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

Case No.

Division:

JEA, a body politic and corporate and an agency of the State of Florida,

Plaintiff,

v.

AARON F. ZAHN, an individual,

Defendant.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

JEA, a body corporate and politic and an agency of the State of Florida, sues Aaron F. Zahn, an individual, and alleges:

SUMMARY OF CLAIMS

1. JEA is a community-owned, not-for-profit utility that serves the Jacksonville community by providing safe and reliable electric, water, wastewater, and chilled water services. JEA is the largest municipal utility in the State of Florida and the eighth largest in the United States and has been built through tremendous capital investments made by the citizens of Jacksonville. JEA's water system has been in operation since 1880, and its electric system was established as a division of the City of Jacksonville in 1895. JEA has a proud history as a valuable asset operated for the benefit of the people of Jacksonville.

2. From 2012 to 2019, JEA enjoyed an extended period of modest, but steady, growth. During that period, JEA's total retail sales of electricity showed consistent growth of about 1% per year on average[1], and revenues from its water and wastewater business increased about 1.7% per year. JEA also greatly improved its balance sheet during this time, paying off over $2.4 billion in debt from 2009 to 2017. JEA's actual financial performance was strong enough to earn JEA a bond rating of AA, which indicates a "very low default risk" relative to similar issuers.

3. Against this backdrop, Aaron Zahn was appointed to serve on JEA's board of directors in February 2018. Zahn had no prior utility or public sector experience and was an outsider to JEA. Zahn's background was in the private sector, where he worked at private equity firms and for a wastewater technology company. After just one board meeting, Zahn resigned to pursue the position of interim CEO. Zahn was appointed by the board to run the utility in April 2018.

4. At the same time, JEA hired a search firm to conduct a nationwide search to identify a permanent CEO. Of the three finalists identified by the search firm, Zahn received the firm's lowest grade on qualifications and leadership. Nevertheless, on November 27, 2018, Zahn was selected to be JEA's permanent managing director and CEO.

5. Zahn would go on to be the principal architect and ringleader of perhaps the largest fraud in Jacksonville history: the failed attempt to sell JEA. On January 28, 2020, Zahn was terminated for cause by JEA's board of directors following an investigation by the City of

[1] 2017 was the only year that retail electric sales did not increase. This was explained in JEA's December 2017 ratings agency presentation as "due to moderate weather and decrease in FPU demand" from one wholesale customer: Florida Public Utilities.

Jacksonville's Office of General Counsel, which identified 24 separate bases for Mr. Zahn's termination. Among them, OGC determined that Mr. Zahn made numerous false and misleading statements to JEA's board of directors about JEA's financial performance and outlook, altered documents, provided false testimony under oath, failed to disclose conflicts of interest, and misused his public position.

6. Because of his actions, Zahn's 14-month tenure as JEA's CEO was marred in a public scandal that has been described as "maybe the biggest attempt to swindle the people of Jacksonville based on the biggest lie ever told in our city's history." The swindle was an attempt to sell JEA that would have netted the senior executives, including Zahn, hundreds of millions of dollars in payouts from a performance unit plan that was tied to the sale. The lie was that JEA had to be sold or face huge rate increases and widespread layoffs caused by an oncoming "death spiral" of declining sales, increasing competition and a heavy debt burden.

7. Zahn's fraudulent scheme has left in its wake criminal and legislative investigations; credit downgrades by bond rating agencies; massive bills from law firms, lobbying groups, and investment bankers; and a damaged reputation from a breach of the public's trust.

PARTIES, JURISDICTION AND VENUE

8. JEA is a body politic and corporate and an agency of the State of Florida. JEA's headquarters is located at 21 North Church Street in downtown Jacksonville.

9. Zahn is an individual who resides in Jacksonville Beach. At all relevant times, Zahn was the CEO of JEA, and as such had final authority over the day-to-day operations of the utility and a fiduciary duty to act in the best interests of JEA. Zahn was also the primary

liaison between the utility and its board and was obligated to ensure that the board was properly informed with complete and accurate information to make appropriate judgments in managing the utility.

10. This court has jurisdiction because all of the alleged acts, conduct, errors and omissions giving rise to this action occurred in Duval County, Florida, and the damages incurred by JEA resulting from Zahn's actions greatly exceed the court's $30,000 jurisdictional requirement.

11. Venue is appropriate in this court because the causes of action accrued in Duval County and both parties are located here.

12. All conditions precedent to bringing this action have occurred, been performed or been waived.

FACTUAL ALLEGATIONS

13. At a JEA board meeting in November 2017, former director Tom Petway first suggested that JEA begin to explore the possibility of a sale as part of a long-term strategic planning process. At the December board meeting a few weeks later, CEO Paul McElroy reported that JEA was working with an outside consulting firm to prepare an economic evaluation of the utility that would take about 60 days to complete.

14. At the February 2018 board meeting, Chairman Alan Howard announced that the board would conduct a workshop on the issue of privatization on March 20, 2018. At that workshop, Zahn's first comments to the board as a director nominee included a claim that "electrical sales decreased by 10%" since 2007. He would continue to repeat some version of

this flawed and misleading statistic throughout his tenure to justify his push towards "monetizing" JEA.

15. After only one board meeting, in April 2018 Zahn resigned as a director to pursue the role of interim CEO. At the time, former CFO Melissa Dykes was serving in that role. The board approved him as interim CEO, but gave Dykes the positions of President and COO as well as a pay raise, making her, not Zahn, JEA's highest-paid employee.

16. At the May 2018 board meeting, Zahn's first as interim CEO, the board passed a resolution instructing him that "without clear board action, any process about privatization should not take place." The discussion on the resolution was clear that "any process" meant "to pursue any activities" and that "by this motion" the board intended to prohibit any "back room discussions" regarding privatization "by our staff."

17. Despite being ordered not to do so, Zahn continued to work toward positioning JEA for a sale. JEA retained McKinsey as a consultant to assist it in long-term strategic planning, a euphemism that JEA's senior leadership team used to discuss JEA's future sale[2]. Among the strategic options ultimately presented by McKinsey was a privatization scenario.

18. From the time he became the interim CEO in April 2018, Zahn knew, or was reckless in not knowing, that JEA's operating performance, financial results, and outlook were far better than they were presented to the board and public under his direction. Rather than accurately portray JEA's financial condition and lose any leverage he had to drive a sale of the utility, Zahn engaged with other JEA executives in a scheme that fraudulently concealed JEA's

[2] Even after the JEA board approved management's exploration of a sale on July 23, 2019, Zahn continued to publicly state that JEA was not pursuing a sale but rather exploring all of its long-term strategic options.

true operational and financial results. Zahn caused subordinates, including members of JEA's senior leadership team, to manipulate information they presented to the board, including the use of confusing metrics, selective and misleading data, and new reporting formats.

19. In furtherance of the scheme, from April 2018 until July 2019, Zahn knowingly or recklessly and repeatedly made false and misleading statements to the JEA board and the public about JEA's operating performance, financial results and financial condition, and failed to disclose material facts necessary to make his statements complete, accurate and not misleading.

20. Zahn's false and misleading statements and omissions included:

a. Historical electric unit sales

Zahn and other senior executives mischaracterized JEA's modest growth in retail electric sales by presenting an 8% decline in "unit sales" from 2006 to 2018. This is misleading for three reasons. First, it cherry-picks two years and compares them to each other instead of analyzing sales trends over the whole period. Second, it fails to explain that the metric includes an entire wholesale business that no longer existed in 2017, which renders it an apples-to-oranges comparison. Third, this figure was presented by Zahn as evidence of an existential threat posed to JEA by energy efficiency rather than the anticipated loss of a business line.

b. Financial Projections

Zahn presented to the board a projection of future electric sales during the period from 2018 to 2030 and related financial projections that included (a) a 52% "rate" increase, (b) unit sales decreasing by 8%, and (c) customers increasing by 16-20%. First, the "rate" metric used was actually yield, which is a different measurement that does not take into account fuel costs.

Second, Zahn claims that these are all the result of impacts from business disruption, which exaggerates the actual anticipated impacts of energy efficiency and distributed generation and fails to consider existing business initiatives designed to mitigate against these impacts. The result is an inaccurate projection of a bleak future.

c. Plant Vogtle

Zahn stated that the liability from the Plant Vogtle power purchase agreement was a reason for JEA to pursue a sale but mischaracterized the impact of the power purchase agreement to JEA. Zahn failed to disclose to the board that upon a sale, the obligations under that agreement could remain with JEA and, if so, would be passed on to JEA's ratepayers.

d. Employee Terminations and Headquarters Relocation

To portray how JEA would be required to respond to the "death spiral" of increasing customers and decreasing revenues, Zahn presented a number of draconian measures that JEA would be forced to undertake as part of a "traditional utility response" business plan. These included the termination of over 500 employees (for effect, a draft WARN Act notice was enclosed in the board packet) and a threat that JEA would relocate its headquarters away from downtown. At the time he made these statements, Zahn knew that management had no immediate plan to do either of these things.

e. Strawman Alternative Scenarios

Zahn created and promoted strawman alternatives to JEA's privatization to drive the board towards a sale. These included the concepts of an initial public offering, which has never before been attempted with a municipal utility, and a co-op, a structure designed to provide electrical power (not water and wastewater) to rural communities. These were not legitimate

alternatives, but were presented only as strawmen in an attempt to bolster the privatization alternative. Similarly, Zahn directed CAO Herschel Vinyard to prepare a presentation that exaggerated alleged legal constraints on JEA's ability to adapt its business. All of this was choreographed to present the fiction that the only viable path forward for JEA was to privatize.

f. Performance Unit Plan ("PUP")

The central component and motivating force that drove the scheme was a long-term incentive plan that came to be known as the Performance Unit Plan, or PUP. Under the PUP, JEA would grant its employees a certain number of units per year that employees could buy for $10 each. A performance goal, measured as 110% of JEA's base valuation in the plan's first year, was set as a target. If JEA hit the target at the end of the performance period, unit-holders would be paid in cash equal to $100.00 per unit for each percentage increase of 1% above the target.

This type of plan is unheard of in the municipal utility industry. JEA's Director of Employee Services Patricia Maillis asked JEA's long-time benefits consultant Willis Towers Watson to perform a survey of comparable municipal utilities to determine how many of them offered this type of plan. In response, WTW learned that no other municipal utility offered this type of plan.

After reporting this to Zahn and JEA's senior management, both Maillis and WTW were cut out of the PUP-planning process. Despite having purview over JEA's benefit plans, Maillis did not know that management had drafted and presented the PUP to JEA's board until after it had been approved.

This is likely because the PUP was illegal. A legal memorandum prepared by Nixon Peabody dated May 20, 2019 determined that the PUP would not "be able to clear hurdles under Florida law" because JEA would face an "unresolvable dilemma" that the plan was required to be open to **all employees;** however, Florida's conflict of interest laws prohibited the participation of any employees with decision-making power to influence the financial metrics being measured for personal financial gain. The memorandum also questioned whether any plan of similar structure could be in furtherance of a legitimate public purpose, a necessary principle of a public body like JEA. This struck at the heart of the PUP: to enrich the senior leadership team upon a sale of JEA. Shortly after JEA received the Nixon Peabody memorandum, it replaced Nixon Peabody with another firm as bond counsel and buried the memo.

After receiving the Nixon Peabody memo, JEA's executive team asked OGC to determine whether JEA could establish a long-term incentive plan. On June 17, 2019, OGC issued a memorandum that clearly laid out the general restrictions on such plans (including the prohibition under Florida Law against using a public position to secure a unique benefit).

On July 22, 2019, the day before the JEA Board Meeting, Lynne Rhode (JEA's Chief Legal Officer) – at Zahn's direction – prepared a memorandum for issuance by the OGC that verified the Board's authority to approve resolutions to pursue one of the proposed strategic options regarding the future of JEA. However, because the documents underlying those resolutions were drafted, vetted and approved by JEA's outside legal counsel (Foley & Lardner and Pillsbury) and not OGC, OGC declined to confirm the legality of the underlying documents. OGC communicated its decision orally to both Rhode and Vinyard when they

attempted to have OGC sign off on the resolutions, and then in writing by revising the memo to clearly state that OGC was not opining on the legality of the underlying documents attached to the resolutions. The final version of the memo was strictly limited to addressing the general authority of the JEA Board to pursue one of the strategic options without regard to any particular outcome, subject to all applicable laws.

Zahn, Vinyard, and Rhode knew that OGC's final memorandum was not an approval of the PUP. Despite knowing this, Zahn and other senior executives misrepresented to the board that the PUP had been approved by the OGC. At the July 23, 2019 JEA board meeting, JEA's chairman Alan Howard asked Rhode a compound question, citing known "legal restraints" and whether the plan had been approved by the OGC, and Rhode replied that it had. Both Rhode (who was a co-author of the July 22 memo) and Zahn (who had read it) knew at the time that OGC had not approved the PUP. Despite having an affirmative duty to disclose the material information contained in the Nixon Peabody and OGC memos, Zahn failed to do so.

Zahn and other senior executives also misrepresented the purpose and application of the PUP. At a June 18, 2019 meeting of the board's compensation committee, Zahn presented the PUP as a plan in which every JEA employee would be eligible to participate. Zahn claimed that the PUP was designed to put the total amount of compensation for JEA's employees at the 50th percentile of the market. These statements were, at best, misleading.

Zahn and JEA's CFO Ryan Wannamacher misrepresented to the board that the PUP had a capped value of around $3.4 million and that the proceeds of the sale of JEA would not be factored into the payout amount. In a presentation given to the compensation committee on

June 19, 2019, a chart was presented that stated the "estimated cost of annual Performance Unit awards to all employees based on current incumbent base salaries is $3.4M." At the July 23, 2019 board meeting, Wannamacher was specifically asked by JEA board member Kelly Flanagan to explain the implication of a sale on the PUP payout calculation (that is, whether the sale proceeds would be factored into the final calculation). Wannamacher responded that the only impact would be that the performance period would conclude and the calculation would be performed. Wannamacher's response was incomplete and misleading, because it failed to answer the specific question that was asked. Wannamacher's non-answer was particularly misleading in light of the prior presentation and board packet materials stating the estimated costs of the PUP was $3.4 million. Zahn had an affirmative duty to correct Wannamacher's misrepresentation but remained silent.

An initial schedule that was never presented to the board showed that units were planned to be allocated as 40% of the employee's salary. This schedule showed JEA's senior leadership team receiving 47% of the allocated units and line employees receiving a mere 2%. If the units were allocated according to this schedule, Zahn alone would have been allocated about the same number of units as all of JEA's line employees combined, which would have paid him a staggering $26 million if JEA were sold for around $10.5 billion[3]. At that sale price, the 14 members of the senior leadership team would have been paid over $200 million. These golden parachutes in no way reflect the 50th percentile of the market, and therefore patently violate the very policy Zahn used to justify the plan.

[3] This assumed sale price is in line with the publicly-disclosed bids that JEA ultimately received from bidders as part of the Invitation to Negotiate (ITN) process.

g. SLT Employment Agreements

On July 23, 2019, the same day the JEA board approved exploring a sale and the PUP, the board also approved a new form of employment agreement to be executed by all of the members of the senior leadership team. This was a break from historical precedent, because previously only JEA's CEO had a written employment agreement. The agreements were also unusual in that they contained much more employee-friendly terms than the prior form of agreement. Emails discovered since Zahn's termination demonstrate that he used JEA's own law firms—Pillsbury and Foley & Lardner—to craft employee-friendly terms for his personal benefit and to JEA's detriment.

The agreements were also unusual in that their execution was inextricably tied to the attempt to sell JEA. Zahn presented the privatization scenario to the board in the form of three resolutions: 2019-07 (CEO authorized to explore privatization), 2019-08 (amendment to pension plan), and 2019-09 (new CEO and executive employment agreements). This was intentional. Zahn presented both the sale and his new employment agreement together because the sale was designed to make him extremely wealthy.

These employment agreements violate the JEA Charter and Florida law. First, Zahn's agreement contains an illegal retroactive salary increase prohibited by FLA. STAT. § 215.425. Zahn knew that his employment agreement violated Florida law when he attended the July 23 board meeting at which it was approved. JEA's Chief Legal Officer, Jody Brooks, had previously advised Zahn that a retroactive salary increase was prohibited "extra compensation" under the statute. Zahn failed to disclose this to the JEA board during its deliberation of his

agreement. The retroactive salary increase resulted in a lump sum payment to Zahn of $115,693.92 on August 9, 2019.

The employment agreement also includes a "Severance and Transition Agreement" that would have paid Zahn an additional 12 months of salary in violation of FLA. STAT. § 215.425(4) and the JEA Charter. Section 215.425 limits a public employee's total severance pay to no more than 20 weeks' salary. JEA's Charter declares as void any agreements that any JEA officer or employee has any interest in "for any matter, cause or thing whatsoever" in which the officer or employee "shall have a financial interest or by reason whereof any liability or indebtedness shall in any way be created against JEA." The Charter of the City of Jacksonville, § 21.09(b). Any agreements that violate this section "shall be null and void and no action shall be maintained thereon against JEA." Because the consulting agreement violates both of these provisions, it is null and void.

21. From April 2018 to July 2019, Zahn and other senior executives reviewed numerous internal reports, data, and information that disclosed JEA's actual financial performance. As a result, Zahn and other executives knew, or were reckless in not knowing, that the utility was performing better than was being presented to the board. JEA was never in or facing an imminent "death spiral."

22. From April 2018 to July 2019, Zahn also knowingly or recklessly presented false or misleading statements to the public through mailings, press releases, interviews and statements to the media. Among other things, Zahn falsely described JEA's operating performance and financial condition and failed to disclose that, with his knowledge and permission, JEA executives had fraudulently manipulated data and information to portray a

sale of JEA as the only viable alternative. This was to induce the Jacksonville City Council and the voting public to approve a sale, both of which would be required to complete a transaction.

23. For example, JEA's residential customers were mailed an insert entitled "The facts about what's next for JEA" that stated they face a future rate increase as much as 52%, deep cuts to JEA's workforce, and reduced spending on the utility system. At the time, JEA had no study or plan that contained that set of impacts. Instead, they were a combination of the worst impacts from several different scenarios JEA was then evaluating.

24. The scheme—attempting to sell JEA and loot it for hundreds of millions of dollars in the process—has resulted in substantial damage to JEA, in the form of costs incurred in responding to criminal and legislative investigations; the increased costs of borrowing money resulting from credit downgrades by bond rating agencies citing "governance instability and evidence of weak controls" under Zahn; massive bills from law firms, lobbying groups, and investment bankers; and a damaged reputation from a breach of the public's trust.

25. Undeterred, on May 8, 2020, Zahn filed a demand for arbitration with the American Arbitration Association seeking to enforce the illegal provisions of his employment agreement. The employment agreement is void as a matter of law because it was an integral part of Zahn's fraudulent scheme, and because the amounts already paid, and those additional amounts Zahn seeks to be paid under it, constitute extra compensation in violation of FLA. STAT. § 215.425.

COUNT ONE
FRAUD

26. JEA incorporates by reference the allegations contained in paragraphs 1 through 25 above.

27. As described above, Zahn, directly or indirectly, knowingly or recklessly: (a) employed devices, schemes, or artifices to defraud, (b) made untrue statements of material facts or omitted material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person.

28. Zahn acted knowingly or recklessly in connection with the above described acts and omissions. He knew, or was reckless in not knowing, that his statements to JEA's board contained material misstatements and omissions and that statements he made to the public were materially false and misleading.

29. Zahn made the misstatements and omissions with the intent that JEA, through its board, would act on them by approving the sale process, including the PUP.

30. On July 23, 2019, JEA's board approved the sale process and the PUP.

31. As a direct result, JEA has suffered and will continue to suffer damages.

WHEREFORE, JEA demands entry of a judgment against Aaron F. Zahn for damages, interest and costs.

COUNT TWO
BREACH OF FIDUCIARY DUTY

32. JEA incorporates by reference the allegations contained in paragraphs 1 through 25 above.

33. As the CEO of JEA, Zahn owed JEA, including its board of directors, a fiduciary duty of utmost care, loyalty and good faith. These duties include obligations to act prudently in the operation of JEA's business; to discharge his responsibilities in good faith; to implement policies and controls that ensure reliable financial reporting, operational efficiency, and compliance with laws and regulations; to act at all times in the best interest of JEA; and to put JEA's interests above and before his own.

34. JEA and its board of directors reposed their trust and confidence in Zahn, and relied on him to meet his duties in the management of JEA.

35. Zahn breached his fiduciary duty of care by, among other things, mismanaging the utility; failing to provide JEA's board with complete and accurate information on material matters; using his position as CEO for his own personal benefit; driving JEA toward a flawed sale process; and pushing for the approval of the PUP and the executive employment agreements, which he knew or should have known violated Florida law.

36. Zahn breached his fiduciary duty of loyalty and good faith by, among other things, knowingly or recklessly violating Florida law in an attempt to approve the PUP and issue himself and other members of the senior leadership team performance units that would have looted the utility for hundreds of millions of dollars in the event of a sale; and continually putting his own personal financial gain above the interests of JEA.

37. As a direct and proximate cause of Zahn's breaches of his fiduciary duties, JEA has suffered and continues to suffer damages.

WHEREFORE, JEA demands judgment against Aaron F. Zahn for damages, interest and costs.

COUNT THREE
BREACH OF THE PUBLIC TRUST

38. JEA incorporates by reference the allegations contained in paragraphs 1 through 25 above.

39. On April 17, 2018, Zahn became the Interim Managing Director and CEO of JEA. On November 27, 2018, Zahn took that role on a permanent basis.

40. As the CEO of JEA, Zahn held a position of public trust. As a result, he owed a duty to serve the public with utmost fidelity, good faith and integrity.

41. Zahn's duties included a duty of undivided loyalty that required Zahn to act at all times in the best interests of the public, and not to use his official position or the resources within his trust to secure a special privilege or benefit for himself.

42. The State of Florida's Code of Ethics for Public Officers and Employees declares as public policies that: (i) no officer of a political subdivision of the state shall have any financial interest which is in substantial conflict with the proper discharge of his duties in the public interest; and (ii) public officers and employees are agents of the people and hold their positions for the benefit of the public. FLA. STAT. § 112.311.

43. Zahn breached his duties and the public trust by, among other things, knowingly or recklessly violating Florida law by seeking to approve the PUP and issue himself and other members of the senior leadership team performance units that would have looted the utility for

hundreds of millions of dollars in the event of a sale; and continually putting his own personal financial gain above the interests of JEA.

44. The PUP placed Zahn in an irreconcilable conflict of interest with JEA because he was in a position to exercise decision-making authority that would affect the financial metrics being measured under the plan, which would result in a direct financial benefit to Zahn.

45. Zahn breached his duties and the public trust by knowingly or recklessly violating Florida law by entering into the employment agreement when he knew that it contained provisions that provided him with extra compensation to which he was not entitled as a public servant.

46. As a result of Zahn's breaches of the public trust, his employment agreement with JEA is contrary to public policy and is therefore void under well-established common law principles.

47. JEA is also entitled to void the employment agreement because it violates the Code of Ethics for Public Officers and Employees. FLA. STAT. § 112.3175.

WHEREFORE, JEA demands entry of a judgment declaring that the July 23, 2019 employment agreement between Aaron F. Zahn and JEA is void and unenforceable.

COUNT FOUR
FRAUDULENT INDUCEMENT

48. JEA incorporates by reference the allegations contained in paragraphs 1 through 25 above.

49. Zahn made material misrepresentations and omissions to the JEA board in connection with its consideration of Zahn's July 23, 2019 employment agreement.

50. Among them, Zahn: (i) stated that he had never had a written employment agreement with JEA before; and (ii) failed to disclose to the board that he had in fact had two prior written employment agreements with JEA, that those agreements did not contain the same employee-friendly provisions that the July 23, 2019 agreement contained, and that these new provisions violated Florida law.

51. At the time Zahn made these misrepresentations, he knew or should have known that they were false.

52. These misrepresentations were intended to induce JEA to enter into the employment agreement.

53. JEA did rely on Zahn's misrepresentations in entering into the employment agreement, and has suffered damages as a result.

WHEREFORE, JEA demands entry of a judgment rescinding as void the July 23, 2019 employment agreement between Aaron F. Zahn and JEA.

COUNT FIVE
DECLARATORY RELIEF

54. JEA incorporates by reference the allegations contained in paragraphs 1 through 25 above.

55. An actual controversy has arisen and now exists between the parties concerning whether Zahn's July 23 employment agreement is void.

56. There is a bona fide, actual, present practical need for a declaration.

57. The declaration sought deals with a present, ascertained or ascertainable state of facts.

58. JEA's rights are dependent on the law applicable to the facts presented.

59. All of the parties to the dispute are properly before the court.

60. The declaration sought is not merely giving legal advice by the court or the answer to a question propounded from curiosity.

WHEREFORE, JEA demands entry of a judgment declaring that (i) the July 23, 2019 employment agreement between Aaron F. Zahn and JEA is void and unenforceable, including that the retroactive pay increase violates FLA. STAT. § 215.425 and the severance and transition agreement violates FLA. STAT. § 215.425 and Section 21.09 of the JEA Charter.

COUNT SIX
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

61. JEA incorporates by reference the allegations contained in paragraphs 1 through 25 above.

62. JEA is likely to suffer irreparable harm if preliminary and permanent injunctions are not entered to: (i) stay the arbitration proceeding commenced by Zahn because there is no agreement to arbitrate; (ii) compel Zahn to return to JEA the amounts improperly paid to him as a retroactive pay increase; and (iii) prohibit JEA from wasting public funds by paying to Zahn any amounts under the employment agreement that are prohibited by Florida law.

63. JEA does not have any available adequate remedy at law.

64. JEA has a substantial likelihood of success on the merits.

65. The threatened injury to JEA outweighs any possible harm to Zahn, who is not entitled to any amounts under the employment agreement.

66. Granting the requested injunctive relief will serve the public interest by recovering public funds that were unlawfully provided to Zahn and by preventing any further waste of public funds.

WHEREFORE, JEA demands entry of a temporary and permanent injunction that: (i) compels Zahn to return to JEA the amounts improperly paid to him as a retroactive salary increase; and (ii) prohibits JEA from wasting public funds by paying to Zahn any amounts he claims under the employment agreement.

DEMAND FOR JURY TRIAL

JEA demands a trial by jury on all issues so triable.

NELSON MULLINS RILEY &
SCARBOROUGH LLP

By: */s/ Lee D. Wedekind, III*

Florida Bar Number 670588
50 North Laura Street, Suite 4100
Jacksonville, FL 32202
(904) 665-3652 (direct)
(904) 665-3699 (facsimile)
lee.wedekind@nelsonmullins.com
allison.abbott@nelsonmullins.com

and

OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE
/s/ Sean B. Granat
Sean B. Granat, Esq.
Florida Bar No.: 0138411
Stephen J. Powell, Esq.
Florida Bar No.: 305881
117 W. Duval Street, Suite 480
Jacksonville, Florida 32202-3734
Telephone: (904) 255-5100
Facsimile: (904) 255-5120
Email: SGranat@coj.net, dorothyO@coj.net
Email: SPowell@coj.net, PCippola@coj.net

Attorneys for JEA

~#4822-6326-3158~