that the Trustee was "reserving the
26 right to assert claims against the Royalty Payments."
- 27 • The moving party had expressly asked the Trustee whether the Trustee
28 "plans to assert a claim against Levin for the royalty fee." The Trustee

1 responded that he was “NOT saying that the subject funds do (or do
2 NOT[sic]) belong to anyone, including without limitation Mobius, David
3 Bergstein and/or the Interim Trustee (Mr. Durkin),” and the “Interim Trustee
4 is reserving all of his rights.” The declaration and correspondence relating
5 to this exchange were filed as part of the moving party’s reply brief. A true
6 and correct copy of this reply brief is attached as Exhibit “5” and
7 incorporated by reference.

- 8 • Further evidence of the Trustee’s contradictory positions, interference, and
9 other wrongful conduct in connection with the Mobius matter is included
10 with Exhibit “6” which is a true and correct copy of a declaration of Lucia
11 Coyoca, Esq., counsel for Mobius Music. Coyoca’s declaration attaches an
12 email from the Trustee’s counsel in which the Trustee’s counsel stated that
13 he “did not tell [the moving party] either to withhold money from your clients
14 or to pay the money to your client.” However, the moving party directly
15 contradicted this statement by claiming that the Trustee’s counsel told her
16 that he was “reserving his rights” regarding the said payment.

17 24. Of course, Mobius was not (and never has been) a debtor in these
18 bankruptcy proceedings. Upon consideration of the merits of the Mobius matter, it was
19 found that the bankruptcy estates had no claim to the funds owed to Mobius Music and
20 the Interpleader was dismissed following a hearing which occurred on September 15,
21 2010. At this hearing, the Motion to Interplead the funds and for an Injunction were both
22 denied. The Stipulation for Dismissal is attached hereto as Exhibit “7” and the Order of
23 dismissal is attached hereto as Exhibit “8.”

24 25. The type of conduct engaged in by the Trustee with respect to Mobius is
25 part of the Trustee’s modus operandi with respect to this case. Specifically, the Trustee,
26 through his counsel, has contacted parties having dealings with companies affiliated with
27 Bergstein but which having no connection with any of the Debtors in these bankruptcy
28 cases. The Trustee is engaging in intentional conduct meant to undermine Bergstein in

1 his business.

2 26. The present controversy with respect to Daro is remarkably similar to what
3 occurred with Mobius. Specifically, the Trustee is relying on a September 2010 Rule
4 2004 examination of Michael Barnes, Esq. to claim some type of right to the money owed
5 to Pangea UK by Daro (attached as Exhibit "12" to this Complaint are excerpts from Mr.
6 Barnes' Rule 2004 examination by the Trustee through his counsel as well as certain
7 particular exhibits utilized by the Trustee at that examination). However, the Trustee has
8 done virtually nothing with respect to the assertion of any interest in Pangea UK in more
9 than two years. As a result, it is clear that the Trustee is doing nothing more than
10 wrongfully interfering with Pangea UK's right to get paid under its agreement with Daro.

11 27. Daro contacted the Trustee regarding Daro's obligation to make payment to
12 Pangea UK under the Agreement. As noted, Daro has never paid any money owed
13 under the Agreement – not even the money that was due upon execution almost two
14 years ago. In spite of this failure to pay, Daro continued to distribute the films that are the
15 subject of its agreement with Pangea UK. Then, in response to a specific email from
16 Daro respecting Pangea UK's rights under the distribution agreement including their right
17 to receive payment, the Trustee wrote an email, a true and correct copy of which is
18 attached hereto as Exhibit "13" and is incorporated herein by this reference (email dated
19 November 21, 2012 at 1:44 p.m) stating:

20 I am responding to your email asking for information about the
21 ownership of Pangea UK.

22 Please see the charts included in Ex. 7 to the enclosed
23 unsealed excerpts from the 9/28/10 Rule 2004 examination of
24 Michael W. Barnes.

25 Mr. Barnes represented one or more Pangea entities and/or
26 R2D2 in January 2009, when Mr. Barnes sent the charts to an
27 outside investor/lender. Mr. Barnes has never told me that
28 the charts he sent out in January 2009 were false or phony."

1 Daro then wrote Pangea UK an email, a true and correct copy of which is attached hereto
2 as Exhibit "14" and is incorporated herein by this reference (email dated November 27,
3 2012 at 2:48 p.m.), in which Daro indicated this his understanding that the Trustee was
4 making claim to an entitlement to the funds owed by Daro to Pangea UK. In fact, as
5 Trustee knows very well, his client has no claim to those funds as Pangea UK and its
6 sole shareholder (as set forth on Exhibit "1" hereto), Veritum, Ltd. are companies which
7 are separate from any of the Debtors in these bankruptcy cases. That is why, in
8 connection with the First Substantive Consolidation Motion, which was filed 10 months
9 after the examination of Mr. Barnes by Mr. Gumport, the Trustee saw fit to seek
10 substantive consolidation of Pangea UK with the Debtors. As the Trustee well knows,
11 this Motion was denied. That the Trustee failed to bring that to the attention of Daro can
12 only be the result of bad faith by the Trustee. The entirety of the evidence that the
13 Trustee relied upon to support consolidating Pangea UK with the Debtors in the First
14 Substantive Consolidation Motion was the very same testimony from Michael Barnes that
15 the Trustee supplied to DARO's counsel. The Trustee knew that this evidence was
16 insufficient to sustain his burden of proof regarding the substantive consolidation of
17 Pangea UK with the Debtors, yet the Trustee used this same evidence when he received
18 inquiry from DARO on this issue.

19 28. Of course, the Trustee never bothered to inform Daro that he previously
20 sought control of Pangea UK through a prior motion for substantive consolidation only to
21 be denied by the Court. The Trustee further never bothered to explain to Daro that even
22 if Pangea UK were a subsidiary of R2D2 (which it is not) that would still not prevent Daro
23 from paying its debt because Pangea UK had not been consolidated and placed under
24 the Trustee's control.

25 29. Exhibit "15" is an email from Bergstein to all parties informing them of the
26 true facts (and attaching the Companies House information which is attached hereto as
27 Exhibit "1") and demonstrating conclusively that Pangea UK is owned by Veritum, a fact
28 well known to the Trustee and his counsel.

1 30. Exhibit "16" is the response of the Trustee to Bergstein's email. In that
2 response, the Trustee does not dispute the Companies House information. The Trustee
3 is very familiar with Companies House, was familiar with it prior to authoring Exhibit "16,"
4 knew that Pangea UK was owned by Veritum, knew that Pangea UK had no connection
5 with any of the Debtors, and knew that the bankruptcy debtors have no claim to the funds
6 owed by Daro to Pangea UK.

7 **III. The Trustee's Conduct Throughout These Proceedings, Including Its**
8 **Conduct In Connection With Pangea UK's Agreement With Daro, Has Been**
9 **Improper**

10 **a. The Trustee Acted Improperly**

11 31. The Trustee's improper and wrongful actions have not been limited to the
12 Mobius and Daro situations.

13 32. For example, the Trustee periodically receives inquiries regarding payment
14 of invoices to non-debtor companies affiliated with Bergstein. In connection with these
15 inquiries, the Trustee has intentionally failed to provide the inquiring parties with material
16 information available to him respecting the fact that the Debtors over whom the Trustee
17 was appointed had no claims to such money or property. The Trustee has failed to
18 provide accurate information to such parties which would have resulted in them properly
19 remitting such money or property to the non-debtor entities affiliated with Bergstein.

20 33. Additionally, the Trustee has tried and failed to persuade the Court that he
21 has a right to take control of various subsidiaries who are not in bankruptcy or controlled
22 by the bankruptcy debtors. For example, the Trustee filed a consolidation motion on July
23 13, 2011 (a true and correct copy of which is attached as Exhibit "9") seeking an Order
24 that: (1) substantively consolidates into the bankruptcy estate of R2D2 LLC the
25 bankruptcy estates of CT-1 Holdings LLC, CAPCO Group LLC, Capitol Films
26 Development and Thinkfilm LLC; (2) retroactively substantively consolidates designated
27 subsidiaries into the consolidated estate of the debtors; and (3) authorizes the Trustee to
28 take control of all subsidiaries including Pangea UK (See, Exhibit 9, pg. 2, Lines 14-26,

1 and in particular, Line 24, subparagraph 8). The supporting memorandum (a true and
2 correct copy of which is attached as Exhibit "8" hereto) leaves no doubt that the Trustee
3 attempted to consolidate Pangea UK into the bankruptcy estate (*See, First Substantive*
4 *Consolidation Memorandum*, pg. 33, Lines 10-28 and pg. 34, Lines 1-4). The Trustee's
5 motion was denied in all respects." A true and correct copy of the "Order Denying Motion
6 by Trustee for an Order that (A) Substantively Consolidates into the Bankruptcy Estate of
7 R2D2 LLC the Bankruptcy Estates of CT-1 Holdings LLC, CAPCO Group LLC, Capitol
8 Films Development and Thinkfilm LLC: (B) Retroactively Substantively Consolidates
9 Designated Subsidiaries into the Consolidated Estate of the Debtors; and (C) Authorizes
10 the Trustee to Take Control of All Subsidiaries" is attached hereto as Exhibit "11" and is
11 incorporated herein by this reference.

12 34. The Trustee has also engaged in a variety of other improper and wrongful
13 conduct including, but not limited to:

- 14 • Obtaining and disseminating confidential information belonging to the
15 debtors;
- 16 • Interfering with the rights of Bergstein and his affiliated entities to collect on
17 debts that are not (and never were) the property of the bankruptcy estate;
- 18 • Publishing Bergstein's confidential and sensitive information including
19 information that has nothing to do with the bankruptcy;
- 20 • Knowingly filing false and misleading information with the intent to injure
21 Bergstein and his affiliated entities in business matters outside of litigation
22 and having nothing to do with the bankruptcy proceedings;
- 23 • Threatening Bergstein with criminal prosecution;
- 24 • Obtaining computer servers not belonging to the debtors in violation of
25 various privacy laws.
- 26 • Failing to consummate a lucrative settlement between Tutor and the
27 bankruptcy estate whereby Tutor would pay \$4 Million and remove his liens;
28 and

- 1 • Despite acknowledging that certain entities were not paid with funds of the
2 debtors – threatening to nonetheless sue those entities so that they would
3 in turn sue Bergstein merely to add additional pressure.

4 35. Additionally, the Trustee has engaged in character assassination of
5 Bergstein. For example, the Trustee went so far as to publish a 400 page report
6 containing illegally obtained information and unlawfully included personal information.
7 The Trustee's report alleged that Bergstein deleted over 6,000 files from the Debtors'
8 computer servers. The Trustee knew this was false, and forensic experts established
9 that the files were simply moved from one server to another as part of a consolidation
10 effort. However, the objective of the Trustee was served – to damage Bergstein and
11 create negative press.

12 36. The Trustee has made clear that he is attempting to extort an outrageous
13 settlement from Bergstein. For example, the Trustee informed Bergstein that if he did not
14 settle for an amount in excess of \$10 million, the Trustee would punish Bergstein in a
15 multitude of ways that he could not imagine including with criminal prosecution. Similarly,
16 the Trustee also directly told Bergstein that if he did not settle, the Trustee would go after
17 casinos where Bergstein had been a guest and has subsequently assisted with several
18 filings against the casinos. Additionally, and as detailed further herein, the Trustee has
19 done Aramid's bidding with Molner being quoted in a presentation to Aramid's investors
20 saying that Molner and the Trustee were working together in ways that Molner never
21 thought possible.

22 37. As discussed in detail herein, the Trustee has repeatedly interfered with
23 Bergstein's businesses, including Pangea UK, even though the vast majority of
24 businesses that have any affiliation with Bergstein are not in any way connected to the
25 bankruptcy.

26 **b. The Trustee Has An Improper Relationship With Aramid**

27 38. The record in these bankruptcy cases is replete with evidence that the
28 Trustee has worked closely with Aramid to harm, humiliate, and frustrate Bergstein and

1 his affiliated entities. For example, the Trustee:

- 2 • Filed over fifty lawsuits through Aramid's derivative standing agreement
- 3 which state no basis for the claims;
- 4 • Entered an agreement with Aramid (without consulting or obtaining the
- 5 approval of major or secured creditors) whereby: (1) Aramid receives 50%
- 6 of any recovery by the bankruptcy estate; (2) Aramid can sue other parties;
- 7 (3) Aramid can receive money that would otherwise be payable to the
- 8 secured creditors; and (4) Bergstein is prohibited from further litigation.

9 39. The Trustee has allowed Aramid to pursue claims purchased by Aramid
10 solely for the purpose of forcing entities affiliated with Bergstein into bankruptcy. The
11 Trustee's inaction comes despite it being a violation of black letter bankruptcy law to
12 acquire claims to push an entity into bankruptcy and despite Aramid having no legitimate
13 claims of its own.

14 40. The Trustee also has not pursued any actions against any entity or
15 individual deemed helpful to or aligned with Aramid.

16 41. Additionally, the Trustee has brazenly flouted his duties and the Court's
17 orders by providing Bergstein confidential information to Aramid. For example, the
18 Trustee obtained a report that constituted the confidential work product of an investigator
19 retained by Bergstein's attorneys by agreeing to maintain that product as confidential only
20 to then summarize the contents of that report and share it with Aramid.

21 42. Bergstein and his affiliated entities, including Pangea UK, have suffered
22 substantial harm as a result of the Trustee's wrongdoing and relationship with Aramid.

23 **c. The Trustee Has An Improper Relationship With Susan Tregub**

24 43. Susan Tregub was counsel to Bergstein, Bergstein-affiliated entities, and
25 the debtors.

26 44. In or around early 2010, Bergstein and Tregub had a falling out. Molner
27 recruited Tregub in order to obtain access to Bergstein's confidential, privileged, and/or
28 proprietary information.

1 45. Tregub violated her fiduciary duty to Bergstein and his affiliated entities by
2 working with Aramid in its efforts to destroy Bergstein. This included Tregub's
3 dissemination of Bergstein's confidential, privileged, and/or proprietary information.
4 Indeed, a Los Angeles Superior Court jury awarded Bergstein and his affiliated entities
5 over \$50 million in damages after a jury trial in Bergstein's suit against Tregub. The jury
6 found that Tregub breached her fiduciary duty and committed legal malpractice.

7 46. The Trustee obtained Bergstein's confidential, privileged, and/or proprietary
8 information from Tregub. The Trustee used that information in these proceedings.

9 47. More specifically, the Trustee's interaction with Tregub defies
10 explanation. Knowing full well that she breached her fiduciary duties, stole and destroyed
11 information and set up these entire bankruptcy proceedings, the Trustee nonetheless
12 worked closely with Tregub and protected her. The Trustee went so far as to portray
13 Tregub as a victim. In return, Tregub provided the Trustee with unfettered access to
14 Bergstein's confidential, privileged, and/or proprietary information.

15 48. The Trustee used, disseminated, and published the Bergstein confidential,
16 privileged, and/or proprietary information he obtained from Tregub.

17 49. Bergstein and his affiliated entities, including Pangea UK, have suffered
18 substantial harm as a result of the Trustee's wrongdoing and relationship with Tregub.

19 **First Claim for Relief**

20 **(for Declaratory Relief**

21 **Against Daro and the Trustee)**

22 50. Plaintiff incorporates the allegations of paragraphs 1 through 49 as though
23 fully set forth at length.

24 51. A dispute has arisen regarding: (1) whether Pangea UK is part of the
25 bankruptcy estate; (2) whether the Trustee has any claim over money owed to Pangea
26 UK; (3) the money owed by Daro to Pangea UK pursuant to the Agreement; and (4)
27 Pangea UK's rights under the Agreement.

28 52. Pangea UK contends that: (1) it is not part of the bankruptcy estate; (2) the

1 Trustee has no rights to money owed to Pangea UK; (3) there is money owed by Daro to
2 Pangea UK under the Agreement; and (4) Pangea UK has rights to enforce the
3 Agreement and collect the money owed to it under the Agreement.

4 53. The Trustee claims that: (1) Pangea UK is somehow part of the bankruptcy
5 estate; (2) the Trustee has a right to money owed to Pangea UK; and (3) Pangea UK has
6 no right to enforce the Agreement and collect the money due to it under the Agreement.

7 54. Daro takes the position that the Trustee's statements and actions create a
8 controversy regarding: (1) whether Daro should be making any payments under the
9 Agreement; and (2) if Daro makes payments, whether the payments should be to Pangea
10 UK or the Trustee.

11 55. The controversy between Pangea UK, the Trustee, and Daro is in
12 immediate need of resolution by this Court.

13 56. Accordingly, Pangea UK seeks a declaration that its contentions stated
14 herein are correct.

15 **Second Claim for Relief**

16 **(for Intentional and Negligent Interference With Prospective Economic Advantage**
17 **Against the Trustee)**

18 57. Plaintiff incorporates the allegations contained in paragraphs 1 through 49
19 as though fully set forth at length.

20 58. Pangea UK has an economic relationship with Daro under the Agreement.

21 59. Pangea UK's economic relationship with Daro would have benefitted
22 Pangea UK as Pangea UK is entitled to payment under the Agreement.

23 60. Pangea UK has not been able to realize the benefits of its relationship with
24 Daro due to the Trustee's wrongful conduct. Specifically, Pangea UK has not received
25 the money owed to it under the Agreement.

26 61. The Trustee knew of Pangea UK's existing economic relationship with Daro
27 and that his wrongful conduct would disrupt the relationship by preventing Pangea UK
28 from being paid.

1 evidence, the Court issue appropriate interim and permanent injunctive relief in order to
2 restrain the Trustee from contacting or communicating in any manner with parties having
3 a prior and existing business relationship with Plaintiff.

4 **Prayer for Relief**

- 5 A. Entry of judgment against Daro and the Trustee on the applicable counts of
6 the Complaint;
- 7 B. For a declaration that Pangea UK's contentions, as hereinabove set forth,
8 are correct;
- 9 C. Compensatory damages according to proof;
- 10 D. For punitive and exemplary damages against the Trustee;
- 11 E. Entry of a permanent injunction enjoining the Trustee and his successors,
12 agents, servants, officers, directors, employees, and all persons acting in
13 concert with them from pursuing the policies, acts, and practices
14 complained of herein including, but not limited to: (1) interfering with
15 Pangea UK's rights under its Agreement with Daro; and (2) interfering with
16 the rights of Bergstein and Bergstein-affiliated entities not in bankruptcy to
17 do business and collect money they are owed;
- 18 F. For a preliminary and permanent injunction as prayed for in the Third Claim
19 for Relief;
- 20 G. For costs of suit and attorneys' fees incurred;
- 21 H. For pre-judgment and post-judgment interest according to proof; and
- 22 I. Such other and further relief as the Court may deem proper.
- 23
24
25
26
27
28

1 DATED: December 3, 2012

Respectfully submitted,

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SulmeyerKupetz
A Professional Corporation

Weingarten Brown LLP
Alex Weingarten
Eric J. Bakewell

By: /s/Victor A. Sahn
Victor A. Sahn
Attorneys for Pangea Media Holdings, Ltd
(UK)

DEADLINE.COM

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS PANGEA MEDIA HOLDINGS LIMITED (UK)	DEFENDANTS DARO FILM DISTRIBUTION RONALD L. DURKIN, CHAPTER 11 TRUSTEE
ATTORNEYS (Firm Name, Address, and Telephone No.) Victor A. Sahn (CA Bar No. 97299) SulmeyerKupetz, PC 333 South Hope Street, Thirty-Fifth Floor Los Angeles, California 90071-1406 T: 213.626.2311 Alex Weingarten, Esq. (CA Bar No. 204410) Eric J. Bakewell (CA Bar No. 241529) Weingarten Brown LLP 10866 Wilshire Blvd Ste 500 Los Angeles, CA 90024 T: 310.229.9300	ATTORNEYS (If Known) Attorneys for Daro Film Distribution Adam Starr, Esq. Greenberg Traurig LLP 1840 Century Park E Ste 1900 Los Angeles, CA 90067-7700 Attorneys for Ronald L. Durkin, Ch 11 Trustee Leonard Gumport, Esq. Gumport Mastan 550 S Hope St Ste 825 Los Angeles, CA 90071
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) DECLARATORY RELIEF; INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; AND FOR PRELIMINARY AND PERMANENT INJUNCTION	
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)	
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input checked="" type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et. seq</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$
Other Relief Sought	

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR R2D2, LLC		BANKRUPTCY CASE NO. 2:10-bk-19924-BR
DISTRICT IN WHICH CASE IS PENDING Central	DIVISION OFFICE Los Angeles	NAME OF JUDGE Barry Russell
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) <i>/s/Victor A. Sahn</i>		
DATE December 3, 2012	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Victor A. Sahn, Attorneys for Pangea Media Holdings, Ltd. (UK)	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Victor A. Sahn (CA Bar No. 97299) vsahn@sulmeyerlaw.com SulmeyerKupetz A Professional Corporation 333 South Hope Street, Thirty-Fifth Floor Los Angeles, California 90071-1406 Telephone: 213.626.2311 / Facsimile: 213.629.4520 Alex Weingarten, Esq. (CA Bar No. 204410) aw@wbllp.com Eric J. Bakewell (CA Bar No. 241529) ejb@wbllp.com Weingarten Brown LLP 10866 Wilshire Blvd Ste 500 Los Angeles, CA 90024 Telephone: 310.229.9300 / Facsimile: 310.229.9380 Attorney for Plaintiff Pangea Media Holdings Limited (UK)	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION	
In re: R2D2, LLC, <div style="text-align: right;">Debtor(s).</div>	CASE NO.: 2:10-bk-19924-BR CHAPTER: 11 ADVERSARY NUMBER:
PANGEA MEDIA HOLDINGS LIMITED (UK), <div style="text-align: right;">Plaintiff(s)</div> Versus DARO FILMS DISTRIBUTION AND RONALD L. DURKIN, CHAPTER 11 TRUSTEE, <div style="text-align: right;">Defendant(s)</div>	SUMMONS AND NOTICE OF STATUS CONFERENCE IN ADVERSARY PROCEEDING [LBR 7004-1]

TO THE DEFENDANT: A Complaint has been filed by the Plaintiff against you. If you wish to defend against the Complaint, you must file with the court a written pleading in response to the Complaint. You must also serve a copy of your written response on the party shown in the upper left-hand corner of this page. The deadline to file and serve a written response is _____. If you do not timely file and serve the response, the court may enter a judgment by default against you for the relief demanded in the Complaint.

A status conference in the adversary proceeding commenced by the Complaint has been set for:

Hearing Date: _____ Time: _____ Courtroom: <u>1668</u>	Place: <input checked="" type="checkbox"/> 255 East Temple Street, Los Angeles, CA 90012 <input type="checkbox"/> 3420 Twelfth Street, Riverside, CA 92501 <input type="checkbox"/> 411 West Fourth Street, Santa Ana, CA 92701 <input type="checkbox"/> 1415 State Street, Santa Barbara, CA 93101 <input type="checkbox"/> 21041 Burbank Boulevard, Woodland Hills, CA 91367
---	--

You must comply with LBR 7016-1, which requires you to file a joint status report and to appear at a status conference. All parties must read and comply with the rule, even if you are representing yourself. You must cooperate with the other parties in the case and file a joint status report with the court and serve it on the appropriate parties at least 14 days before a status conference. A court-approved joint status report form is available on the court's website (LBR form F 7016-1.1) with an attachment for additional parties if necessary (LBR form F 7016-1.1a). If the other parties do not cooperate in filing a joint status report, you still must file with the court a unilateral status report and the accompanying required declaration instead of a joint status report 7 days before the status conference. **The court may fine you or impose other sanctions if you do not file a status report. The court may also fine you or impose other sanctions if you fail to appear at a status conference.**

**KATHLEEN J. CAMPBELL
CLERK OF COURT**

Date of Issuance of Summons and Notice of Status Conference in Adversary Proceeding: _____

By: _____
Deputy Clerk

DEADLINE.COM

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **SUMMONS AND NOTICE OF STATUS CONFERENCE IN ADVERSARY PROCEEDING [LBR 7004-1]** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date

Printed Name

Signature