



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

JEFFREY L. BURTCH, as chapter 7 )  
trustee of the estates of Dura )  
Automotive Systems Cable Operations, )  
LLC, Dura Automotive Systems, LLC, )  
Dura Fremont L.L.C., Dura G.P., Dura )  
Mexico Holdings, LLC, Dura Operating, )  
LLC, and NAMP, LLC )

Plaintiff, )

v. )

C.A. No: 2022-0343-PAF

**Public/Redacted Version Filed:  
April 21, 2022**

LYNN G. TILTON and KEVIN GRADY )

Defendants. )

**VERIFIED COMPLAINT**

Plaintiff Jeffrey L. Burtch (“**Trustee**” or “**Plaintiff**”), as the chapter 7 trustee of the bankruptcy estates of Dura Automotive Systems, LLC (“**DAS**”), and its Debtor subsidiaries, Dura Automotive Systems Cable Operations, LLC, Dura Fremont L.L.C., Dura G.P., Dura Mexico Holdings, LLC, Dura Operating, LLC, and NAMP, LLC (collectively with DAS, “**Dura**” or the “**Debtors**” and together with their non-debtor affiliates, the “**Company**”), jointly administered under Case No.

19-12378 (KBO) in the United States Bankruptcy Court for the District of Delaware (the “**Delaware Bankruptcy Court**”), brings this action against Lynn G. Tilton and Kevin Grady and alleges and avers as follows:

### SUMMARY OF ACTION

1. This is an action seeking to recover the losses Dura incurred as a result of systematic breaches of fiduciary duty by Lynn G. Tilton (“**Tilton**”) and Kevin Grady (“**Grady**”). The Trustee brings breach of fiduciary duty claims against Tilton as DAS’s Chief Executive Officer and the manager of its Managing Member, for abusing her control over Dura and harming it in an effort to benefit herself at Dura’s expense. The Trustee also brings claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty against Grady, who was DAS’s Chief Financial Officer and Tilton’s primary confidant, for his role in the scheme to elevate Tilton’s interests above those of Dura. Grady knew that Tilton was acting in her own self-interest and was harming Dura, yet he assisted her disloyal schemes. Grady consistently put Tilton’s interests ahead of Dura’s, rather than fulfill the fiduciary duties he owed to Dura.

2. Through their conduct, Tilton and Grady caused Dura to lose hundreds of millions of dollars in value. All the while, Tilton and Grady ignored their duties to Dura and instead focused on serving Tilton’s personal interest in her years-long, scorched-earth litigation battle with stakeholders (the “**Zohar Stakeholders**”) in

collateralized debt obligation funds known as Zohar CDO 2003-1, Limited, Zohar II 2005-1, Limited, and Zohar III, Limited (the “**Zohar Funds**”). That ongoing dispute led to the Zohar Funds filing bankruptcy in March 2018.

3. Tilton referred to Dura as the “crown jewel” of the Zohar Funds’ many portfolio companies. Until May 2018, Tilton controlled the Zohar Funds, but in May 2018, an independent director and chief restructuring officer took control from Tilton as part of the bankruptcy process. Tilton and the Zohar Stakeholders agreed at that time that if Tilton raised enough cash to repay in full certain debts of the Zohar Funds to the Zohar Stakeholders in the subsequent 15 months, she would regain control of the Zohar Funds. Those funds were to be principally raised by selling the Zohar Funds’ most valuable portfolio companies, including Dura. During the 15-month period, Tilton would remain in control of the portfolio companies. If Tilton succeeded, she would regain control of the Zohar Funds at the end of the 15-month period, but if she failed, she would permanently relinquish control of the Zohar Funds and she could also be removed from her positions of control over the Zohar Funds’ portfolio companies, including its crown jewel, Dura. Thus, Tilton’s ability to monetize Dura sufficiently to repay the Zohar-related debt had enormous consequences to Tilton personally outside of her role as Dura’s Chief Executive Officer.

4. As planned, in the spring of 2018, Tilton hired an investment banker and began to try to sell Dura and its sister Tilton portfolio company, Global Automotive Systems, LLC. The sales process was promising, and several would-be buyers expressed interest in acquiring the companies for up to \$875 million, most of which value was attributable to Dura. A sale at that price would have been enough to pay off Dura's debt and leave hundreds of millions of dollars of net proceeds. Tilton, however, unilaterally quashed the sales process in late 2018 and early 2019 because the expected net proceeds would not have been enough to enable Tilton to repay the Zohar Stakeholders and resolve her overarching dispute with them. Tilton and Grady did not respond to the prospective buyers, nor did they obtain any independent analysis of whether the proposed deal terms were good for Dura. Tilton claimed that she was just slowing down the sales process for a few months, but that assertion was false. Instead, Tilton abandoned the sales process for good, never revisiting the prospect of seeking a sale to outside buyers. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] she moved on to her next scheme to retain control of Dura.

5. That scheme came into focus in the summer of 2019, when it was clear Tilton would be unable to meet the 15-month deadline to pay back the Zohar

Stakeholders and thus could not recover control of the Zohar Funds. As her next-best-option, she put into motion a plan to take the Zohar Funds’ “crown jewel,” Dura. The first step to executing her scheme was to acquire Dura’s first lien debt facility, which provided Dura access to liquidity as its cash needs fluctuated. Immediately upon obtaining the facility, Tilton reduced Dura’s borrowing limit, artificially choking Dura’s access to cash so that it could not meet its payroll and other pressing obligations, which she fully understood existed in her roles with Dura.

6. Artificially cash-strapped and unable to meet its predictable obligations, Tilton forced Dura to file bankruptcy about a month after acquiring the debt facility and positioned entities she controlled as the only source of financing that would be available quickly enough to rescue Dura. Tilton, however, was not trying to save Dura; rather, she was trying to take it for herself—and cheaply. As a condition of her bankruptcy financing proposal, she required that she would be the stalking horse bidder so she could purchase Dura for a small fraction of the bids she had received, and then ignored, during the aborted sales process. Tilton and Grady thwarted competing rescue-financing offers by concealing Dura’s financial information from others who tried to offer alternative financing, including the Zohar Funds and their court-appointed management.

7. Ultimately, although she succeeded in forcing Dura into bankruptcy, Tilton’s scheme failed because the bankruptcy court rejected her attempt to become

the DIP financier and stalking horse bidder. The damage, however, was already done. Tilton's and Grady's actions eliminated most of the value Dura could have fetched in a sale. When Tilton aborted the promising sales process in 2018, Dura could have been sold for hundreds of millions of dollars. However, as a result of Tilton's schemes, Dura was sold in bankruptcy for a credit bid of \$65 million. The sale price did not even repay Dura's secured debt and left the Debtors' chapter 11 bankruptcy cases administratively insolvent, leading to conversion to a chapter 7 liquidation. Tilton and Grady should be held liable and accountable for the hundreds of millions of dollars of harm they caused to Dura.

#### THE PARTIES AND OTHER RELEVANT ENTITIES

8. Plaintiff is the chapter 7 trustee of the Debtors' bankruptcy estates. On October 17, 2019 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Middle District of Tennessee (the "**Tennessee Bankruptcy Court**"). On November 8, 2019, the Debtors' bankruptcy cases were transferred to the Delaware Bankruptcy Court. By order entered on December 15, 2020, the Delaware Bankruptcy Court converted the Debtors' cases to cases under chapter 7 of the Bankruptcy Code. On December 16,

2020, the Trustee was appointed as interim Chapter 7 Trustee. The Trustee now serves pursuant to Section 702(d) of the Bankruptcy Code.

9. The Company was a global Tier 1 automotive supplier specializing in the design, engineering, and manufacturing of products that support the evolution of automotive mobility, with a special emphasis on electric vehicles. Before the Petition Date, Dura had its headquarters in Auburn, Michigan.

10. The Company conducted its North American operations through DAS, a Delaware limited liability company, and DAS's eight directly and indirectly wholly owned subsidiaries (six of which are in bankruptcy). Dura Mexico Holdings, LLC and Dura Operating LLC ("**Dura Operating**") are Delaware limited liability companies and DAS's direct subsidiaries. Dura Operating's subsidiaries include Delaware limited liability companies Dura Automotive Systems Cable Operations, LLC and NAMP, LLC, Michigan limited liability company Dura Fremont L.L.C., and Dura G.P., a Delaware general partnership. DAS employees and officers conducted all the business operations of all of these entities.

11. DAS's equity is owned 56.9% by the Zohar Funds, 26% by investment entities that are unaffiliated with Tilton or Patriarch, and 17.1% by Tilton and her entity, Ark II CLO 2001-1 Ltd. ("**Ark II**"). The Zohar Funds and Ark II hold their

interests in Dura indirectly through Dura Buyer LLC, a Delaware limited liability company (“**Dura Buyer**”), which owns 73.1% of Dura.

12. Defendant Tilton is an individual residing in Florida. Tilton was DAS’s Chief Executive Officer from October 2012 through the Petition Date. By virtue of her position at DAS, Tilton acted in a similar capacity with respect to all of the Debtors. Tilton is also the sole manager of DAS’s managing member, Dura Buyer.

13. Defendant Grady is an individual residing in Illinois. Grady became DAS’s Executive Vice President and Chief Financial Officer in about May 2015. Grady temporarily resigned his positions at Dura effective June 29, 2019, which he characterized as a decision “primarily for medical purposes.” Even when he was supposedly on leave, Grady remained heavily involved with Dura and facilitated and assisted Tilton’s scheme to purchase the Company for a self-interested bargain. For example, Grady helped Tilton purchase Dura’s ABL Facility (defined and discussed below) in July and August 2019 and assisted her efforts in September 2019 to become Dura’s debtor-in-possession lender and stalking horse bidder. Grady officially resumed his role as DAS’s Chief Financial Officer on or about September 30, 2019. Grady permanently resigned from all positions at Dura in early November 2019 after he had a falling out with Tilton. As Chief Financial Officer and Executive Vice President of DAS, Grady acted in a similar capacity with respect to all of DAS’s

subsidiaries, including the other Debtors. Grady also held the title of “Manager” for most of the other Debtors.

14. Global Automotive Systems, LLC (“**GAS**”) was a Patriarch portfolio company. GAS was a leading global supplier of complex, structural metal assemblies and components to the automotive market. Tilton formed GAS in 2005 as a platform through which she acquired and consolidated the assets and operations of three auto part suppliers that she acquired out of bankruptcy. After Patriarch acquired Dura in 2009, Tilton integrated the operations of Dura and GAS, though they remained separate legal entities.

15. The Zohar Funds are collateralized debt obligation funds Tilton created. The Zohar Funds were lenders under Dura’s term loan facility which, as of the Petition Date, had an outstanding principal balance of \$104 million (the “**Term Loan Facility**”). On March 11, 2018, the Zohar Funds and certain of their affiliates filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, which are jointly administered in the Delaware Bankruptcy Court, captioned *In re Zohar III, Corp., et al.*, Joint Case No. 18-10512 (KBO) (the “**Zohar Bankruptcy**”). Tilton was the sole director of the Zohar Funds until she had to cede control in the Zohar Bankruptcy in May 2018.

16. Tilton appointed Marc Beilinson and Jill Frizzley (the “**Independent Managers**”) as Independent Managers of the Debtors on or about October 12, 2019.

Mere days after their appointment, on October 16, 2019, the Independent Managers rubber-stamped the Debtors' Chapter 11 filing.

### FACTUAL BACKGROUND

#### A. Tilton's Control over Dura

17. In 2000, Tilton founded Patriarch Partners, LLC, a Delaware limited liability company ("**Patriarch**"), and has served as its CEO since its inception. Under Tilton's leadership, Patriarch acquired what it perceived to be undervalued American companies and restructured them. In late 2009, Tilton caused Patriarch, through its affiliates, to form Dura Buyer and acquire a controlling interest through the Zohar Funds (which she then controlled) in Dura Automotive, Inc., which was later converted into a limited liability company, DAS. DAS holds controlling interests in the other Debtors and non-Debtor affiliates that made up the Company.

18. DAS is governed by its Limited Liability Company Agreement dated as of January 1, 2010 (the "**LLC Agreement**"). When the LLC Agreement was executed, Dura Buyer was the sole Series A Preferred Member and there were 10 Common Members that were unaffiliated with Patriarch. Tilton was Dura Buyer's sole manager, with sole authority to act on its behalf. Pursuant to the LLC Agreement, Dura Buyer (through its manager, Tilton) made substantially all business decisions of Dura as DAS's Managing Member. Dura had no board of

directors or board of managers or any other independent body charged with oversight until the LLC Agreement was amended just a few days before the Petition Date.

19. Tilton exercised complete control over the Company's management, both as DAS's Chief Executive Officer and as the Manager of Dura Buyer, which was the sole Managing Member of DAS. Tilton cemented her unilateral control over Dura by documenting, as Managing Member, an Authority Matrix that specified some limits on actions that officers of DAS and its subsidiaries could take without the Managing Member's approval. The Authority Matrix purported to require that the Managing Member (*i.e.* Tilton) approve specific Company decisions, such as annual budgeting, appointing officers, and changing financing policies. The Matrix also stated that Tilton had to approve any spending program of more than \$100,000. Dura's executives routinely sent Tilton formal approval requests, citing the Authority Matrix, for garden-variety business expenses. Of course, Tilton's own authority was unlimited, given that the only approval she needed as CEO was from herself on behalf of Dura's Managing Member.

20. In tension with Tilton's role as Dura's CEO and Managing Member, Tilton also wielded control over Dura's lenders. Dura had two main credit facilities: (i) a senior secured asset-based revolving credit facility (the "**ABL Facility**") and (ii) the Zohar Funds' Term Loan Facility, which was secured by a first-priority lien on substantially all of Dura's U.S. assets other than those that secured the ABL

Facility. Until May 2018, Tilton controlled the Term Loan Facility because she was the Zohar Funds' sole director and owner.

21. As explained below, Tilton resigned all positions of authority for the Zohar Funds shortly after the Zohar Funds filed for bankruptcy in March 2018. In August 2019, however, Tilton acquired Dura's other facility—the ABL Facility—through another entity she controlled, Ark II. As further explained below, Tilton used her control over the ABL Facility to tighten Dura's access to cash and force it to file bankruptcy in October 2019 so that she could acquire Dura for herself on the cheap. Had she been successful, Ark II would have provided Dura's bankruptcy financing and been the “stalking horse” bidder for its assets.

B. Tilton's Standstill Agreement with the Zohar Stakeholders

22. The Zohar Stakeholders were creditors of the Zohar Funds. For many years before the Zohar Bankruptcy, Tilton and the Zohar Stakeholders were engaged in protracted litigation battles. On March 11, 2018, the Zohar Funds and certain of their affiliates filed the Zohar Bankruptcy.

23. After fierce fighting at the start of the Zohar Bankruptcy, on or about May 21, 2018, the Zohar Bankruptcy Court issued an order approving and authorizing a settlement agreement between Tilton and the Zohar Stakeholders (the “**Zohar Settlement**”). Pursuant to the Zohar Settlement, Tilton resigned her positions of authority with the Zohar Funds (other than for certain tax purposes),

former federal judge Joseph Farnan was appointed Independent Director (the “**Zohar Independent Director**”), Michael Katzenstein of FTI Consulting was appointed Chief Restructuring Officer (the “**Zohar CRO**”), and Robert Kost of Goldin & Associates was appointed Chief Monetization Officer (the “**Zohar CMO**,” and collectively with the Zohar Independent Director and the Zohar CRO, the “**Zohar Fiduciaries**”). The Zohar Fiduciaries were charged with trying to monetize the Zohar Funds’ interests in certain portfolio companies, including Dura.

24. In short, the Zohar Settlement was a temporary litigation armistice to facilitate an effort to monetize assets (portfolio companies) relevant to the Zohar Bankruptcy. The Zohar Settlement included a “15 Month Window” (which could be extended to 18 months if certain payments were made) (the “**Standstill Period**”), during which Tilton would remain in her positions of control over the portfolio companies, including Dura. Tilton agreed to work with the Zohar Fiduciaries during the Standstill Period to monetize Dura and certain other portfolio companies. Tilton was required to act in the best interests of the portfolio companies. In addition, Tilton was required to give the Zohar CRO “full and complete information regarding the Monetization Process.”

25. If monetizations during the Standstill Period yielded enough funds to repay the Zohar Stakeholders fully, Tilton would be reinstated as director of the Zohar Funds. If she did not accomplish that by the end of the Standstill Period, the

Independent Director and CRO would have the power to remove Tilton from her controlling roles at the portfolio companies. Thus, Tilton knew that to regain control of the Zohar Funds, and to maintain her control over Dura and the other portfolio companies, she needed to raise sufficient funds through monetizing portfolio companies for the Zohar Stakeholders to receive the “Paid in Full” amounts specified in the Zohar Settlement—approximately \$1.77 billion at the time of the Zohar Settlement—by September 2019. The stakes were high for Tilton because if she failed to do so, she stood to lose everything at the end of the Standstill Period.

26. Tilton’s incentives and the impending deadline drove Tilton’s self-interested conduct described below.

C. The 2018 Jefferies Sales Process

27. On May 10, 2018, Dura and GAS executed an engagement letter with Jefferies LLC (“**Jefferies**”) to seek a potential combined sale of both companies. But Tilton’s interest in selling was conditional: it only served Tilton’s self-interest to sell if the price was high enough to enable her, in combination with funds obtained through sales of other Zohar portfolio entities, to fully repay the Zohar Stakeholders pursuant to the Zohar Settlement. Once it appeared that she would not be able to obtain the \$1.77 billion dollars she needed from the overall monetization process, Tilton unilaterally terminated the Dura sales process.

28. Tilton's eventual pretext for stopping or delaying the sales process was that she wanted to refinance Dura's debt. When Tilton hired Jefferies, however, Jefferies advised her that a sale was preferable to a refinancing. Given Jefferies' understanding that selling was the primary objective, its engagement letter referred expressly to a sale but did not expressly mention a refinancing. Rather, the engagement letter stated that Jefferies was retained in connection with "a possible sale, disposition or other business transaction or series of transactions involving all or a material portion of the equity or assets of one or more entities comprising both of the Companies." Richard Morgner ("**Morgner**"), a Managing Director and Joint Global Head of the Debt Advisory & Restructuring Group at Jefferies, later testified at a deposition taken in connection with the Zohar Bankruptcy that when Jefferies was retained in May 2018, its primary mandate was to sell Dura and GAS. The Zohar Settlement similarly required Tilton and the Zohar CRO to "prioritize sales" in the monetization process.

29. The monetization of Dura and GAS was crucial to Tilton reaching her goal relating to the Zohar Settlement. Of the 12 portfolio companies she considered monetizing, Dura was by far the largest and most valuable. Dura's nearly \$600 million of assets on its balance sheet in September 2018 were double the balance sheet assets of the next largest portfolio company, MD Helicopters. Together, Dura

and GAS constituted approximately 40% of those 12 portfolio companies' balance sheet assets.

30. The pressure to obtain maximum value for Dura increased because the public perception of the value of the second-largest portfolio company, MD Helicopters, dropped in early 2018. In February 2018, a high stakes *qui tam* whistleblower lawsuit against MD Helicopters was revived by the United States Court of Appeals of the Eleventh Circuit.<sup>1</sup> The shadow of this lawsuit (which led to a \$36.2 million judgment, which may be trebled) likely loomed over how potential buyers would reasonably value MD Helicopters. Thus, Tilton knew when she entered the Zohar Settlement that she would have to rely heavily on the monetization of Dura to generate enough funds to pay the "Paid in Full" amounts due to the Zohar Stakeholders.

31. Tilton began the sales process for Dura and GAS with an expected price in the \$625-\$850 million range, as Jefferies suggested in a "Preliminary Valuation Overview" it prepared in May 2018. That expected range reflected multiples of about 5x-6.5x of Dura's and GAS's combined estimated 2018 projected adjusted EBITDA of \$130 million.<sup>2</sup> The expected range was also a 4.5x to 6x multiple of

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<sup>1</sup> *Marsteller for use & benefit of United States v. Tilton*, 880 F.3d 1302 (11th Cir. 2018)

<sup>2</sup> Morgner testified that in this context, adjusted EBITDA represented ordinary EBITDA that was adjusted to account for one-time charges to better reflect current cashflow.

projected adjusted 2019 EBITDA of \$138.3 million. Jefferies also presented three other preliminary valuation metrics, which estimated Dura's and GAS's enterprise value in the range of \$650 million to \$900 million. Morgner testified that approximately 85% or more of the EBITDA was attributable to Dura, with a much smaller percentage attributable to GAS.

32. Tilton's negotiations with Jefferies over its compensation for the engagement aligned with Jefferies' value estimates. Jefferies initially proposed a base fee of \$250,000 and incentive compensation of 1.8% of the transaction price up to \$700 million, which increased to a maximum of 5% of any amount above \$900 million. Tilton countered with a flat \$6.5 million transaction fee applicable to any transaction value up to \$650 million, plus 2% of the transaction value between \$650-\$750 million, 3% of the transaction value between \$750 and \$850 million, and 5% of the transaction value greater than \$850 million. Tilton justified her counterproposal by stating that it "encourages the multiples we need to be paid." The parties ultimately agreed to Tilton's proposal but increased the base fee to \$7 million. The negotiations and the ultimate fee structure reflected Tilton's belief at the time that a sales price of \$650 million was acceptable, and that any sale over \$850 million would be a very good result.

33. Tilton, however, did not focus on selling Dura for its market value; instead, she was solely concerned with fetching a high enough sales price to repay

the Zohar Stakeholders. For example, in a presentation Jefferies made to Patriarch on May 2, 2018, shortly before Jefferies was engaged, Jefferies explained that it would seek to meet “Patriarch’s Objectives” of (1) “[r]ais[ing] capital to repay Zohar creditors, either through a sale of DURA/GAS . . . or a refinancing”; and (2) “[c]losing within 15 months”—*i.e.*, within Tilton’s window to repay the Zohar creditors.

34. Tilton told no one at Dura about the sales process other than Grady and Dura’s President and Chief Operating Officer, Tyrone Michael Jordan (“**Jordan**”), until many months later when the sales process was leaked to the press. Even Dura’s General Counsel was out of the loop about the efforts to sell the Company. Tilton directed Grady not to use Dura’s General Counsel, Jonathan Greenberg, to review the legal documents related to the sales process. Instead, Tilton and Grady worked only with Brian Stephen, Patriarch’s General Counsel. Because Tilton kept Dura’s own legal department in the dark, Tilton and Patriarch (along with Grady) controlled all information related to the sales process. As a result, only Patriarch, not Dura, received legal advice to protect its interests.

35. Upon information and belief, Tilton kept the potential sale secret from most of the Dura executive team because of her tainted motives. Tilton did not want others to learn of the sales process until she could be sure it would benefit her. Tilton’s plan was that if the highest offer for Dura was not enough to allow her to

retake control of the Zohar Funds, Tilton would not agree to a sale, and she would quietly kill any proposed acquisition. Tilton involved Grady in the sales process because Tilton trusted that Grady would help further her personal goals.

36. From May through October 2018, Jefferies marketed Dura to potential buyers. Jefferies contacted 59 potentially interested parties. 32 were interested enough that they executed NDAs and received due diligence materials, including a 67-page Confidential Information Memorandum (the “**CIM**”). The CIM contained a 2018 adjusted EBITDA projection of \$154 million. Jefferies told multiple potential buyers that Dura and GAS would likely be valued between \$800 million and \$900 million.

37. On October 2, 2018, Jefferies sent potential buyers an update that asked interested parties to submit their proposals basing their valuation of the Company on Pro Forma Adjusted EBITDA guidance of approximately \$152 million, which was a modest adjustment to the \$154 million stated in the CIM “due to a few headwinds the Company [was] facing.”

38. Jefferies received eight formal indications of interest (“**IOIs**”) between October 9 and October 25, 2018, which ranged from \$400 million to \$875 million. Most of the IOIs were between \$650-800 million—within the range that Tilton and Jefferies contemplated when Dura engaged Jefferies five months earlier. The highest

IOI of \$875 million would have triggered the highest tier of fees to Jefferies under the engagement letter Tilton negotiated.

39. The companies that submitted the IOIs were seriously interested in acquiring Dura and GAS. Many of the potential buyers were prepared to move forward with diligence and sign a sale contract quickly. Indeed, many of the bidders set targets to complete due diligence and sign a sale agreement by January or February of 2019. Moreover, some bidders disclosed that they could complete the purchase without needing outside financing, enabling them to close more quickly. The IOIs were also attractive because almost all the bidders expressed their desire to keep key management personnel in place after the sale. There is no evidence among Company documents that any of the IOIs proposed terms that Tilton or Grady regarded as deal-killers.

40. When these IOIs were submitted in October 2018, however, Tilton had two problems with respect to the sale effort. *First*, Tilton's efforts to monetize other Zohar portfolio companies were proving unsuccessful, which meant she needed to extract more value from Dura to repay the Zohar Stakeholders. *Second*, Dura was missing its EBITDA targets. Tilton and Grady knew that downward adjustments to 2018 EBITDA would reduce Dura's market value and make it even less likely that Tilton could pay off the Zohar Stakeholders in full.

41. Based on Dura's missed targets in October, Grady delivered a Q4 update to Tilton on November 4th that lowered the 2018 baseline EBITDA projections by at least \$9 million below the number Jefferies had presented to potential bidders. Tilton responded that this reduction was "shocking and really disappointing." In an email, Grady warned Tilton that "the accounting gymnastics are getting more difficult."

42. Dura's failure to meet its October 2018 EBITDA projections pushed Tilton into crisis mode. In an email in late October to Grady and Jordan, Tilton wrote, "[w]e are missing our numbers at the worst time in our history. Credibility will be lost by this team in the marketplace." The same day, Tilton wrote to the Dura executive team, "Sadly, we are woefully off budget in a year when we are in the market and we needed to meet our budget and our numbers." Tilton said that Dura was in "an emergency situation," because sales volume was down and the Company had missed on several metrics of its results. Tilton also began pressing Jordan about layoffs at Dura's plants "ASAP," foretelling that without major cuts, "[y]ou, Kevin and I will lose all credibility in the marketplace." In another email, Tilton predicted that "this big miss will hurt Dura for a long time to come."

43. Thus, Tilton knew that Dura was in a weaker financial position as compared to May 2018, and that the problem would not go away anytime soon. Nonetheless, the sales process continued to have considerable potential for Dura.

The contemplated EBITDA reduction from of \$9 million from \$152 million equates to an approximately 6% reduction. If the bidders who submitted IOIs had reduced their bids by 6% or more, many of the bids would still have exceeded \$650 million. As Morgner from Jefferies later testified, the IOIs in the higher end of the range would have left significant residual proceeds after paying off Dura’s Term Loan Facility and the ABL Facility and its trade debt. Morgner also testified that even though Dura missed its EBITDA targets for October, the lower end of the IOIs or higher was still achievable, and that had the sales process continued, Jefferies could have “secured a valuation meaningfully in full excess of [Dura’s] approximately \$210 million of debt.”

44. Nevertheless, Tilton refused to entertain sales offers that would not accomplish what she expressly called “[her] goal.” After hearing in mid-October 2018 (approximately six months after the Zohar Bankruptcy) that one potential buyer bid \$450 million, Tilton wrote to Jefferies, [REDACTED]

[REDACTED] *I fear I have lost 6 months and may not accomplish my goal.*” (Emphasis added.) Thus, Tilton admitted that her real goal was retaking control of the Zohar Funds, not doing what was best for Dura. Tilton would not budge on her need for an unrealistically high sale price for Dura.

45. In fact, Tilton *increased* her target sales price in October 2018 compared to earlier in the year. When Tilton began the sales process, she discussed

with Jefferies an EBITDA multiple of at least 5x. But by early October, Tilton's position was, "5 times is not going to do it." Even when Jefferies explained that a potential buyer had a starting point of 4x, Tilton scoffed, "I am not sure why people think I might even consider a sale at that multiple." Tilton's position was self-interested and irrational: because Dura's financials were now *weaker* than before, Dura's market value did not increase.

46. As further evidence that Tilton increased her minimum sale price, she told the Zohar CRO and the Zohar CMO in mid-October that she would not accept less than 6x pro forma EBITDA. That meant that her floor price for Dura, based on the projected EBITDA disclosed to potential purchasers, was now \$900 million. This was well above the threshold for compensating Jefferies at the highest range set forth in its engagement letter, which entitled Jefferies to receive 5% of any price over \$850 million. And even though one potential buyer had indicated it would be willing to pay up to \$875 million for Dura and GAS—a mere \$25 million less than Tilton's newly increased "release price"—Tilton refused to engage in further discussions with that party. Tilton instead pulled the plug on the sales process.

47. Tilton made the decision to stop the sales process unilaterally. Morgner later testified that Jefferies was "directed by Dura CEO, Lynn Tilton, not to proceed with the sales process." Tilton specifically excluded Jefferies from making decisions or even answering questions from potential buyers about the sales process. Stopping

the sales process also went against the Zohar Fiduciaries' clear desire for the sales process to proceed.

48. Grady accepted and adopted Tilton's unrealistic expectations and increased sales price. By mid-October 2018, he told others that a sale would only occur at a price of more than a billion dollars or an EBIDTA multiple of more than 11.1x (well in excess of \$1 billion based on Dura's stated adjusted EBITDA), which was far more than anyone involved with the process had contemplated.

49. Tilton's unilateral decision to increase her price expectations and end the sales process was not based on any financial analysis or any independent valuation. Tilton did not direct Jefferies to share her new pricing demands with the entities that had submitted IOIs. In Tilton's view, the only relevant factor was whether she thought the sales price was enough to resolve her disputes with the Zohar Stakeholders.

50. Tilton gave shifting rationalizations for her decision to abandon the sales process, but she generally gave three pretextual reasons. *First*, Tilton claimed that the IOIs did not capture Dura's and GAS's intrinsic value. But that excuse was nonsense given that the IOIs were well within Jefferies' initial range of the Companies' enterprise valuation on which Tilton had agreed to start the sales process. No analysis or valuation suggested otherwise.

51. *Second*, Tilton purported to be concerned that the IOIs did not properly account for the positive effect on Dura's EBITDA of restructuring a damaged Dura plant (the Plettenberg plant). But the materials that solicited the IOIs directly accounted for the effect of the restructuring when calculating Dura's EBITDA, and the IOIs used multiples of that EBITDA to calculate their bids. Further, if Tilton thought the IOIs were based on a misunderstanding of the plant closure's effect on EBITDA, she could have provided additional explanation, rather than suddenly terminating the sales process without further discussion. Moreover, any criticism that the EBITDA forecast was incorrect was also baseless because she and Grady were responsible for the forecast.

52. *Third*, Tilton claimed that the counterparty to a large battery tray contract had told her that it opposed a sale because of concerns about the continuity of Dura's ownership and management. Even if that was true, the IOIs contemplated only a change in ownership, not management, and in fact most of the IOIs stated that the purchaser intended to retain existing management. Moreover, it is not credible that a contractual counterparty's concern about who owned the Company was a basis to pull the plug suddenly on a productive sales process, rather than, for example, trying to seek approval from the counterparty.

53. Tilton and Grady tried to disguise the decision to abandon the sales process in late 2018 by pretending they had merely slowed down the sales process

temporarily, and that it would ramp up again in January 2019. The Zohar Fiduciaries and Jefferies all agreed that slowing the sales process was not ideal, but they decided they would not try to block a temporary slowdown as long as Tilton reengaged in a sales process quickly.

54. When Tilton and Grady finally disclosed that they had abandoned, not “slowed” the sales process—months after it happened—they mischaracterized the abandonment as a recent development. On January 8, 2019, the Zohar CMO contacted Jefferies to get an update on the Dura sales process, because he thought it was ongoing and would ramp up soon. In response, Jefferies admitted that its focus was no longer on a sale, and referred any further questions to Tilton. Tilton then told the Zohar CRO and the Zohar CMO that she had decided to pursue a refinancing only and not a sale. Tilton also sought to stop the Zohar Fiduciaries from asking Jefferies any questions about Tilton’s motives and the about-face, and told the Zohar Fiduciaries to communicate solely with her, not Jefferies.

55. The Zohar Fiduciaries wanted the sales process to continue because they wanted to obtain the maximum available value from Dura’s sale, even if it was not enough for Tilton to fully cover her obligations under the Zohar Settlement. In late January 2019, Joseph Farnan, the Zohar Funds’ independent director, told Tilton he strongly disagreed with Tilton’s claimed authority to decide unilaterally to stop the sales process. Tilton did not have that power given that the Zohar Settlement

required the sale of portfolio companies and cooperation with the Zohar Fiduciaries in the monetization process. Farnan also challenged Tilton's approach of keeping relevant information confined to her inner circle, stating that neither he nor the Zohar CRO had been provided any analysis or other support for her decision to terminate the sales process, and that it was inappropriate to forbid the Zohar Fiduciaries from speaking with Jefferies.

56. Tilton never reopened the sales process to outsiders, even when the bidder who had submitted an IOI for up to \$875 million inquired in February 2019 about whether the sales process would continue. While she excluded outsiders,

[REDACTED]

[REDACTED]

[REDACTED] Tilton again demonstrated that her concern was not whether the IOIs were fair to Dura, but whether a sale of Dura would benefit her.

57. In sum, there was no rational business reason from Dura's perspective for Tilton to suddenly, unilaterally, and secretly terminate the sales process. Nevertheless, Tilton abandoned the sales process and never reopened it to outside bidders. She then tried to sweep under the rug the disastrous consequences of her selfish decision.

D. After Tilton Sabotages the Sales Process, Tilton and Grady Unsuccessfully Pursue a Refinancing

58. Morgner later testified at a hearing before the Tennessee Bankruptcy Court that in the spring of 2019, Jefferies internally valued Dura in the hundreds of millions of dollars. Yet Tilton and Grady wasted time focusing solely on refinancing efforts that ultimately proved unsuccessful rather than pursue a sale during late 2018 and early 2019 consistent with Jefferies' valuation.

59. The refinancing efforts took several forms, but none succeeded. First, Dura sought a combined refinancing of Dura and GAS. Under that proposal, Dura would formally merge with GAS and obtain a new term loan and a new ABL facility for the combined entity. That plan failed because both S&P Global Ratings and Moody's gave a low rating to the combined facility in September 2018. Predictably, Dura could not find enough banks willing to participate, and Dura abandoned that structure.

60. Next, in or around February or March 2019, Dura engaged Jefferies to seek a syndicated loan facility from European banks for Dura alone—GAS would not be included. But this second refinancing plan also failed. On April 8, 2019, Grady directed counsel that was handling the refinancing to go "pens down" on all refinancing efforts because he and Tilton had decided to suspend refinancing efforts for 60 days. Tilton also told the Zohar CRO that the European refinancing plan had

failed. Grady’s excuses for the failure were part of Tilton’s talking points against the Zohar Stakeholders. He complained about the “uncertainty over final outcome of the Zohar challenges” and “concerns regarding overall governance of Dura, including an independent Board of directors.” Tilton and Grady could have avoided these issues by resuming efforts to sell the Company, but they never tried.

61. Tilton and Grady did not consider returning to a sales process even when the refinancing was supposed to be “on hold.” [REDACTED]

62. Ultimately, all of the refinancing proposals failed because no lenders would fund them, largely because Tilton has a reputation as a serial litigant. For

example, in April 2019, Dura’s Director of Treasury, Liza Duronio, told Grady that Bank of America was reluctant to consider a refinancing transaction because of the “*intangible* ‘Lynn Tilton Factor.’” Bank of America repeated its concern to Duronio in a June 2019 email, citing “the behavior pattern of Lynn [Tilton] and her companies [so] if times are tough, BoA [Bank of America] will be in litigation.” At around the same time, KeyBank did not want to participate in a refinancing, citing “Lynn’s reputation and prior litigations.”

63. As Tilton and Grady wasted precious time on the varied refinancing ideas, Dura, by mid-2019, was in the midst of a liquidity crisis. As a result, its value had deteriorated substantially. The prospect for a sale at the level of the IOIs had vanished. Once Tilton finally acknowledged that refinancing was a lost cause, she turned her focus, with Grady’s assistance, to a scheme designed to divert Dura’s remaining value to herself.

E. Tilton’s Scheme to Divert Dura’s Value to Herself

64. In the summer of 2019, Tilton decided to acquire the ABL Facility, which gave her control over Dura’s access to cash. Then, Tilton intentionally strained Dura’s liquidity until it could barely operate. After she put Dura in a desperate financial position, she positioned herself to be the only source of debtor-in-possession (“**DIP**”) financing and the only viable purchaser in bankruptcy of Dura

or its assets. In effect, Tilton started drowning Dura so that she could be the one to “rescue” it and profit personally from the “rescue.”

65. Tilton and Grady took several steps, each explained below, to advance this scheme between July 2019 and the Petition Date on October 17, 2019. As noted above, Grady resigned his CFO position from June 29th through September 30th, yet he directly assisted Tilton with each of these steps.

66. *Tilton Acquires Dura’s ABL Facility.* Toward the end of the Standstill Period in September 2019, Tilton faced the risk of losing the control she exercised as manager of all the portfolio companies, including Dura. Tilton had sold only two of the portfolio companies for an aggregate sale price of roughly \$150 million, which meant she had no realistic chance of raising enough funds to repay the Zohar Stakeholders before the Standstill Period expired. So Tilton planned to acquire the ABL Facility from Wells Fargo, which would benefit her in two ways. *First*, even if she lost control of Dura as its manager, she could retain control and information rights as Dura’s senior secured lender. *Second*, owning the ABL Facility gave Tilton the ability to pull off another scheme. She could squeeze Dura’s liquidity, force it into a bankruptcy process in which Tilton could position herself as the only realistic source of financing and purchaser, and acquire Dura in bankruptcy.

67. Accordingly, when Tilton bluntly informed Grady in July 2019 that “I am going to need to acquire the Wells [Fargo] loans,” Tilton’s use of the words “I”

and “need” referred to her personal need, not Dura’s needs. Dura’s financial personnel, who did not know of Tilton’s motives, were “ecstatic” when they learned Tilton planned to purchase the ABL Facility because they incorrectly assumed that their CEO was purchasing the ABL Facility to give Dura some breathing space, which would benefit Dura.

68. As the summer progressed, Tilton’s personal motives became increasingly urgent, as reflected in her emails about acquiring the loan with Grady and Brian Stephen, Patriarch’s general counsel. For example, on August 6, 2019, Tilton urged that she “really need[s] to get [the loan acquisition] done.” Even though Tilton learned that drafting of assignment agreements was underway, she reiterated several minutes later that “I really need this done this week. So please help accelerate.”

69. Tilton rushed the assignment of the ABL Facility so much that Dennis Richardville, who became Dura’s CFO during Grady’s temporary absence, did not see the assignment documents until the day he was asked to sign them. Moreover, only Patriarch’s general counsel reviewed the assignment documents, presumably for Patriarch’s benefit, before they were executed on August 13, 2019. No one in Dura’s legal department reviewed the assignment documents for Dura’s benefit before Richardville signed them.

70. Once Ark II obtained the ABL Facility, Tilton restricted the flow of cash to Dura in at least two ways. *First*, Tilton lowered the maximum amount Dura could draw from the ABL Facility from \$40 million to \$27 million. There was no legitimate reason for the reduction because Dura had more than enough collateral to support credit under the contractual borrowing base formula. Dura had about \$29 million in available collateral when Tilton acquired the loan on August 14, 2019. Yet Tilton did not allow Dura to borrow any amounts over \$27 million, which meant that Dura could not borrow against \$2 million of its acceptable collateral. The borrowing base reports referred to the amounts that would have been available but-for the \$27 million cap as “suppressed availability.” As collateral availability increased, the \$27 million cap remained the same. As a result, suppressed availability increased to almost \$3 million by the end of August 2019, to almost \$5.5 million by early September, and to more than \$9 million by early October 2019. Thus, Tilton starved Dura of more than \$9 million in much-needed liquidity through her artificial cap, which exacerbated a liquidity crisis that forced Dura into bankruptcy.

71. *Second*, Tilton throttled Dura’s liquidity by demanding that she personally review and approve every funding request, even requests that would leave Dura’s borrowing under her \$27 million cap. Tilton used her power to arbitrarily reduce Dura’s ability to borrow even below the limits imposed by the reduced

borrowing cap. Tilton's actions immediately plunged Dura into a severe liquidity crisis. Shortly before Tilton acquired the facility, Dura personnel calculated that the Company needed \$6.4 million to meet payroll and other urgent expenses. Dura's controller, Pam McIntyre, requested the \$6.4 million and gave Grady a copy of the borrowing base report right after the assignment closed. Even though there was sufficient space under the cap to support the request for \$6.4 million, Patriarch forced Dura to reduce its request twice that same day, first to only \$2.1 million, and then again to \$1.89 million, leaving \$4.6 million available but undrawn. When Dura filed for bankruptcy in October, approximately \$1.2 million that would have been available under Tilton's \$27 million cap remained undrawn.

72. *Tilton Planned a Bankruptcy Filing for Her Own Benefit.* Tilton plotted to benefit from Dura's artificially hastened demise. She orchestrated a bankruptcy filing so she could seize control of the Company through a DIP loan from a Tilton-controlled entity and then through a bid to acquire Dura's assets.

73. To pave the way for her desired bankruptcy filing, Tilton hired Kirkland & Ellis LLP ("**Kirkland**") to act as Dura's bankruptcy counsel through an engagement letter dated September 15, 2019. Shortly after Tilton engaged bankruptcy counsel, Jefferies circulated information requests to Tilton and Grady for a DIP loan, dubbed "Project Como." Tilton then thwarted the ability of anyone other than herself to participate as a lender by giving Jefferies only two weeks to

find interested lenders. Given such a short timeframe, it was all but impossible for any alternative DIP lenders to emerge, leaving a Tilton-owned company as the only option to finance Dura's bankruptcy.

74. Tilton then set out to prepare her own self-interested DIP proposal. Patriarch's counsel, Skadden, forwarded Dura's counsel at Kirkland a term sheet for a DIP loan from Patriarch and Tilton on October 3, 2019. The proposal offered \$50 million in new money and a "roll-up" of the pre-petition ABL Facility debt (owned by Tilton) into the DIP loan. The proposed roll-up would give Tilton's outstanding debt under the ABL Facility to the same super-priority for repayment as Tilton's DIP loan. Tilton's DIP term sheet imposed a rushed timeline that was designed to preclude, or at least limit, any possible dissent. A term sheet provision required that upon filing Dura's bankruptcy petition, Dura would have to obtain interim bankruptcy court approval of the DIP facility within three days and final approval within 21 days. It also required Dura to file a motion for a sale and bid procedures within just three days of the petition date. The entire sales process was supposed to finish within 120 days. The cramped timeframe of the proposed bankruptcy financing and sale would give Tilton a substantial advantage over other proposed bidders because Tilton had unfettered access to information about Dura pre-petition. Tilton's term sheet also gave herself further power to sideline other bidders because an entity that Tilton controlled (Patriarch Partners Agency Services LLC) would

have sole discretion to approve the sale motion and bid procedures before Dura could seek bankruptcy court approval of those procedures.

75. As Patriarch’s counsel and Dura’s counsel exchanged drafts of Tilton’s DIP financing proposal, Dura’s counsel (Kirkland) complained that provisions in the draft proposed DIP order were inappropriate and unreasonable. Kirkland pushed back at Patriarch’s unreasonable timeframe for alternative DIP proposals and Tilton’s absolute and sole discretion to dictate the terms of any sale. Nevertheless, Kirkland had no choice to but to relent because Dura urgently needed additional cash—a circumstance Tilton had created after she acquired the ABL Facility.

76. In early October 2019, Skadden also circulated a draft stalking horse purchase agreement by which a Tilton-affiliated entity was willing to purchase Dura’s assets. Once finalized, Tilton’s stalking horse offer included: (i) a credit bid in the amount of the outstanding indebtedness under the ABL Facility (which she owned) plus the amount of her DIP loan; (ii) \$5,000,000 in cash designated the “Wind-Down amount”; and (iii) the assumption of certain liabilities. Morgner later testified that the total value of her credit bid was approximately \$77 million, and the value of the assumed liabilities was approximately \$80 million. This bid was a far cry from the many hundreds of millions of dollars from which Tilton had walked away when she had abandoned the sales process. The stalking horse bid provided no recovery for any of Dura’s creditors other than Tilton.

77. Tilton's final DIP financing proposal and stalking horse purchase agreement pushed Tilton's self-interest even more aggressively than the early drafts of the proposal. Tilton's final DIP financing proposal was *conditioned* on her entity serving as the stalking horse bidder. In addition, the final proposal gave broad releases to her and her affiliated entities. Because Dura was desperate for cash (a problem she had created), there was little time for an acceptable competing bid to challenge her DIP financing proposal and stalking horse bid.

78. *Tilton Stonewalled and Delayed Other Potential DIP Lenders.* To ensure her DIP financing proposal would prevail, Tilton sought to eliminate any plausible alternative DIP lending proposals. Tilton therefore obstructed a potential competing offer by Bardin Hill, which was a major stakeholder in the Zohar Funds. In the weeks just before Dura's bankruptcy filing, Tilton made sure that Bardin Hill (and the Zohar Fiduciaries who sought to assist Bardin Hill) lacked access to information to enable Bardin Hill to timely submit a competing DIP financing proposal.

79. On September 17, 2019, the Zohar CRO advised Patriarch that he was looking to broker a financing proposal from Bardin Hill. The Zohar CRO urgently sought, among other things, a 13-week cash flow forecast, information about discrepancies between Dura's projections and actual performance, and information about Dura's battery tray contracts with Daimler and Ford. The Zohar CRO also

requested a call with Dura management to discuss the current situation and develop potential solutions. The next day, Tilton, Grady, and Richardville advised the Zohar CRO and his consultants at FTI Consulting that Dura would require \$40-50 million of financing to avoid filing for bankruptcy. During and after the call, the Zohar Fiduciaries and Bardin Hill expressed that they were “ready and willing” to provide the needed financing and that they would soon submit a proposal.

80. But in the ensuing weeks, Tilton and Grady provided little of the requested information. Tilton and Grady did not even provide the requested 13-week cash flow projections. Tilton promised the Zohar Fiduciaries that she would provide the forecast, but internal emails with Grady and others reveal that Tilton did not want to provide it. She said that before sending it, they would need to “make sure it encompasses the cash needs to which we spoke,” which suggested that Tilton wanted the financial information to correspond to a narrative that would support her own DIP financing proposal. Later that afternoon, Dura’s controller sent Tilton and Grady a copy of the 13-week cash flow forecast. But Tilton and Grady never provided it to the Zohar CRO or Bardin Hill. Morgner later testified that Grady told him that it did not exist.

81. Despite the limited information available to it, Bardin Hill tried its best to make a DIP financing proposal anyway. On September 27th, Bardin Hill sent Tilton a proposal for a \$40 million DIP loan. Under the proposal, the Zohar Funds

would be the DIP lender and Bardin Hill would backstop the loan by lending the same amount, on the same terms, to the Zohar Funds. Bardin Hill specified that they were open to negotiating terms, but the financing would “include a fair and value maximizing process for the sale of Dura.” But Tilton did not want a “fair” or “value maximizing process” because she intended to purchase Dura herself. And to do so, she could not have Bardin Hill compete with her DIP proposal.

82. Tilton did not immediately respond to Bardin Hill’s proposal, other than telling the Zohar CRO that “my lawyers” (referring to Dura’s counsel, Kirkland) would review it, but that there are “many things about [the Bardin Hill proposal] that do not work for me.” Tilton was obviously conflicted, given that she was preparing to submit her own DIP financing proposal to Kirkland a few days later.

83. When Dura’s counsel finally responded to Bardin Hill’s September 27th proposal on October 4th, it responded with an “issues list” that further demonstrated the depth of Tilton’s conflicts. Among other things, the issues list stated that the ABL lender (*i.e.*, Tilton through Ark II) would not approve a financing proposal that came ahead of the existing ABL facility. In other words, Tilton, in her capacity as lender under the ABL Facility, would have to approve the proposed DIP loan that competed with her own proposed DIP loan (which included a roll up of the ABL Facility debt into her DIP loan) while she was still serving as Dura’s CEO (and

apparently directing Dura's counsel to relay her requirements as ABL Facility lender). The issues list also complained that the \$40 million DIP loan Bardin Hill had proposed could not meet Dura's \$50 million near-term liquidity needs.

84. Conveniently, Tilton's DIP loan proposal submitted the day earlier was for \$50 million. Tilton's criticism was pretextual (and unfair) because she and Grady had told Bardin Hill at their initial meeting that Dura needed a \$40-50 million loan. Notably, had Tilton not lowered the cap on the ABL Facility to \$27 million, Dura would have had almost \$10 million of additional available cash that would have filled the purported \$10 million deficiency in Bardin Hill's \$40 million proposal.

85. But Bardin Hill was not deterred. It continued to request information it needed "quickly to address the Dura liquidity issues," including complete responses to its September 17th requests and access to Dura's data rooms for previous sales and refinancing processes. The following days, Bardin Hill sent supplemental information requests. Grady promised that providing the requested information was "in process" and that access to the previous data rooms "should be provided as soon as practical." On October 10th, Grady advised that Dura had "a batch of documents to share," but refused to produce them absent an NDA. Bardin Hill correctly suggested that the NDA was yet another attempt to "delay and obfuscate." In all, Dura provided only 29 documents, none of which addressed Bardin Hill's requests

for information about Dura's liquidity and capital expenditures, and which still did not include requested financial information or a 13-week cash flow forecast.

86. By the time Dura shared a few documents with Bardin Hill, Tilton was getting ready to announce Dura's imminent bankruptcy, which Tilton planned to file on October 16th. The Independent Managers were appointed on October 12, 2019. By October 13, 2019, Patriarch directed an advisory firm to prepare a press release and other press materials announcing the Debtors' bankruptcy filing planned for October 16, 2019. On October 14, 2019, the advisory firm provided a draft press release that stated that (1) the Debtors had filed chapter 11 bankruptcy in the Tennessee Bankruptcy Court, (2) Tilton would provide DIP financing, (3) Tilton had made an offer to purchase the Debtors, and (4) "A Transaction Committee consisting of two independent directors has been appointed to provide for a clear and quick marketing process."

87. In the final days before Dura filed its bankruptcy, Bardin Hill desperately tried to explain to Dura's professionals that Dura's expected bankruptcy filing was not in good faith because Tilton had designed the process to benefit herself and blocked access to others. On October 13th, Jefferies and Kirkland sent Bardin Hill an "illustrative" refinancing proposal that would have avoided Dura's bankruptcy filing through joint out-of-court financing by Patriarch and Bardin Hill. The Zohar Fiduciaries and Bardin Hill still had not received the basic due diligence

they had requested and needed, but Bardin Hill nevertheless promptly responded with a proposal that would have avoided the imminent bankruptcy filing. The Zohar Funds' counsel warned Dura that the lack of information meant that Dura's newly installed Independent Managers also lacked sufficient information to make an informed business decision to reject Bardin Hill's non-bankruptcy financing proposal:

*Based on the lack of information, we do not believe the Independent Directors can possibly be in a position to make a fully informed judgment that any competing proposal is superior, or is otherwise in the best interests of the Company.*

(Emphasis added.)

88. Later on October 14, 2019, the Zohar Fiduciaries' counsel expressed their suspicion that Tilton's real motivation was to favor her own insider proposal and demanded that the Independent Managers step in to stop Tilton's improper conduct:

In order for the [Zohar] Debtors and Barden Hill [sic] to be able to move forward, there will need to be a fair and transparent process with a level playing field. It is the [Zohar] Debtors' expectation that the independent directors have exclusive authority regarding the financing process and with respect to any restructuring transaction/process. *Since the alternative to a Bardin Hill-financed (in whole or in part) FIFO is a restructuring proposal from an insider who has control over the very information at issue*, it is our expectation that the independent directors - we presume acting as a special committee - understand the importance of transparency (both in and out of chapter 11) and will direct Dura and its professionals to provide the [Zohar] Debtors and Bardin Hill with the requested information in short order.

(Emphasis added.)

89. The next day, on October 15th, John Greene from Bardin Hill sent an email to the Zohar Fiduciaries and Dura's counsel that called out Tilton's conflicts and how she had used them to accomplish her goals:

Here is a blinding statement of the obvious: This process is proving to be a joke. The data site is a joke. While there is a stated liquidity crisis, nobody can tell us how much money the company needs, when it is needed, provide a sources and uses table, financial statements, 13 week cash flow, etc. Basic stuff. We asked a month ago and have gotten nothing. What about the "company's" financial advisors? What information do they have to advise the independent directors? Either the independent directors don't know or won't tell us. Either one is a major problem.

*Information is being withheld, and it is totally unacceptable. Lynn is playing games to buy this company on the cheap from its owners and creditors.*

90. Dura did not respond further to Bardin Hill's diligence requests or its proposal before filing for bankruptcy in the Tennessee Bankruptcy Court on October 17, 2019. The process of pretending to consider Bardin Hill's proposals was a sham.

F. Tilton's Scheme to Acquire Dura Through Bankruptcy Fails

91. At first, it appeared that Tilton's scheme had succeeded when Dura filed its bankruptcy petition on October 17, 2019, and the Debtors filed their First Day Motions seeking approval of DIP financing from Ark II (the "**DIP Motion**").

92. In Grady's declaration filed in support of the First Day Motions, he claimed that there was no alternative to Tilton's DIP financing. Grady's declaration

tried to whitewash Tilton’s self-interest and her ironclad grip on the process that led up the bankruptcy. Even though DIP financing negotiations had been ongoing for a month, Grady incorrectly asserted that the Independent Managers appointed days earlier “have overseen and directed the DIP financing negotiations and asset sale process, and played an integral role in the overall restructuring process.” Grady also inaccurately represented that Dura had exercised business judgment concerning Tilton’s DIP financing proposal. In fact, Tilton’s proposed DIP loan and stalking horse proposal were a done deal before the Independent Managers were appointed, and no one exercised independent business judgment on behalf of Dura.

93. After the Zohar Funds and Bardin Hill objected to Tilton’s DIP Motion, the Tennessee Bankruptcy Court refused to allow Tilton’s plan to proceed. Both Morgner and Grady testified in person at an evidentiary hearing on October 23, 2019. At the end of the hearing, the court held an off-the-record conference with counsel and advised that the court would not approve Tilton’s DIP proposal because she wore too many hats as CEO, DIP lender, and stalking horse bidder. The court encouraged the parties to move forward with an alternative DIP proposal from Bardin Hill instead. The Debtors withdrew the DIP Motion and instead sought approval of a DIP proposal from Bardin Hill.<sup>3</sup>

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<sup>3</sup> In a hearing before the Delaware Bankruptcy Court seeking to transfer venue from Tennessee to Delaware, the Delaware Bankruptcy Court seemingly agreed with the result, stating that the DIP Motion and Tilton’s proposed

94. Tilton was not happy with the result and was forced to withdraw her stalking horse bid as well. The Debtors then stipulated to transfer venue to the Delaware Bankruptcy Court.

G. Grady Belatedly Tries to Distance Himself from Tilton and then Resigns

95. Grady finally tried to distance himself from Tilton after the Debtors accepted Bardin Hill's DIP proposal and Tilton's scheme had been foiled, at which point Grady began to support Bardin Hill, rather than Tilton. But Grady's change of heart came too late because he had willingly facilitated her self-interest for so long. After Grady's apparent shift in loyalty, Bardin Hill tried to install him as Dura's new Chief Executive Officer. Grady was willing to accept the position, but Tilton managed to keep her position as CEO. Grady told the Zohar CRO that he was not happy that Tilton would remain CEO, citing the "flow of information at the company, operational and financial."

96. On November 3, 2019, Grady resigned all his positions with Dura and GAS. In a draft resignation letter, Grady cited Tilton's "inappropriate communication with one of my key employees" along with "other communications over the last several days to both myself and others" through which Tilton "created an environment that I have no interest in being associated with in any way." (The

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stalking horse bid were "extremely troubling" and that the court "would not be inclined to readily approve such relief."

version he sent to Tilton was more watered down and cited “several instances of unprofessional communication to both myself and others.”)

#### H. The Dura Bankruptcy Sale and Conversion to Chapter 7

97. On November 19, 2019, the Delaware Bankruptcy Court entered a final order approving the Bardin Hill DIP facility, which, among other things, provided the Debtors with up to \$84 million in post-petition borrowing, \$28.5 million of which was used to pay off the ABL Facility and Tilton’s initial interim DIP loan.

98. Dura was ultimately sold in bankruptcy for \$65 million, which was a fraction of the potential value the sales process that Tilton halted in 2018 could have generated. The Delaware Bankruptcy Court issued orders approving two stock purchase agreements of the Debtors’ assets: one for sale of Debtors’ European business to an affiliate of Bardin Hill in exchange for a credit bid of \$50 million, and other for the sale of Debtors’ North American business to an affiliate of Bardin Hill in exchange for a credit bid of \$5 million and a cash payment of \$11.25 million in administrative claims. In all, Dura’s assets were sold for a total credit bid of \$65 million on May 15, 2020.

99. After accounting for Bardin Hill’s credit bids, approximately \$33.8 million remained due and owing under Bardin Hill’s DIP financing facility. The Debtors’ cases needed to be converted to chapter 7 liquidations because there were insufficient funds available to pay the Debtors’ chapter 11 expenses. On December

15, 2020, the court issued an order converting the Debtors' chapter 11 cases to cases under chapter 7 of the Bankruptcy Code.

I. Dura's Damages

100. Tilton's and Grady's breaches of their fiduciary duties caused hundreds of millions of dollars of harm to Dura. As a direct result of these breaches, Dura lost hundreds of millions of dollars in value and the ability to obtain its full market value through a sale.

101. As of Defendants' first breaches of their fiduciary duties to Dura in or about October 2018, Dura was worth hundreds of millions of dollars in a sale. Indeed, the eight IOIs reflected willing buyers who would pay between \$400 million and \$875 million for Dura and GAS. Of those amounts, approximately 85% or more of the value was attributable to Dura. Thus, the damages for abandoning the sales process were the amount for which Dura could have been sold when Defendants abandoned the sales process, less Dura's value when it sold in bankruptcy for \$65 million. The same is true when Defendants breached their duties again in the first half of 2019 when they did not resume the sales process.

102. Tilton's and Grady's later wrongful conduct leading up to the bankruptcy also caused damages measured by the value of the Company at that time less Dura's value when it sold in bankruptcy for \$65 million. When Tilton used her

control of the ABL Facility to restrict Dura's credit and then manipulated the bankruptcy process, she reduced Dura's value even further.

103. In sum, the measure of Dura's damages consists of the difference between Dura's value at the earliest time Defendants are found to have breached their fiduciary duties and the \$65 million for which Dura sold in bankruptcy after Tilton destroyed the Company, to be more precisely proven at trial.

J. Timeliness

104. All statutes of limitations applicable to these claims on behalf of the estate were tolled under 11 U.S.C. § 108(a) for two years after the Petition Date from October 17, 2019 to October 17, 2021. The statutes of limitation were further tolled by a Tolling Agreement of the parties from October 13, 2021, until the Trustee terminated the Tolling Agreement on March 29, 2022, which caused the tolling period to expire on April 19, 2022. Accordingly, all claims that were timely as of October 17, 2019 remain timely as of the date this Complaint was filed.

FIRST CLAIM FOR RELIEF

(Breach of Fiduciary Duty of Loyalty, Care and Good Faith Against Tilton)

105. The Trustee repeats and realleges the allegations set forth above.

106. As Chief Executive Officer of a Delaware limited liability company, Tilton owed fiduciary duties to DAS, including the fiduciary duty of absolute loyalty and the related duty to act in good faith and in the best interests of the Company.

She also owed Dura the fiduciary duty of care. Tilton owed the same duties to DAS as manager of its managing member, Dura Buyer.

107. The LLC Agreement did not eliminate any such duties, and, to the extent it purported to do so, it did not do so clearly and expressly as Delaware law requires to restrict or eliminate default fiduciary duties to an LLC.

108. Section 5.8(a) of the LLC Agreement does not limit the extent of Tilton's duties. Rather, it provides that "Nothing in this Agreement creates any duty (including any fiduciary duty) of any Member to any of (i) the Company, (ii) any other Member, or (iii) any other Person that is a party to this Agreement or otherwise bound hereby, except for the implied contractual covenant of good faith and fair dealing on the part of such Member created by this Agreement pursuant to Delaware law." That provision does not speak to directors and officers, and a statement that the agreement "does not create a duty" is not a disclaimer of default fiduciary duties.

109. Section 5.8(b) of the LLC Agreement provides that officers and members of DAS are liable to the company for "Malfeasance," which includes, among other things, bad faith or willful misconduct.

110. Because Tilton managed all of the Debtors as a single business through DAS, Tilton owed them the same fiduciary duties she owed to DAS.

111. From at least October 2018, Tilton continuously, willfully, and in bad faith breached the fiduciary duties she owed to Dura by placing her own interests

over those of Dura and failing to act in Dura's best interests throughout the events described in this Complaint, including, among other things:

- Tilton unilaterally ended a sale process for Dura in or around October 2018 because she believed a sale would not serve her personal goals;
- Tilton refused to restart a sales process thereafter because it did not suit her interests;
- Tilton purchased the ABL facility and intentionally and knowingly constricted Dura's liquidity to try to retake control of Dura at a fire sale price in a rushed bankruptcy;
- Tilton positioned herself to be the only source of financing, and the only viable purchaser in bankruptcy through a DIP financing proposal and stalking horse bid that, if successful, would have allowed Tilton to acquire Dura at a steep discount;
- Tilton concealed information and otherwise prevented parties that could have helped salvage Dura's value from doing so;
- Tilton focused on her legal battle with the Zohar Stakeholders and used Dura to position herself favorably in that battle while she neglected her fiduciary duties as a director and officer of Dura and did not respond to Dura's financial woes and operational struggles because she was distracted by her personal goals; and
- Tilton otherwise took actions without considering Dura's best interests or by affirmatively disregarding Dura's interests.

112. Tilton's breaches of the fiduciary duties she owed to Dura directly and proximately harmed the Debtors by causing them to lose the opportunity to sell themselves for hundreds of millions of dollars. Thereafter, Dura's value deteriorated

substantially. As a result, Tilton is liable to the estate for damages in an amount to be determined at trial.

### SECOND CLAIM FOR RELIEF

(Breach of Fiduciary Duty of Loyalty, Care and Good Faith Against Grady)

113. The Trustee repeats and realleges the allegations set forth above.

114. As Chief Financial Officer of a Delaware limited liability company, Grady owed fiduciary duties to Dura, including the fiduciary duty of absolute loyalty and the related duty to act in good faith and in the best interests of the Company. He also owed Dura the fiduciary duty of care.

115. As explained above, the LLC Agreement did not eliminate any such duties.

116. Section 5.8(b) of the LLC Agreement provides that officers of DAS are liable to the company for “Malfeasance,” which includes, among other things, bad faith or willful misconduct.

117. Because all of the Debtors were operated as a single business through DAS, Grady owed them the same fiduciary duties he owed to DAS.

118. From October 2018, Grady continuously, willfully, and in bad faith breached the fiduciary duties he owed to Dura by placing Tilton’s interests over those of Dura and failing to act in Dura’s best interests when, among other things:

- Grady assisted Tilton in conducting a sales process that Grady knew was designed to benefit Tilton even to Dura’s detriment, and then supporting and assisting her when she unilaterally terminated the sales process to serve her own needs;
- Grady enabled Tilton to exclusively pursue a futile refinancing as Dura’s value deteriorated;
- Grady affirmatively assisted Tilton’s plan to seize Dura through bankruptcy, while knowing this harmed Dura;
- Grady served as Tilton’s right-hand person who facilitated her plan to become the only source of financing, and the only viable purchaser in bankruptcy;
- Grady concealed information and otherwise prevented parties that could have helped salvage Dura’s value from doing so;
- Grady filed a first day declaration in the Dura bankruptcy that supported Tilton’s DIP proposal and stalking horse bid and made statements therein that were false or misleading;
- Grady consistently placed his loyalty with Tilton, who had the power to reward him financially and keep him in power at Dura, over his loyalty to Dura, and carrying out Tilton’s schemes even when he knew they were detrimental to Dura;
- Grady otherwise took actions or failed to act without considering Dura’s best interests or by affirmatively disregarding Dura’s interests.

119. As Dura’s CFO, Grady owed duties to Dura, not Tilton or Patriarch.

Nonetheless, he abrogated his fiduciary duties to Dura whenever Tilton requested that he do so. When Tilton said “jump,” Grady jumped. By assisting Tilton’s self-serving behavior, Grady also breached his own duty of loyalty.

120. Grady's breaches of the fiduciary duties he owed to the Debtors directly and proximately harmed the Debtors by causing them to lose the opportunity to sell themselves for hundreds of millions of dollars. Thereafter, Dura's value deteriorated substantially. As a result, Grady is liable to the estate for damages in an amount to be determined at trial.

### THIRD CLAIM FOR RELIEF

(Aiding and Abetting Breach of Fiduciary Duty Against Grady)

121. Plaintiff repeats and realleges the allegations set forth above.

122. In the alternative to Plaintiff's claim against Grady for breaching his fiduciary duties, Grady is liable for aiding and abetting Tilton's breaches of her fiduciary duties to Dura.

123. For the reasons stated above, Tilton owed fiduciary duties to Dura, and breached those fiduciary duties.

124. Grady knew that Tilton was breaching her fiduciary duties, yet knowingly participated in Tilton's breaches of her duties, including when:

- Grady assisted Tilton in conducting a sales process that Grady knew was designed to benefit Tilton even to Dura's detriment, and then supporting and assisting her when she unilaterally terminated the sales process to serve her own needs;
- Grady enabled Tilton to exclusively pursue a futile refinancing as Dura's value deteriorated;

- Grady affirmatively assisted Tilton's plan to seize Dura through bankruptcy, while knowing this harmed Dura;
- Grady served as Tilton's right-hand person who facilitated her plan to become the only source of financing, and the only viable purchaser in bankruptcy;
- Grady concealed information and otherwise prevented parties that could have helped salvage Dura's value from doing so;
- Grady filed a first day declaration in the Dura bankruptcy that supported Tilton's DIP proposal and stalking horse bid and made statements therein that were false or misleading;
- Grady consistently placed his loyalty with Tilton, who had the power to reward him financially and keep him in power at Dura, over his loyalty to Dura, and carrying out Tilton's schemes even when he knew they were detrimental to Dura;

125. Grady's and Tilton's concerted actions directly and proximately harmed the Debtors by causing them to lose the opportunity to sell themselves for hundreds of millions of dollars. Thereafter, Dura's value deteriorated substantially. As a result, Grady is liable to the estate for damages in an amount to be determined at trial.

#### RELIEF REQUESTED

WHEREFORE, the Trustee demands judgment against Defendants: (i) for damages in an amount to be proven at trial, together with prejudgment interest to the full extent permitted by law; and (ii) such other and further relief as is just and proper.

Dated: April 18, 2022

Respectfully Submitted,

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(Words: 12,795)