

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT IN AND FOR
NASSAU COUNTY, FLORIDA

RAYONIER INC. and
RAYDIENT LLC,

Plaintiffs,

vs.

Case No. 2019-CA-000051-AXYX

MICHAEL S. MULLIN,

Defendant.

AMENDED COMPLAINT

Plaintiffs Rayonier Inc. and Raydient LLC (f/k/a TerraPointe LLC, collectively “Rayonier”), by and through their undersigned attorneys, file this Amended Complaint against Defendant Michael S. Mullin (“Mullin”), and state as follows:

INTRODUCTION

By switching sides and representing interests directly adverse to his former client, Mullin has violated and continues to violate a lawyer’s most fundamental obligation – the duty of loyalty. Mullin represented Rayonier for approximately eight years, conceiving the strategy to secure fundamental land-use approvals for a 24,000 acres real estate development that would take decades to build out. Mullin left his law firm to become County Attorney for Nassau County and, despite owing Rayonier a fiduciary duty of loyalty, Mullin has represented and continues to represent Nassau County adversely to Rayonier on matters that are directly related to the work he performed for Rayonier. Mullin’s work to implement policies that would undo the work he performed for Rayonier undermines Rayonier’s years of investment and jeopardizes a project that will transform Nassau County’s economy. Despite many efforts – both informal

and formal – to convince him to stop, Mullin persists, leaving an injunction from this Court as the only remedy that will address the harm Rayonier has suffered and continues to suffer because of Mullin’s misconduct.

PARTIES, JURISDICTION AND VENUE

1. This is an action for injunctive relief only.
2. Rayonier Inc. is a North Carolina corporation with its principal place of business in Wildlight, Florida.
3. Raydient LLC is a Delaware limited liability company with its principal place of business in Wildlight, Florida.
4. Mullin is, on information and belief, a citizen of Florida and a resident of Nassau County, Florida.
5. This Court has jurisdiction over this dispute pursuant to Fla. Stat. § 26.012(2) and (3).
6. Venue is proper in this Court pursuant to Fla. Stat. § 47.011 on the grounds that: (1) Mullin is subject to personal jurisdiction in Nassau County, (2) Mullin is a resident of Nassau County, and (3) substantially all of the events giving rise to this action took place in Nassau County.

FACTS TO SUPPORT THE CAUSES OF ACTION

7. Upon information and belief, at all material times, Mullin has been an attorney licensed to practice law in the State of Florida and a member of the Florida Bar. From 2007 until early 2015, Mullin was engaged in private practice with the law firm of Rogers Towers, P.A. in Jacksonville, Florida. Mullin primarily worked from Rogers Towers’ Amelia Island office.

8. While an attorney at Rogers Towers, P.A., Mullin represented Rayonier in connection with a large-scale, master-planned development project within what became the 24,000 acre East Nassau Community Planning Area (“ENCPA”). Rayonier retained Mullin to represent it in connection with all aspects of the County approval and regulatory process relating to the ENCPA, and he provided legal services to Rayonier on a wide range of matters.

9. For almost eight years, Mullin served as Rayonier’s lead counsel in Rayonier’s efforts to obtain the necessary approvals to develop the 24,000 acres of land in the ENCPA. Mullin developed a strategy by which Nassau County would approve the necessary land use applications that would set forth the controlling ENCPA standards, development conditions and entitlements for a project that would take decades to complete and would ultimately transform Nassau County’s economy. In the course and scope of that representation, Mullin often worked directly with Rayonier’s senior managers and executives, who were not attorneys, without the direct involvement of Rayonier’s in-house attorneys.

10. Mullin’s strategy, which Rayonier adopted, was comprehensive in its approach: rather than secure entitlements and establish development conditions on a parcel-by-parcel piecemeal basis over time – a method that would subject the project to the vagaries of the political environment and regulatory environment at the time each new parcel came up for consideration – Mullin proposed that Rayonier secure a large-scale, long-term master plan land use approval that would control the project in its entirety. By obtaining the land use approvals at the outset, all involved parties would understand the applicable standards and development conditions to enable the ENCPA development to proceed in a predictable and efficient manner.

11. Mullin’s first step as Rayonier’s counsel was the establishment of the ENCPA and the incorporation of development conditions and standards and entitlements into the County’s

Comprehensive Plan to direct development within the ENCPA. The incorporation of the ENCPA in the County's Comprehensive Plan brought the entirety of the project's 24,000 acres under one long-term, large-scale master land use plan, commonly referred to as the ENCPA Sector Plan.

12. It is undisputed that Mullin represented Rayonier in connection with the development of the ENCPA, which Nassau County describes as a plan that "allows for large-scale planning that recognizes the integral relationships between transportation, land use and urban design." Development within the ENCPA is intended to, among other things, "[c]reate a connected network of community amenities consisting of public parks, multi-use pathways, schools and playfields..." ENCPA Master Land Use Plan (the "MLU") at 220, attached at **Exhibit 1**. The MLU sets forth the entitlements, development conditions and standards for development within the ENCPA, addressing all aspects of the development, including parks and recreational spaces.

13. The MLU requires the inclusion of "common open spaces" – a term that encompasses parks and recreation – in all future development plans and it sets forth the requirements for parks and recreation throughout the ENCPA's development guidelines and standards for the various ENCPA land use sub-categories. *See id.* at 226 *et seq.* Most notably, within the guidelines for Residential Neighborhoods, the MLU requires neighborhood parks, which are generally private and intended for the residents, and community or regional parks that serve the general public and should be near planned public schools. *See id.* at 233. Mullin represented Rayonier in all aspects of the development of the ENCPA and the MLU, helping develop strategy with the company's executives and consultants and meeting with Nassau County officials to advance Rayonier's positions regarding the project.

14. In connection with the ENCPA, Mullin and his law firm represented Rayonier during Nassau County's drafting and adoption of the Nassau County 2030 Comprehensive Plan (the "Comp Plan"), which was a holistic, statutorily mandated update to the prior Comprehensive Plan. One of the reasons for the update was to assist Nassau County in planning for the future and, given the size of Rayonier's land holdings within Nassau County, long-term planning for the ultimate development of the ENCPA lands had to be considered. Mullin and his law firm represented Rayonier in the development of the MLU and in negotiations with Nassau County to incorporate and ultimately adopt the MLU within the Comp Plan.

15. As part of Mullin's counsel on ENCPA matters, he also advised Rayonier as to the 2030 Comp Plan update and its impacts on the ENCPA development. His advice and counsel during the MLU and 2030 Comp Plan approval process was instrumental to the ENCPA development conditions and mitigation framework applicable to the project and, more importantly, Rayonier's understanding of the relevant development mitigation requirements and how they would impact the project going forward.

16. As an example, the Comp Plan sets forth Nassau County's objectives for providing adequate recreational facilities for its citizens. See Nassau County 2030 Comprehensive Plan Capital Improvements Element (the "Comp Plan CI"), attached as **Exhibit 2**. The Comp Plan CI establishes Level of Service standards for various kinds of public facilities based on population and other data and requires Nassau County to maintain these standards. See *id.*

17. Nassau County primarily maintains these standards by reviewing development applications to determine if the project will cause the Level of Service standard to be maintained or fail. For example, if a failure in community or regional park Level of Service occurs due to a

proposed residential development or portion thereof, the developer may donate (as applicable) community and regional park land to the County to cure the failure and allow the proposed development to proceed. Nassau County is responsible for funding, constructing and maintaining community and regional park facilities and its funding source is derived from recreation and park impact fees, ad valorem taxes and other funding sources (e.g. grants). A developer is only required to donate land and builders pay the recreation and park impact fee under the Comp Plan and relevant County regulations.

18. Nassau County has generally failed to provide adequate recreational land and facilities to meet the needs of its population. Notwithstanding that historical failure, the prime objective of the Comp Plan relative to recreational spaces states that “[t]he County shall acquire, develop and efficiently maintain adequate community and regional recreation facilities to achieve and maintain the adopted Level of Service (LOS) in order to meet projected recreational needs through the year 2030.” *See* Nassau County 2030 Comprehensive Plan Recreation and Open Space Element (the “Comp Plan ROSE”), attached as **Exhibit 3**. The Comp Plan ROSE puts the burden on Nassau County to fund, construct, and maintain community and regional parks and recreational facilities in order to meet the citizens’ needs and sets out the means and methods to satisfy this requirement.

19. Mullin represented Rayonier’s interests throughout the passage of the Comp Plan, working with the company to advise it as to the County’s recreation and other public facility standards for the development of the ENCPA and to ensure that the project would meet the County’s standards and be economically viable. While the Comp Plan is applicable to all projects in Nassau County, the MLU, the ENCPA and Rayonier’s project were shaped, in very large part, by Mullin’s understanding and advice to Rayonier as to the County’s recreation and

other public facility standards contained in the Comp Plan. Mullin's advice provided a very necessary, predictable and discernable understanding for Rayonier as to recreation mitigation requirements for the ENCPA. Such predictability is essential in developing a large-scale, long-term master planned community like the ENCPA, as it enables developers and landowners to plan the project with certainty as to the requisite mitigation requirements which assists in enabling essential development and financial planning and prevents piecemeal development and the uncertainty of the timing, costs, location and other factors related to development mitigation requirements.

20. With the passage of the Comp Plan, Mullin's work proceeded to the development and approval of the East Nassau Employment Center Detailed Specific Area Plan ("DSAP 1"). DSAP 1 specified the development conditions for the development of almost twenty percent of the total ENCPA land area, a 4,202 acre area just north of Highway A1A that includes the project known as Wildlight.

21. Based on Mullin's representation of Rayonier during the ENCPA, MLU and Comp Plan approval process and his legal advice as to the required recreation requirements to mitigate for residential impacts within DSAP 1, approximately 1,700 acres within DSAP 1 would be provided as open space and regional park lands, known as the Conservation Habitat Network (the "CHN"). At buildout of the ENCPA project, approximately 12,000 acres (or half of the ENCPA property) will be protected as a regional Conservation Habit Network, which will form interconnected wetlands, uplands and wildlife habitat and provided much needed open space and regional park lands for Nassau County.

22. The DSAP 1 Development order also requires that "...a community park of approximately 20 acres is reserved within the Central Planning Area for conveyance to the

County...” in satisfaction of the Comp Plan ROSE and CI requirements. *See* Ordinance No. 2013-11 (the “DSAP 1 Development Order”) at 20, a copy of which is attached as **Exhibit 4**. The DSAP 1 Development Order also provides for neighborhood parks as required by the MLU. *See id.* If Nassau County later determined to implement an impact fee (the only funding mechanism contemplated for public improvements within the ENCPA by the applicable County regulations), the DSAP 1 Development Order required the inclusion of a credit to Rayonier for “any and all land or public facilities” required by the DSAP 1 Development Order. *See id.* Accordingly, with Mullin’s help and in furtherance of his representation of Rayonier, Nassau County accepted and approved a plan that would satisfy the parks requirements of the MLU through donated lands alone, as contemplated by the Comp Plan.

23. Importantly, the DSAP 1 Development Order recognized that, at build out, the public facilities within DSAP 1 would be of significant benefit to Nassau County as a whole. Specifically, the DSAP 1 Development Order states that:

Nassau County is currently deficient in recreation and open space facilities. The proposed DSAP 5 year and build-out programs are estimated to increase demand by approximately 12 acres and 141 acres, respectively. This demand is being met within the DSAP through the provision of significant open space and an extensive multi-use trail, bike lanes and/or sidewalk system which includes 1,700 acres of open space in the form of interconnected wetlands, surface waters, and upland preserves forming a CHN. The significant open space system provided by the DSAP is capable of not only accommodating DSAP impacts, but helping the County address a County-wide deficiency in regional parks through 2030.

See id. Summed up, Rayonier, represented by Mullin, agreed to dedicate 1,700 acres in the CHN (including regional park lands and over 20 miles of multi-use trails) and 20 acres in the planned community park to public uses, well in excess of the 141 acres Rayonier was obligated to provide by the MLU. The excess 1,579 acres – land Rayonier was not obligated to dedicate to public use – would help remediate Nassau County’s overall failure to provide adequate

recreational facilities for its citizens. Stated differently, Nassau County gained 1,579 acres of land inside the ENCPA that could help it meet its open space and recreational requirements without any expense to the citizens outside the ENCPA.

24. Mullin and his law firm also represented Rayonier in connection with the ENCPA Mobility Fee Agreement, which addressed the construction of transportation improvements (e.g. roads, multi-use trails) within the ENCPA. Rayonier and Nassau County entered a Mobility Fee Agreement, which was subsequently amended, whereby in excess of \$138 million in transportation improvements would be provided to mitigate transportation impacts from the ENCPA project, funded by ENCPA developers and landowners.

25. Thus, Mullin indisputably represented Rayonier in connection with:

- a) the creation of the ENCPA, including the development of the overall strategy and the passage of the necessary implementing legislation;
- b) the understanding and advice as to the public facility requirements in the Comp Plan which require ENCPA developers to donate lands and builders to pay impact fees to maintain the recreation Level of Service standards;
- c) DSAP 1 and the passage of the DSAP 1 Development Order, which allowed Rayonier to donate lands in full satisfaction of its obligations under the Comp Plan and yielded a massive and unnecessary surplus of recreational lands that would address Nassau County's failure to otherwise provide for its citizens;
- d) the Mobility Fee Agreement that would result in the provision of desperately needed roadways within Nassau County, easing overall traffic congestion and dramatically improving Nassau County's public safety and mobility.

26. To say that Mullin represented Rayonier throughout the development of the most significant general land use legislation in Nassau County's recent history would not be an overstatement. Mullin's work established a structure for development that would correct Nassau County's historical issues, create economically efficient means for the creation of new public recreational resources and provide Rayonier with certainty for the decades that the ENCPA would require to reach full development. For these accomplishments, Rayonier paid Mullin and

his firm hundreds of thousands of dollars in the course of their eight-year engagement, with Mullin personally billing Rayonier approximately one-half million dollars for his work.

27. With the unfortunate passing of David Hallman, Mullin resigned from his firm and returned to Nassau County. Rayonier reasonably believed that, in light of the purpose and scope of the structures created by Mullin during his time as Rayonier's counsel and Mullin's own duty of loyalty to his former client and his professional ethical obligations, Mullin's transition back into service of Nassau County would not present any issues.

28. On March 16, 2016, Rayonier submitted an application to Nassau County for the Chester Road Detailed Specific Area Plan ("DSAP 2") on generally the same terms and conditions as DSAP 1. Rayonier took steps to move ahead with DSAP 2, until Commissioner Pat Edwards, who was running for reelection against a "no growth" opponent, asked Rayonier to delay the approval of DSAP 2 until after the November elections. Rayonier agreed and delayed its plans.

29. After the elections, DSAP 2 began to be processed and political pressure began to increase from County residents for the County to upgrade and provide additional community and regional park facilities. In response, Commissioner Edwards demanded additional development exactions from Rayonier and the Stewardship District. While land contribution satisfied Rayonier's obligations with regard to DSAP 1, Nassau County took the position that Rayonier could not simply donate land, but had to contribute further resources, particularly with regards to the Yulee Sports Complex which had become a pet project for Commissioner Edwards. Nassau County's demands were without any legal basis and were an attempt at a retroactive exaction to cure the County's existing park deficiencies. Notwithstanding the fact that these demands attempted to illegally modify the County park regulations applicable to the ENCPA that Mullin

helped secure while representing Rayonier and in light of the fact that Nassau County made it plain that DSAP 2 would not be approved unless Rayonier capitulated, Rayonier made proposals aimed at satisfying Nassau County's demands. Nassau County consistently sought to retrade the transaction; when Rayonier made its counters, Nassau County would demand more and greater exactions from Rayonier. Prior to this point, Nassau County had never taken the position that Rayonier had any obligation outside of the scope of the MLU or the Comp Plan.

30. During the negotiations over DSAP 2, Mullin met with Rayonier personnel to discuss DSAP 2's status. At a meeting in April 2017, Mullin told Rayonier's representatives that no approval would be forthcoming for DSAP 2 unless Rayonier fully funded the construction of major additions and improvements to the Yulee Sports Complex at a cost of approximately \$13-15 million. Mullin's demand was contrary to the structure of the ENCPA, the Comp Plan and the approach Mullin successfully negotiated on Rayonier's behalf as to DSAP 1. Mullin, as the chief legal officer for Nassau County, not only took a position directly contrary to then-existing law to extract additional (and arguably illegal) exactions from Rayonier, he reversed course and rejected the work he had done on behalf of his former client. Stated differently, once Mullin switched sides and began working for Nassau County, he also switched sides and began working against his former client on matters squarely within the scope of his prior representation of Rayonier. Ever since that meeting, Nassau County has consistently maintained the position that Rayonier is somehow obligated to fund all recreational improvements within the ENCPA.

31. In 2017, while the dispute as to DSAP 2 continued, the Florida Legislature established the East Nassau Stewardship District (the "Stewardship District") which encompasses the ENCPA. *See* House Bill 1075, a copy of which is attached as **Exhibit 5**. A stewardship district is a limited purpose, independent special district form of local government

that is granted certain general and special purposes within a given area, akin to a homeowner's association. While the Stewardship District has a range of powers, it is not under any particular obligation to exercise them. Section 7(i) grants the Stewardship District the power "[t]o provide public parks and public facilities for indoor and outdoor recreational, cultural, and educational uses," but the Stewardship District – an entity that holds no development rights and is not burdened by mitigation obligations – is not obligated to do so. No legislation, contract or written obligation compels the Stewardship District to exercise this power or, for that matter, any of the other powers granted in Section 7.

32. Discussions concerning DSAP 2 continued to deteriorate. By the end of discussions over DSAP 2, Nassau County demanded exactions (in excess of land donations) of up to \$15 million as a condition of approval. Rayonier withdrew the application for DSAP 2 because of Nassau County's continuing demands.

33. Prior to the withdrawal of the application for DSAP 2, counsel for Rayonier polled County staff assembled for the negotiation as to whether Raydient's draft of DSAP 2 met its obligations under the development approvals based , despite the absence of any funding of recreation facilities by Raydient. Every County staff member present responded in the affirmative other than Mullin, who abruptly terminated further public discussion. When questioned by counsel for Raydient as to the source of the purported obligation for Raydient to fund all costs for the construction of recreation facilities in the ENCPA, Mullin demurred and merely responded that it was the impression of the members of the Board of County Commissioners that Raydient had agreed to fund those improvements.

34. Subsequently, Rayonier attempted to negotiate a resolution with Nassau County, but Nassau County made it plain that it believed that Rayonier, the Stewardship District and any

developers would have to bear all costs associated with recreational facilities within the ENCPA. This belief appears to have originated with Mullin, but, regardless of source, it certainly had his full support.

35. On November 15, 2017, Mullin sent a letter to Rayonier attaching a “draft agreement.” *See* Letter from Michael S. Mullin to Charles Adams dated November 15, 2017, attached as **Exhibit 6**. Both the letter and the attachment referred repeatedly to the notion of a “public/private partnership” between Nassau County and Rayonier; the recitals of the draft Agreement open with the statement that “the ENCPA Sector Plan was planned as a public/private partnership” and the letter asserts that Nassau County wants “...to move forward with the public/private partnership and we believe this agreement accomplishes that goal.” Thus, Mullin, who represented Rayonier as the “private partner” in connection with the development of the ENCPA, now represented Nassau County, the “public partner,” in its effort to amend the ENCPA land use approvals through the draft agreement, which would shift the entire burden of funding recreation facilities from Nassau County to Rayonier.

36. The reference to a “public/private partnership” is important, because it is a consistently moving target that Mullin uses to conceal his duplicity and to attack his former client. Mullin’s November 15 letter expressly connects this concept to the ENCPA, which Mullin helped develop on Rayonier’s behalf. The members of the Nassau County Board of County Commissioners (the “BOCC”) have also been plain that the “public/private partnership” refers to the relationship with Rayonier:

Mr. Edwards: Thank you. One other question I’ll just throw this to the Board as chairman. As chairman of the board twice during this period – Mr. Leeper, I know you’ve served at least once or twice as Commissioner. Have any of you-all ever spoken with a board member of the Stewardship since its inception?

Mr. Kelley: No, sir.

Mr. Spicer: No, sir.

Mr. Edwards: Have any of you-all agreed to a partnership with them?

Mr. Kelley: No, sir.

Mr. Spicer: No.

Mr. Edwards: The only partnership I'm aware of is our Partnership through the ENCPA and Raydient. I've never spoken with any who is a Stewardship commissioner or anything else.

Transcript of Nassau County Board of Commissioners Meeting dated February 16, 2018 at 28, a true and correct copy of which is attached as **Exhibit 7**. Given Mullin's express understanding as reflected in the November 15 letter and the BOCC's statements as to what is meant by the "public/private partnership," there can be no doubt that the term refers to the ENCPA.

37. Mullin's proposal was entirely adverse to Rayonier's interests and represented a significant change to the structure of the ENCPA. According to Mullin's draft, "[t]he public recreation improvements required within the ENCPA and the Stewardship District shall be the financial responsibility of [Rayonier] and its successors, the Stewardship District and Developers) within the ENCPA and the Stewardship District." **Exhibit 6**. Nassau County could – but would not be required to – contribute impact fees collected in the county "...for supplemental funding of public recreation." *Id.* Finally and importantly, Mullin made it clear that Nassau County would not consider any further applications within the ENCPA until Rayonier, the Stewardship District and Nassau County executed an agreement on public facilities within the ENCPA. Unless Rayonier (a) agreed to pay for all public recreation improvements in the ENCPA and (b) agreed to whatever facilities Nassau County might demand, development within the ENCPA would come to a stop.

38. Mullin's proposed agreement sought to codify the demand he made during his meeting with Rayonier personnel in April 2017. Mullin, who masterminded the creation of the ENCPA as Rayonier's counsel, switched sides to undermine the economic underpinnings of the

land use structure Mullin created for Rayonier and attack his former client on behalf of his new client, Nassau County.

39. In February 2018, Nassau County learned that Rayonier and a number of industry groups sponsored legislation that would codify common-law standards concerning local government's ability to impose impact fees on developers, would require mitigation requirements inside sector plans to be treated in the same manner as mitigation requirements outside of sector plans and impose deadlines on local governmental approval of DSAPs within sector plans (the "Clarification"). Though elements of the legislation were already the law of Florida, Nassau County vehemently opposed the Clarification because it would diminish local governments' ability to abuse the development process as Nassau County had done with DSAP 2 and would weaken Nassau County's ability to extract exactions from Rayonier beyond the requirements of the MLU and the Comp Plan.

40. As the dispute over the Clarification escalated, the BOCC began discussing the rescission of the ENCPA with the lawyer who helped put it together for Rayonier. At the February 16, 2018 meeting, Commissioner Danny Leeper raised the prospect of undoing the ENCPA:

Mr. Leeper: Thank you Mr. Chairman. Mike, is there – first and foremost, I hope – I think it's the wishes of everyone that we try to work this agreement out, if you would, this concern and get back to the partnership – true partnership for what it is.
But is there – in case it doesn't happen, worst-case scenario, do we have any ability – do we have an option to rescind, if you will, the ENCPA? It may be – I don't want to put you on the spot, but it's – have you thought about that?

Mr. Mullin: I have, Commissioner Leeper and let me – I want to do some more research on that before I get back to you on that because I anticipated that question and I'm certainly – as much as I don't like to say it – started looking at that just because of the failure, as the movie said, to communicate not on your part but no one here to

communicate. So, yes sir. Simple answer is I will research and get that back to the whole Commission.

Exhibit 7 at 29-30. Mullin, as counsel to Nassau County, advised the BOCC that he had been thinking about how Nassau County could rescind the ENCPA and that he would research the issue further.

41. This concept took hold at the meeting as other members of the BOCC voiced support for the idea of rescission of the “public/private partnership”:

Mr. Leeper: One more comment. I know, Mike, you said sometimes there's disagreements in partnerships. I agree with that. We all -- we all -- even on this board, we thankfully agree to disagree and we move on. But my opinion, based on what I've learned in the last few days and based upon what I learned today is, again, my opinion. This is a very deliberate act upon what the partnership that we have with those officials to break the promises they've made to the taxpayers of this county. That's how I feel at the moment based on what I know.

Mr. Mullins: Yes, sir.

Mr. Edwards: I'll agree with that. Commissioner Kelley?

Mr. Kelley: Thank you, Mr. Chairman. Once again, I can't stress enough just as Commissioner Leeper. A group of people who have been thus far so concerned about public image and public perception, they're starting a project of this sheer magnitude that we all agreed would take 20 to 30 years to fully develop to enter into this type of adverse relationship so early in our partnership, I am puzzled. I am more than puzzled. I'm baffled. Because, if they don't like bad press, I know they're not going to like the next chapter in this partnership. Because it's only going to go downhill from here, I can assure you. Because I don't like bad press either, and I answer to 81,000 stockholders called taxpayers. It's going to get bad. So I'm -- like Commission Leeper, I certainly hope that there is some way that we can resolve it. If not -- if we can't resolve it, then let's dissolve it. How's that? Thank you, Mr. Chairman.

Id. at 32-33. Led and represented by Rayonier's former lawyer, Nassau County began raising the possibility of rescinding the ENCPA, an outcome that would have a massively negative impact on Rayonier and would undo the crown jewel of Mullin's representation of the company.

42. On February 25, 2018, Mullin advised members of Nassau County's Board of County Commissioners and staff of his intention to take the fight against Rayonier regarding the Clarification to the court of public opinion. See Email from Michael Mullin to Pat Edwards, Daniel Leeper, George Spicer, Justin Taylor, Steve Kelley, Shanea Jones, Justin Stankiewicz, Taco Pope and Joyce Bradley dated February 25, 2018, a copy of which is attached as **Exhibit 8**. Mullin advised that:

We have been providing info. [sic] To callers about SB 324 and we have also noticed "social media" info. [sic] About SB 324 and reviewed info. "put out" by the other side. It is crucial, in my opinion to seek professional assistance to help with information and responses on social media and to have assistance in co-ordinating [sic] media responses. I have engaged, under my office, a professional, [sic] to accomplish that. The person will also scan social media and co-ordinate responses and research websites to insure the correct info. is being distributed. The cost are reasonable. I wanted to make you aware of this. If you have any questions, please call separately and donot [sic] respond to the group e-mail.

Id. Mullin sent this e-mail subsequent to the engagement of Kristi Dosh, a local public relations specialist, who Mullin hired to publish the anti-Rayonier narrative in various citizen groups on Facebook and to engage the local press. Mullin retained Dosh at an hourly rate of \$195 and Nassau County ultimately paid her in excess of \$5,000 to advocate against Rayonier. At Mullin's direction, Dosh published statements accusing Rayonier of reneging on "certain promises" relating to the funding of recreational spaces inside the ENCPA in an attempt to sway public opinion against his former client on the very subject of his representation. With Dosh's retention and deployment, not only was Mullin advocating against his former client on a matter of prior representation, he was using Nassau County's funds to expand his advocacy to the public.

43. Rayonier first raised the issue of its former counsel's adversity in a face-to-face meeting in late February 2018. Rayonier explained its position and requested that Mullin step

aside to remedy the obvious conflict of interest in light Mullin's duty to his former client. Mullin declined, refusing to acknowledge any problem with his behavior.

44. Having attempted an informal resolution, Rayonier demanded Mullin's recusal by letter, which was e-mailed to Mullin on February 26, 2018. *See* Letter from Mark R. Bridwell to Michael S. Mullin dated February 26, 2018 (the "Conflict Letter"), a true and correct copy of which is attached as **Exhibit 9**. Rayonier's letter discussed Mullin's multiple challenges to the ENCPA and his many attacks on Rayonier, concluding that Mullin's conduct presented a violation of Mullin's professional obligations not to undertake representations adverse to former clients on matters that are the same or substantially related to the prior representation.

45. Twenty-three minutes later after Rayonier emailed the Conflict Letter, Mullin responded by e-mail, stating:

I am in receipt of your letter regarding conflict. I have not had time to review it or seek a legal opinion. A cursory review leads me to a different conclusion than stated in the letter. I will certainly have someone do a legal review and respond. The board of county commissioners, representing 81,000 residents has responded to actions taken by ray dient [sic] that are contrary to the public private partnership and everything represented to them by ray dient [sic] since late 2015 and 2016 and 2017. As you know the board asked for the company representatives to come to a public workshop for a partner discussion and the company refused. They also asked the stewardship board to come to a public meeting and they declined.

E-mail string between Mark Bridwell and Michael Mullin, attached as **Exhibit 10**. While claiming not to have read the Conflict Letter sufficiently to form an opinion, Mullin disagreed that he had a conflict. Perhaps more tellingly, Mullin used the opportunity to attack his former client once again.

46. Mullin did, apparently have sufficient time to discuss the Conflict Letter with various County Commissioners and other county employees via text message. Three minutes after Mullin sent his terse response, he participated in the following text message exchange:

Shanea Jones: Oh Lordy...Raydient taking a new angle to shut Mike down. Lol

Commissioner Justin Taylor: They're pulling out all the stops.

Mullin: *They luv me*

Taco Pope: ?Did we miss the memo?

Jones: I feel the love vibes being sent your way. I just forwarded the email to you Taco & Justin.

Mullin: I feel them everywhere

Jones: It's all of a sudden a conflict of interest even though you've been back since March of 2015 & had countless meetings with them as u represent the Board.

Mullin: Yes isn't that strange. There goes my thanksgiving day invitation

Justin Stankiewicz: Think we need a new word stronger than irretrievably broken

Mullin: Yes

Commissioner Danny Leeper: *What would happen if we deny the conflict. I say let them spend their money.*

Mullin: *We may do that.* I guess I am off the easter dinner list

Leeper: Lol. All of us

Mullin: Yes

Text Messages between Mike Mullin, Justin Stankiewicz, Shanea Jones, Taco Pope, Justin Taylor and Danny Leeper dated February 26, 2018, a true and correct copy of which is attached as **Exhibit 11** (emphasis added). Approximately twenty-six minutes after Rayonier raised the issue of Mullin's conflicts, Mullin had formulated a strategy with members of the BOCC and senior Nassau County staff to increase the harm to Rayonier by ignoring Rayonier's legitimate concerns for the purpose of making Rayonier spend money to seek a remedy for Mullin's malfeasance.

47. Without regard to Rayonier's concerns, Mullin testified before the Florida Senate Appropriates Committee on Finance and Tax in opposition to the Clarification on February 27, 2018. Mullin attacked the Clarification, claiming that it would "eviscerate" the legislation that created the Stewardship District. Mullin testified that the Clarification would cost Nassau

County between \$25-\$50 million dollars, though Mullin offered no basis for any of his statements. Ultimately, despite the absence of any supporting facts and regardless of the fact that the Clarification largely reflected the current state of the common law, Mullin's efforts succeeded and the Clarification failed to pass.

48. Hearing nothing, Rayonier asked Mullin for a response to the Conflict Letter on March 7, 2018. *See* Email from Mark Bridwell to Michael Mullin dated March 7, 2018, a true and correct copy of which is attached as **Exhibit 12**. Rayonier explained that Mullin's public statements concerning the rescission of agreements and land use approvals Mullin negotiated, drafted and obtained approval of created a conflict and that his continued representation of Nassau County in matters relating to the ENCPA generally – in light of Mullin's eight-year stint as Rayonier's lead counsel during the formation of the ENCPA and the negotiation of a number of bedrock agreements and land use approvals – required him to abstain from continuing to represent Nassau County.

49. Mullin responded by letter on March 12, asserting that Rayonier's position was not specific enough, but claiming that he would have outside counsel review Rayonier's assertions. *See* Letter from Michael S. Mullin to Mark Bridwell dated March 12, 2018, a true and correct copy of which is attached as **Exhibit 13**.

50. Hearing nothing further from Mullin, Rayonier took the action it believed to be appropriate and filed a bar complaint against Mullin on March 29, 2018. *See* Florida Bar Inquiry/Complaint Form dated March 29, 2018 (the "Bar Complaint"), a true and correct copy of which is attached as **Exhibit 14**. Generally speaking, the complaint described the scope of Mullin's lengthy representation of Rayonier, discussed Mullin's antagonistic representation since

assuming the role of Nassau County Attorney and asked the Bar to take action to stop Mullin's impermissible infidelity to his former client.

51. Mullin responded to the Bar Complaint by letter on May 3, 2018. *See* Letter from Michael S. Mullin dated May 3, 2018 (the "Bar Response"), a true and correct copy of which is attached as **Exhibit 15**. The sum of Mullin's responsive position was that his representation of Rayonier involved participation in numerous public meetings and hearings and helping prepare numerous publicly filed documents, such that he – despite representing Rayonier for eight years – had no confidential information. Mullin also asserted that the Stewardship District was formed after Mullin joined Nassau County, so that the present disagreement could not relate to Mullin's service to Rayonier irrespective of the fact that the Stewardship District is an integral part of the overall strategy that Mullin himself devised.

52. Mullin became Interim County Manager on July 2, 2018, expanding the scope of Mullin's involvement in matters relating to the ENCPA. Mullin's appointment prompted Rayonier to send yet another letter concerning the conflict of interest presented by Mullin's involvement in matters adverse to his former client. *See* Letter from Mark R. Bridwell to Michael S. Mullin dated June 29, 2018, a true and correct copy of which is attached as **Exhibit 16**. Rayonier pointed out that Mullin's role as County Attorney left Mullin in a conflict when he was merely advising the county on matters relating to the ENCPA; in his new role as Interim County Manager, he would be making substantive decisions on matters involving his former client. Accordingly, Rayonier once again asked that Mullin recuse himself from matters relating to the ENCPA. As before, Mullin did not respond.

53. Instead of withdrawing, Mullin continued his attacks on his former client at a special meeting of the BOCC on September 17, 2018. The stated purpose of the meeting was to

discuss the Stewardship District “including the necessity for amendments”; Senator Aaron Bean and Representative Cord Byrd were attendees. *See* Transcript of September 17, 2018 BOCC Meeting, relevant excerpts of which are attached as **Exhibit 17**.

54. During the meeting, Mullin asserted that modifications to or rescission of the Stewardship District might be necessary and discussed the ENCPA at length in furtherance of Nassau County’s narrative that Rayonier made commitments to unilaterally fund public recreational facilities. Importantly, Mullin’s comments related directly to the time period when Mullin led Rayonier’s efforts to obtain approval of the ENCPA and his related work for Rayonier. Perhaps even more importantly, based on Mullin’s guidance and advocacy, the BOCC continued to express its willingness to rescind the ENCPA in its entirety and dissolve the “public/private partnership” between Nassau County and Rayonier. *See id.* at 69-72.

55. On January 7, 2019, Justin Stankiewicz, Nassau County’s former Office of Management and Budget Director, filed a grievance asserting that he had been terminated for refusing to destroy documents responsive to a then-pending public records request from Rayonier’s counsel in October 2018. *See* Employee Grievance dated January 7, 2019, a true and correct copy of which is attached as **Exhibit 18**. Stankiewicz’s grievance describes a November 6, 2018 meeting where Mullin raised the issue of the outstanding public records request. Stankiewicz states that Mullin directed Stankiewicz to delete text messages on Stankiewicz’s phone that would qualify as public records relating to Nassau County’s dispute with Rayonier over the ENCPA. Stankiewicz claims that Mullin stated that Mullin had previously deleted similar messages from his phone. Stankiewicz was terminated shortly thereafter without cause because Mullin claimed he could not trust Stankiewicz in his position.

56. Mullin claimed that Stankiewicz's termination related to funds missing from petty cash and not Stankiewicz's refusal to violate Florida's public records laws; the Nassau County sheriff's office subsequently investigated Mullin's allegations, but found insufficient evidence to support any further action. Stankiewicz's allegations suggest that, in addition to advising Nassau County on matters adverse to his former client, Mullin was violating Florida law to impede Rayonier's efforts to defend itself against Mullin's assault.

57. Stankiewicz's grievance attached a number of text messages between Mullin and various County Commissioners and senior county personnel, none of which were produced in response to Rayonier's counsel's public records request prior to their attachment to Stankiewicz's grievance. Each of them relate to Nassau County's attacks on Rayonier and, throughout, Mullin is revealed to be directing Nassau County's strategy in those efforts to undermine the ENCPA.

58. In connection with an action relating to Rayonier's counsel's public records request, Stankiewicz confirmed the allegations in his grievance under oath and testified that he had communicated with Mullin on matters squarely within the scope of Mullin's representation of Rayonier.

59. The disputes between Rayonier and Nassau County concerning Rayonier's duties, rights and obligations under the ENCPA, Mobility Fee Agreement and other associated development submittals and approvals continue as of the date of this filing. Mullin has continued his adverse representation of Nassau County on those matters, despite Rayonier's multiple requests that he stop.

60. Mullin has now assumed the role of County Manager, while maintaining his position as County Attorney. Mullin is not only in a position to render legal opinions and give

advice in the course of his continuing dispute with Rayonier, his new role puts him in a position to make decisions contrary to his former client on matters within the scope of his prior representation, including, among other things, pursuing dissolution of the “public/private partnership” in the ENCPA.

61. In his dual roles – both considered full-time jobs – Mullin will receive two salaries, totaling more than \$270,000, and double retirement contributions by Nassau County.

62. Mullin’s representation as County Attorney and his work as Interim County Manager and now County Manager presents a direct conflict to his prior representation of Rayonier in the same or a substantially related matter and amount to a violation of Mullin’s fiduciary obligation to his former client, Rayonier.

63. Any actions taken by Mullin to investigate or provide any legal advice to his current client, Nassau County, that may affect Rayonier’s ongoing development rights granted pursuant to the ENCPA are directly adverse to Rayonier’s interests and constitute a conflict as established by Rule 4-1.9 of the Rules of Professional Conduct of the Florida Bar:

A lawyer who has formerly represented a client in a matter must not afterwards:

- (a) Represent another person in the same or a substantially related matter on which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent;
- (b) Use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known; or
- (c) Reveal information relating to the representation except as these rules would permit or require with respect to a client.¹

¹ Rule 4-1.11 specifically states that Rule 4-1.9 applies to attorneys serving as public officers or employees.

64. Based on the facts above, it is indisputable that Mullin has provided advice and counsel to Nassau County contrary to Rayonier's interests on matters directly within the scope of his representation of Rayonier.

65. On learning of Mullin's adverse representation of Nassau County with respect to matters on which he previously represented Rayonier, Rayonier immediately—and repeatedly—demanded that Mullin stop all such representation due to the obvious conflict of interest.

66. Rayonier repeatedly informed Mullin orally and in writing over the course of several months that it would not consent to his representation of Nassau County adversely to its interests in any ENCPA matters. Because Mullin refused to substantively respond or to accede to Rayonier's requests, Rayonier was forced to go so far as to file a bar complaint against Mullin. Still this had no effect and Mullin continued to intentionally breach his fiduciary obligations to Rayonier.

67. Mullin continues to refuse to cease representing Nassau County with respect to Rayonier's ENCPA project. Indeed, Mullin's transition from County Attorney to County Manager appears to be part of an effort by Mullin to avoid the strictures of his professional obligations so that he can continue to breach his duty of loyalty to Rayonier and its affiliates by continuing to advise and represent Nassau County and the BOCC with respect to the ENCPA.

68. Not only has Mullin intentionally engaged in a directly conflicting legal representation adverse to his former client, Rayonier, but Mullin has taken multiple actions with the malicious intention of harming Rayonier in order to benefit his current client, the County. Indeed, this dispute is not simply a disagreement regarding the scope of Mullin's ethical obligation to not engage in conflicting representations against former clients. Rather it concerns a former attorney's intentional and malicious actions in affirmatively seeking to harm that former

client by leveraging his prior representation and exploiting his authority as the County Attorney and now County Manager.

69. Because the ENCPA dispute is ongoing, Rayonier's confidential and attorney-client privileged information regarding relevant business issues, risk and reward analyses, and possible negotiating leverage points that Mullin obtained during the course of his nearly eight year representation of Rayonier are, upon information and belief, being used by Mullin to Rayonier's disadvantage. Indeed, Florida law presumes that Mullin has obtained privileged and confidential communications from Rayonier. And there is a continuing danger that Mullin will use that information to benefit the County and the BOCC to the detriment of Rayonier and its affiliates—his former clients. This danger is all the more pertinent given Mullin's apparent willingness to ignore public records laws, to openly advocate for rescinding the regulatory framework that he negotiated and drafted on Rayonier's behalf for almost eight years, and to maliciously attack his former client both directly and through his proxies and political allies.

COUNT I – Injunctive Relief

70. Rayonier realleges and incorporates Paragraphs 1-69 above as if set forth fully herein.

71. This is an action for temporary and permanent injunction against Mullin to enjoin him from continuing to represent Nassau County in any capacity in matters regarding the ENCPA, including, but not limited to, the Mobility Fee Agreement, the East Nassau Stewardship District, and any other associated land development approvals and matters relating to the ENCPA that are adverse to Rayonier and its affiliates' interests and from divulging any confidential or otherwise privileged information concerning Rayonier and its affiliates that Mullin obtained or created during the course of his representation of Rayonier.

72. Mullin occupied a special and confidential relationship with Rayonier as its adviser and attorney over the course of almost eight years.

73. Rayonier reposed trust and confidence in Mullin as its adviser and attorney.

74. Mullin knowingly accepted Rayonier's trust and confidence and, as Rayonier's adviser and attorney acted in reliance on that trust and confidence.

75. As a result of the relationship between Mullin and Rayonier, Mullin owed and owes Rayonier fiduciary duties, including but not limited to the duty to (a) act in Rayonier's best interests, (b) not act adversely to Rayonier in connection with matters on which he represented Rayonier and (c) safeguard and not disclose Rayonier's confidential and attorney-client privileged information. In short, as a result of his prior representation of Rayonier, Mullin owes Rayonier a duty of loyalty which continued after his representation ceased in March 2015.

76. Mullin has breached his fiduciary duties to Rayonier in connection with his directly adverse representation of Nassau County as described above.

77. Not only has Mullin breached his fiduciary duties to Rayonier, but he has done so in bad faith, intentionally and with actual malice toward Rayonier. Indeed, Mullin has taken numerous steps to not only engage in the directly conflicting representation, but also to affirmatively harm Rayonier and its interests. Those malicious acts include but are not limited to: (1) refusing to cease the representation of the County after receiving notice that Rayonier did not consent to the representation, (2) openly discussing and seemingly advocating for the rescission of the ENCPA, which would completely undermine Rayonier's reliance on the very developmental framework Mullin negotiated on its behalf, (3) making disparaging statements that Rayonier was not honoring its purported agreements and promises regarding its obligations and performance under the ENCPA framework to the detriment of Rayonier's financial interests

and public reputation, and (4) allegedly instructing County employees and officials to withhold or delete responsive documents and communications requested through Rayonier's public records request in order to advance the County's position in its dispute with Rayonier and, more importantly, to harm Rayonier.

78. Mullin's current representation of Nassau County is the same or substantially related to his prior representation of Rayonier and its affiliates with respect to the ENCPA. Rayonier and its affiliates have not provided their consent to the materially adverse representation.

79. Rayonier and its affiliates have suffered and will continue to suffer irreparable injury as a result of Mullin's actions and failures to act described in this Complaint. Mullin's intentional bad faith and maliciousness has existed and continues despite Rayonier's efforts to convince Mullin to cease his breaches of his obligation to Rayonier. Mullin has accused Rayonier of violating agreements and land use approvals Mullin knows not to exist because of the work he performed and, in the process, has encouraged Nassau County's government to undermine the basic development conditions Mullin helped craft and on which the Project rests, if not to rescind the entire ENCPA. Mullin's representation of Nassau County will continue to harm Rayonier by virtue of his obvious conflict of interest and will disadvantage Rayonier in its efforts before the County to move forward with the ENCPA development as Mullin divulges privileged and confidential information to the disadvantage of Rayonier, Mullin's former client, and to the advantage of Nassau County, Mullin's current client. An award of damages is not sought in this action since any such award against Mullin would not adequately remedy the harm Rayonier has suffered and will continued to suffer because of his conduct and, in any event, would be virtually impossible to quantify.

80. Under the circumstances described in this Complaint, Mullin's representation of Nassau County as described above is a violation of his fiduciary duty of loyalty and is a direct and prohibited conflict of interest under the Florida Rules of Professional Conduct governing attorneys admitted to practice in Florida.

81. As such, there is a substantial likelihood of Rayonier's success on the merits.

82. A temporary and permanent injunction will serve the public interest in protecting the attorney-client privilege, protecting Rayonier's confidential information and upholding the Florida Rules of Professional Conduct.

83. Rayonier has a clear legal right to the relief sought.

84. Rayonier does not have an adequate remedy at law.

85. All conditions precedent to the maintenance of this action have been obtained or have been waived by Mullin.

WHEREFORE, Rayonier respectfully requests that this Court (a) enjoin Michael Mullin from continuing to represent Nassau County and/or its Board of County Commissioners in any capacity in connection with matters regarding the ENCPA that are adverse to Rayonier and its affiliates' interests, (b) enjoin Michael Mullin from divulging privileged communications and confidential information he obtained during his representation of Rayonier, and (c) provide any other relief the Court deems just and appropriate.

DATED this 8th day of April, 2019.

GUNSTER, YOAKLEY & STEWART, P.A.

By /s/ William E. Adams, Jr.
William E. Adams, Jr.
Florida Bar Number 467080
Lauren V. Purdy
Florida Bar Number 93943
225 Water Street, Suite 1750

Jacksonville, FL 32202
(904) 354-1980 phone
(904) 354-2170 facsimile
Primary email: badams@gunster.com
Primary email: lpurdy@gunster.com
Secondary email: lfrancis@gunster.com
Secondary email: aarmstrong@gunster.com
Attorneys for Plaintiff Rayonier

CERTIFICATE OF CONFERENCE

The undersigned certifies that a true and correct copy of the foregoing has been served on all counsel of record on April 9, 2019.

/s/ William E. Adams, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April, 2019, I electronically filed the foregoing with the Clerk of the Court using the Florida Courts E-Filing Portal, and served the document electronically by email on the following:

Robert H. Farnell, II, Esq.
John G. Woodlee, Esq.
Bedell, Dittmar, Devault, Pillans & Cox, P.A.
The Bedell Building
101 East Adams Street
Jacksonville, FL 32202
Phone: (904) 353-0211
Primary E-mail: rhf@bedellfirm.com
Primary E-Mail: jgw@bedellfirm.com
Secondary E-mail: mam@bedellfirm.com
Secondary E-mail: aub@bedellfirm.com
Secondary E-mail: he@bedellfirm.com

/s/ William E. Adams, Jr., Esq.
Attorney