IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA

MAURINE NIEMAN Plaintiff, v. DUKE ENERGY CORPORATION, JAMES E. ROGERS, LYNN J. GOOD, STEVEN K. YOUNG, WILLIAM (BILL) BARNET III, G. ALEX BERNHARDT SR., MICHAEL G. BROWNING, R. DIMICCO, JOHN H. FORSGREN, ANN MAYNARD GREY, JAMES H. HANCE, JR., E. JAMES REINSCH, JAMES T. RHODES, and PHILIP R. SHARP, Defendants.	C.A. No. 3:12-cv-00456 **CLASS ACTION COMPLAINT** JURY TRIAL DEMANDED

Plaintiff Maurine Nieman ("Plaintiff"), individually and on behalf of all persons who exchanged shares of Progress Energy, Inc. ("Progress") common stock for shares of Duke Energy Corporation ("Duke") common stock in connection with the merger between Progress and Duke that was announced on January 10, 2011, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff's information and belief is based upon, among other things, her investigation of: (a) a registration statement filed with the Securities and Exchange Commission ("SEC") on or about July 7, 2011 under the Securities Act of 1933 (the "Securities Act") Form S-4/A the ("Registration Statement"); (b) other filings made by Duke with the SEC; (c) press releases, public statements, news articles, securities analysts' reports and other publications disseminated by or concerning Duke; (d) statements from former Progress directors; and (e) other publicly available information about Duke.

Many other facts supporting the allegations contained herein are known only to the

defendants or are exclusively within their custody and/or control. Plaintiff believes that further substantial evidentiary support will exist for the allegations in this Class Action Complaint after a reasonable opportunity for discovery.

INTRODUCTORY STATEMENT

1. On January 10, 2011, Duke and Progress issued a joint press release announcing that the boards of directors of both companies had unanimously approved a definitive merger agreement ("Merger Agreement") pursuant to which Duke would acquire Progress in a stock-for-stock transaction (the "Merger"). In order to induce approval of the Merger by Progress shareholders, Duke touted the transaction as a merger-of-equals that would create a combined company in which the Progress and Duke constituents were equals in power, management and governance. Progress shareholders not would receive a takeover premium typically paid by the buyer when power is not as equally shared. Under the terms of the Merger each outstanding share of Progress common stock was to be converted into the right to receive 2.6125 shares of New Duke common stock. Based on Duke's closing share price on January 7, 2011 (one day prior to the signing of the Merger Agreement), the share exchange ratio represented a value to Progress shareholders of $46.48 per share – a premium of only 3.9 percent. Both companies argued this lower premium was appropriate because this was not a buyout but rather a merger-of-equals.

2. Upon closing of the Merger, Duke represented in the Registration Statement the new combined company ("New Duke") would be governed by executives and directors of both companies creating a merger-of-equals.

3. Specifically, the Registration Statement explained that the Progress CEO William D. Johnson ("Johnson"), would become the CEO of the New Duke, and Duke CEO James E.

Rogers ("Rogers"), would serve as the New Duke Chairman. Also, the New Duke Board would be comprised of 11 members of the Duke Board and seven members of the Progress Board. Finally, the executive team of New Duke would be comprised of executives of both Progress and Duke.

4. Contrary to the representations in the Registration Statement of sharing power in a merger-of-equals, on July 2, 2012, just hours after the Merger closed and Progress shareholders received their shares under the Registration Statement, New Duke voted to oust Johnson as CEO of the combined Company, New Duke, and appoint Rogers as CEO.

5. On June 23, 2012, prior to the closing of the offering under the Registration Statement, Rogers agreed to go along the New Duke Board's plan to oust Johnson and act as CEO of New Duke.

6. Despite this shift in the leadership of the New Duke the Registration Statement was not amended to reflect the change in leadership making the operative Registration false and misleading.

7. Instead, on June 27, 2012, with full knowledge that the Duke members of the New Duke Board intended to oust Johnson, the New Duke Board entered into a three-year employment agreement with Johnson that provided terms should Johnson be terminated, as the New Duke Board knew would occur.

8. Within hours of the closing of the Merger on July 2, 2012, the New Duke Board voted to terminate Johnson and hire Rogers as the New Duke CEO.

9. On July 3, 2012, New Duke filed a current report on Form 8-K ("8-K") attaching Johnson's June 27, 2012 employment agreement, and July 3, 2012 Separation Agreement. The 8-K also stated that the New Duke Board had reinstated Rogers effective July 3, 2012, despite

the fact that his appointment as CEO had been orchestrated weeks, if not months, earlier.

10. Johnson immediately became eligible to receive a payment of approximately $44.7 million as per his Separation Agreement. In return for this generous exit package, Johnson agreed to a non-disparagement clause as part of his Separation Agreement. Due to this agreement, Johnson has not yet publically spoken about his termination from New Duke.

11. Contrary to the representations in the Registration Statement, there has been no combination of the companies' complementary strengths to create a stronger unified whole under a combined leadership structure.

NATURE OF CLAIMS

12. This is a securities class action brought on behalf of Plaintiff and the Class identified below alleging violations of the Securities Act of 1933, specifically: Count I (Section 12(a)(2) of the Securities Act, 15 U.S.C. §77l(a)), and Count II (Section 15 of the Securities Act, 15 U.S.C. §77o).

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v. New Duke has operations in this District, the misrepresentations were made in this District and acts giving rise to the violations complained of occurred in this District.

THE PARTIES

14. Plaintiff Maurine Nieman was a Progress shareholder who received shares of New Duke pursuant to the Registration Statement.

15. Defendant New Duke is a Delaware corporation with a principal place of business located at 550 South Tyron Street Charlotte, North Carolina 28202-4200. New Duke common stock trades on the New York Stock Exchange under the trading symbol "DUK." New Duke is

the successor to Progress.

16. Defendant James E. Rogers ("Rogers") is the Chairman and CEO of New Duke. Prior to the Merger, Rogers had been President, CEO and a member of the Board of Directors of Duke since its merger with Cinergy Corp. in 2006 and had served as Chairman of Duke since 2007. Rogers was Chairman and CEO of Cinergy Corp. from 1994 until its merger with Duke. Rogers signed the Registration Statement.

17. Defendant Lynn J. Good ("Good") is CFO of New Duke. Prior to the Merger, Good was the Group Executive and Chief Financial Officer of Duke and signed the Registration Statement.

18. Defendant Steven K. Young ("Young") was the Senior Vice President and Controller of Duke and signed the Registration Statement.

19. Defendant William (Bill) Barnet III ("Barnet") is a director of New Duke. Prior to the Merger, Barnet was a director of Duke since 2001 and signed the Registration Statement.

20. Defendant G. Alex Bernhardt Sr. ("Bernhardt") is a director of New Duke. Prior to the Merger, Bernhardt was a director of Duke since 1991 and signed the Registration Statement.

21. Defendant Michael G. Browning ("Browning") is a director of New Duke. Prior to the Merger, Browning was a director of Duke since 1990 and signed the Registration Statement.

22. Defendant Daniel R. DiMicco ("DiMicco") is a director of New Duke. Prior to the Merger, DiMicco was a director of Duke since 2007 and signed the Registration Statement.

23. Defendant John H. Forsgren ("Forsgren") is a director of New Duke. Prior to the Merger, Forsgren was a director of Duke since 2009 and signed the Registration Statement.

24. Defendant Ann Maynard Grey ("Grey") is a director of New Duke. Prior to the Merger, Grey was a director of Duke since 1994 and signed the Registration Statement.

25. Defendant James H. Hance, Jr. ("Hance") is a director of New Duke. Prior to the Merger, Hance was a director of Duke since 2005 and signed the Registration Statement.

26. Defendant E. James Reinsch ("Reinsch") is a director of New Duke. Prior to the Merger, Reinsch was a director of Duke since 2009 and signed the Registration Statement.

27. Defendant James T. Rhodes ("Rhodes") is a director of New Duke. Prior to the Merger, Rhodes was a director of Duke since 2001 and signed the Registration Statement.

28. Defendant Philip R. Sharp ("Sharp") is a director of New Duke. Prior to the Merger, Sharp was a director of Duke since 2007 signed the Registration Statement.

29. Defendants listed in paragraphs 16-28 above are collectively herein referred to as the "Individual Defendants."

COMMON FACTUAL ALLEGATIONS

The Merger

30. On January 10, 2011, Duke and Progress issued a joint press release announcing that the boards of directors of both companies had unanimously approved a definitive merger agreement pursuant to which Duke would acquire Progress in a stock-for-stock transaction that was represented to be a merger-of-equals.

31. The newly formed company, New Duke, was to be the country's largest utility with assets of over $95 billion (calculated on a pro forma basis as of December 31, 2010), approximately $65 billion in enterprise value, and approximately $37 billion in market capitalization. Moreover, New Duke was said to have the country's largest regulated customer base, with service to approximately 7.1 million customers in six regulated service territories –

North Carolina, South Carolina, Florida, Indiana, Kentucky, and Ohio.

32. Pursuant to the terms of the Merger, each outstanding share of Progress common stock was to be converted into the right to receive 2.6125 shares of Duke common stock. Based on Duke's closing share price on January 7, 2011 (one day prior to the signing of the Merger Agreement), the share exchange ratio represents a value to Progress shareholders of $46.48 per share – a premium of only 3.9 percent. The companies explained at the time that the small premium was due to the fact that the Merger was not a buyout but rather a merger-of-equals.

33. Progress had an attractive asset and business mix that made it a valuable standalone enterprise in its own right. For instance, Progress's business was 100 percent regulated, because Progress had divested itself of its less stable, non-regulated businesses over the past decade. In addition, Progress had made significant investments toward modernization and environmental upgrades, an effort to move away from dirtier coal resources that has transformed its generation capabilities to be based on just 33 percent (owned capacity) and 42 percent (actual capacity) coal. These measures would permit Progress both to comply with forthcoming environmental regulations and to benefit from rate base increases and earnings growth that are only just beginning to take shape.

34. Following the announcement of the Merger, on February 18, 2011 a Progress investor conference call made clear that Progress's future was promising. Defendant Johnson stated that its capital investments in modernization and environmental upgrades were paying off in terms of rate base growth that support ongoing earnings targets and that by merging with Progress just after Progress completed these upgrades, New Duke shareholders would reap the benefits of those investments under his continued leadership.

The Registration Statement

35. Following the announcement of the Merger Duke and Progress filed a Registration Statement with the SEC. The initial Registration Statement was filed on March 17, 2011. The Registration Statement was subsequently amended on April 8, 2011, April 25, 2011, May 13, 2011, and June 30, 2011. The final Registration Statement was filed on July 7, 2011. No amendments have been made to the Registration Statement since July 7, 2011.

36. The Registration Statement repeatedly represented that New Duke was to be a merger-of-equals. Specifically, the Registration Statement stated that the Progress Board was recommending the Merger to its then shareholders because of the "*Shared Strategic Vision and Governance*."

37. The Registration Statement stated:

- Mr. Johnson will be the president and chief executive officer of the combined company.
- Mr. Rogers will be the executive chairman of the board of directors of the combined company.
- The senior management team named in the merger agreement draws from the senior management teams of both companies. The combined company's board of directors will have seven directors designated by Progress Energy and eleven directors designated by Duke Energy. The lead director will be designated by Duke Energy.
- The combined company's board committee assignments will be allocated on a balanced basis among Progress Energy and Duke Energy designees.

38. Furthermore the Registration Statement stated that New Duke would be managed by the leadership of both companies:

> The following individuals will be the senior officers of Duke Energy upon completion of the merger:
>
> - Lynn J. Good, currently group executive and chief financial officer of Duke Energy, will continue as chief financial officer;
> - Dhiaa M. Jamil, currently group executive, chief generation officer and chief nuclear officer of Duke Energy, will lead nuclear generation;

- Jeffrey J. Lyash, currently executive vice president of energy supply of Progress Energy, will lead energy supply;
- Marc E. Manly, currently group executive, chief legal officer and corporate secretary of Duke Energy, will be general counsel and corporate secretary;
- John R. McArthur, currently executive vice president, general counsel and corporate secretary of Progress Energy, will lead regulated utilities;
- Mark F. Mulhern, currently senior vice president and chief financial officer of Progress Energy, will be chief administrative officer;
- B. Keith Trent, currently group executive and president of commercial businesses of Duke Energy, will lead commercial businesses;
- Jennifer L. Weber, currently group executive – human resources and corporate relations of Duke Energy, will lead human resources; and
- Lloyd M. Yates, currently president and chief executive officer of Progress Energy Carolinas, will lead customer operations.

39. Overall the Registration Statement painted a picture to Progress shareholders that the transaction was structured as a merger-of-equals thereby protecting Progress shareholders interests in New Duke.

The Registration Statement was False and Misleading

40. The Registration Statement was false and misleading at the time of the offering of the New Duke shares to Progress shareholders on July 2, 2012.

41. Contrary to the repeated representations in the Registration Statement, members of the Duke Board began to meet in May 2012 to discuss the ouster of Johnson and retention of Rogers to lead New Duke as CEO.

42. On June 23, 2012, members of the Duke Board met with Rogers who then agreed to act as CEO of New Duke.

43. Four days later, on June 27, 2012, with full knowledge that the Duke members of the New Duke Board intended to oust Johnson, the New Duke Board entered into a three-year employment agreement with Johnson that provided terms should Johnson be terminated, as the Duke members of the New Duke Board knew would occur. The employment agreement provided should Johnson be resign for "good reason" he would be entitled to:

(A) a cash lump sum payment equal to the sum of (w) any earned but unpaid Annual Base Salary through the Date of Termination, (x) any of the Employee's business expenses that are reimbursable, but have not been reimbursed as of the Date of Termination, (y) the Employee's annual cash bonus for the fiscal year immediately preceding the fiscal year in which the Date of Termination occurs, if such annual cash bonus has not been paid as of the Date of Termination and (z) any accrued vacation pay to the extent not theretofore paid (the sum of the amounts described in subclauses (w), (x), (y) and (z), the "Accrued Obligations");

(B) a cash lump sum payment equal to 300% of the sum of (x) Annual Base Salary and (y) the greater of (1) the average annual cash bonus paid to the Employee with respect to the three completed calendar years immediately preceding the year during which the Date of Termination occurs (including years during which the Employee was an employee of Progress); *provided*, *however*, that if the Employee was not eligible to receive an annual cash bonus with respect to each of the three calendar years immediately preceding the year in which the Date of Termination occurs, the average shall be determined for that period of calendar years, if any, for which the Employee was eligible to receive an annual cash bonus, or (2) the Target Bonus Opportunity for the year during which the Date of Termination occurs;

(C) Duke Energy shall pay the total cost for continued participation under the applicable medical, dental, vision and life insurance plans in which the Employee participated immediately prior to the termination of his employment until the earlier of the third anniversary of the Date of Termination and the date or dates that the Employee receives comparable coverage and benefits under the plans, programs and/or arrangements of a subsequent employer;

(D) a cash lump sum payment equal to 100% of his Target Bonus Opportunity for the year during which the Date of Termination occurs;

(E) all outstanding unvested stock options and restricted stock units shall vest immediately and each performance share award outstanding at the time of termination shall vest at target level;

(F) vesting of any awards which have been granted to the Employee by the Company or any of its Affiliates under any incentive compensation plan, program or agreement (other than those plans or agreements specified above) prior to the Date of Termination; and

(G) payment of accrued benefits in all accrued nonqualified deferred compensation plans.

44. Immediately following the closing of the Merger on July 2, 2012, the New Duke Board met and voted 10-5 on its pre-arranged plan to oust Johnson, with all five nay votes coming from former Progress directors who joined the New Duke Board.

45. On July 3, 2012, New Duke filed an 8-K announcing that the Merger was completed, that New Duke had signed an employment agreement with Johnson, and that Johnson had agreed to resign effective 12:01a.m. on July 3, 2012 and agreed to terms for his resignation in a formalized agreement (the "Separation Agreement"). The 8-K also stated that the New Duke Board had reinstated Rogers as CEO.

46. Attached to the 8-K filed with the SEC at 5:07p.m. on July 3, 2012 was a copy of the Johnson employment agreement dated June 27, 2012, and the Separation Agreement dated July 3, 2012.

47. The Separation Agreement states that Johnson is entitled to "the payments and benefits" contemplated in his June 27, 2012 employment agreement. In addition, the Separation Agreement stated it would reimburse Johnson for business expenses incurred and any expenses incurred in connection with his relocation to Charlotte. In addition, all outstanding equity awards immediately vested upon his resignation. Finally, in exchange for Johnson's agreement not to disparage New Duke, Johnson will be entitled to up to $1.5 million as an additional payment.

48. This shocking information as disclosed in the 8-K led to both regulatory agencies and Progress directors who approved the deal publically stating that they were mislead.

49. Statements and sworn testimony of Rogers confirm the falsity of the Registration Statement. Rogers testified before the North Carolina Utilities Commission (the "Commission") on July 9, 2012. During his sworn testimony he stated that he was made aware that the Duke Board was not satisfied with Johnson's "autocratic" leadership in May 2012.

50. Johnson also made sworn statements before the Commission on July 19, 2012. Johnson testified that Duke wanted out of the Merger and when they could not determine a way to get out, they decided to oust Johnson: "They wanted the merger. Then they didn't. Then they

couldn't get out of it, and they didn't want to be stuck with me, as the person who dragged them into it." Johnson also testified that after the Federal Energy Regulatory Commission expressed concerns about the Mergers' effect on wholesale power prices in December 2011, Duke and Progress disagreed over the cost and method, to resolve those issues causing his relationship with Rogers to begin to deteriorate. Johnson also testified that he heard that Duke executives were telling investors that the Merger might not go through in early 2012.

51. Two former Progress directors have also publically commentated on Duke's actions.

52. Alfred Tollison Jr., who served on the Progress Board until the completion of the merger stated: "Frankly, I felt misled. Just from circumstantial evidence you would have to think it didn't happen overnight, that there was a lot of forethought given to it." Despite this likely forethought, Duke failed to amend the Registration Statement or provide any notice to the Progress shareholders that the information contained therein was false.

53. Another former Progress board member, John Mullin III, told *The Wall Street Journal*, that: "I do not believe that a single director of Progress would have voted for this transaction as structured with the knowledge that the CEO of Duke, Jim Rogers, would remain as the CEO of the combined company." Mullin also stated: "In my opinion this is the most blatant example of corporate deceit that I have witnessed during a long career on Wall Street and as a director of 10 publicly traded companies and as a former trustee of Putnam's numerous mutual funds."

The Fall Out Over the False and Misleading Registration Statement

54. After the truth emerged, Standard & Poor's placed New Duke on a credit watch. Standard & Poor's analyst, Dimitri Nikas, stated: "The sudden shift in management raises

concerns about effective corporate governance, successful handling of the anticipated merger integration and the ongoing effective management of pending challenges that face the combined entity."

55. Moreover the Commission has launched an investigation. Robert Gruber, the chief public advocate at the Commission, had deep concerns about Johnson's dismissal publicly stating: "Had [the Commission] known about this management structure before the merger closed, we might not have voted to approve it. Mr. Rogers is very competent but that is not how the deal was advertised."

56. The Commission has also ordered testimony from the key players at New Duke and Progress. Rogers testified before the Commission on July 9, 2012. Johnson testified on July 19, 2012. And the Commission has ordered four New Duke Board members – two former Duke directors, Ann Maynard Gray and Michael Browning, and two former Progress directors, E. Marie McKee and James Hyler Jr. – to testify as well.

57. Gray testified before the Commission on July 20, 2012 telling the Commission that the Duke Board members were concerned about Johnson's "leadership style." Gray testified under oath that Johnson got off to a rocky start even before the companies' announced the Merger, when he gave a presentation in 2010 and discussed how he liked to operate. Gray testified that Johnson "describe[d] himself as an individual who likes to learn but not to be taught. That was an expression that stayed with the board." Gray said she DiMicco were both concerned about Johnson after that initial meeting.

58. Despite the concern of these Due Board members prior to the Merger, Duke still agreed to a Merger Agreement that called for Johnson to be CEO and issued a Registration

Statement stating that Johnson would be CEO despite their knowledge that the Duke members of the New Duke Board would never allow Johnson to actually take control of New Duke.

59. The Commission has indicated that its investigation is not complete.

60. Commentators have speculated that while the Commission is unlikely to unwind the Merger, as it is empowered to do, it will likely seek to impose a substantial fine or other regulatory penalties on New Duke.

61. In addition, analysts have speculated that trust will be an issue when New Duke seeks future rate increases from the Commission.

62. North Carolina's Attorney General, Roy Cooper, is also seeking documents to find out what else the public was not told and see if consumers were misled about the Merger.

63. After Johnson's forced resignation, three senior Johnson lieutenants resigned: Chief Administrative Officer, Mark Mulhern, Chief Integration and Innovation Officer, Paula Sims, and Executive Vice President, John McArthur.

64. Also, four former Progress directors who did not join the New Duke Board have said they would not have approved the Merger had they known Rogers would be put in charge.

65. As a result of the change in leadership at New Duke, shareholders appear to be concerned as demonstrated by New Duke's stock prices dropping. New Duke's stock prices began to fall following the July 3, 2012 announcement of Johnson's termination. On July 13, 2012, alone New Duke's stock dropped $2.34, or 3.4 percent, on heavy volume, while broader utility stock indexes were essentially flat resulting in damages to former Progress shareholders that exchanged their shares as part of the Merger.

CLASS ACTION ALLEGATIONS

66. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of all former Progress shareholders who acquired New Duke stock as a result of the Merger. Excluded from the Class are the defendants, all of the officers and directors of Duke, members of their immediate families and their legal representatives, heirs, predecessors, successors and assigns and any entity in which any of the foregoing has a controlling interest.

67. The members of the Class are so numerous that joinder of all members is impracticable. As of July 5, 2011, the record date for the Progress special meeting, there were approximately 295 million shares of Progress outstanding that were to be exchanged for shares of New Duke shares upon the completion of the Merger.

68. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether the federal securities laws were violated by defendants' acts and omissions as alleged herein;

(b) Whether statements made in the Registration Statement to Progress shareholders misrepresented and/or omitted material facts about the Merger;

(c) Whether defendants' statements made in the Registration Statement misrepresented and/or omitted material facts about the Merger;

69. Plaintiff's claims are typical of the claims of the members of the Class as she and members of the Class sustained damages arising out of the defendants' wrongful conduct in violation of federal securities laws as complained of herein.

70. Plaintiff will fairly and adequately protect the interests of the members of the Class, and has retained counsel competent and experienced in class action and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

71. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members of the Class is impracticable. Furthermore, because the damages suffered by individual members of the Class may in some instances be relatively small, the expense and burden of individual litigation make it impossible for such Class members individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

COUNT I
For Violation of Section 12(a)(2) of the Securities Act
Against All Defendants

72. Plaintiff incorporates by reference herein each and every allegation set forth above.

73. Plaintiff asserts this claim within one year of the date on which she discovered or should have discovered, through the exercise of reasonable diligence, the untrue statements and omissions alleged herein, and within three years after the bona fide sale of Duke common stock pursuant to the exchange of securities which occurred in connection with the Merger.

74. Plaintiff and the other members of the Class were recipients of stock issued by New Duke and offered pursuant to the Registration Statement. Defendants were sellers, offerors and/or solicitors of sales of the Duke stock offered pursuant to the Registration Statement. The defendants knew or should have known that the Registration Statement prepared by the defendants and distributed in connection with the Merger was inaccurate and misleading, contained untrue statements of material facts, omitted other material facts necessary to make the

statements made not misleading and concealed and failed to adequately disclose material facts as described above.

75. Accordingly, Plaintiff and the other members of the Class have the right to rescind and recover the consideration exchanged for their Duke shares and hereby reserve the right to rescind and tender their shares to Duke. To the extent that Plaintiff and other members of the Class have sold their shares, they are entitled to recissory damages.

COUNT II
For Violation of Section 15 of the
Securities Act Against Rogers and Gray

76. Plaintiff incorporates by reference herein each and every allegation set forth above.

77. Rogers and Gray participated in the preparation and/or dissemination of the foregoing false representations by providing information or approving their substance.

78. Rogers and Gray are controlling persons with respect to New Duke regarding the content of the misrepresentations made to Plaintiff and the Class, within the meaning of Sections 11 and 12(a)(2) of the Securities Act, because they had the authority or power to control or influence the conduct of Duke, signed the Registration Statement and/or otherwise participated in the process which allowed the offering to be completed.

79. Rogers and Gray knew or should have known of the violations of Sections 11 and 12(a)(2) of the Securities Act as set forth in Counts I above.

80. Rogers and Gray failed to disclose to Plaintiff and other members of the Class, the truth concerning the false and misleading statements contained in defendants' communications with Plaintiff and the Class, and failed to advise Plaintiff and the Class of the omitted statements

of material fact. Rogers and Gray knew these representations and omissions to be false and misleading at the time that they were made.

81. As a consequence of these defendants' unlawful course of conduct, Plaintiff and the other members of the Class have been damaged and continue to be damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Class, pray for a judgment as follows:

A. Determining that this action is a proper class action and certifying, *inter alia*, Plaintiff as the Class representative under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiff and all other Class members against all defendants for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding rescission or recissory damages to Class members who exchanged Progress stock for Duke stock in the Merger;

D. Awarding Plaintiff and all other members of the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

E. For pre-and post-judgment interest in the maximum amount prescribed by law; and

F. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands trial by jury in this action of all claims asserted against all defendants.

Dated: July 24, 2012

GRAY, LAYTON, KERSH, SOLOMON, FURR & SMITH, P.A.

By: /s/ William E. Moore, Jr.

William E. Moore, Jr.
N.C. State Bar No. 9962
516 South New Hope Road
P.O. Box 2636
Gastonia, North Carolina 28053-2636
Telephone: (701) 865-4400
Facsimile: (704) 866-8010
bmoore@gastonlegal.com
Local Counsel for Plaintiff

GARDY & NOTIS, LLP
James S. Notis
Jennifer Sarnelli
501 Fifth Avenue, Suite 1408
New York, New York 10017
Tel: 212-905-0509
Fax: 212-905-0508