



contaminants that can cause cancer. They were advised by the State that their own private water wells tested positive for one or more contaminants. And, Plaintiffs have learned that Duke's own testing of its coal ash waste at the sites within half a mile of their homes also reveals these contaminants.

2. Parents like Amy Brown are afraid to let their children drink the water. The State Toxicologist informed Ms. Brown and others that the tap water from the private wells in their yards was unfit to drink. Duke has denied that its coal ash ponds have caused any problems with the water. However, environmental groups that sued Duke have proven that Duke violated the law and allowed coal ash waste to contaminate public waters near its plants. This contamination included lakes and rivers used by the public for recreation and as sources of public water supplies for major cities such as Charlotte.

3. Plaintiffs and their families have also learned that Duke admitted to criminal negligence in its coal ash management practices in a Joint Factual Statement filed as part of the resolution of a claim brought by the United States Department of Justice. But for the criminal negligence and subsequent spill, the events that followed would not have been set in motion.

4. The coal ash is kept in massive unlined basins or ponds. They seep and leak. Ms. Brown and other neighbors of the plants worry that in the future a basin may breach and cause a catastrophic spill. One of the largest coal ash waste spills in the nation occurred in 2014 at Duke's Dan River plant.

5. Duke has denied that its coal ash can cause any harm to these families. Yet, in proposing a "financial supplement" to accompany its plans to make public water connections available to the neighbors, Duke demands that they enter into contract language that is unfair, deceptive and unconscionable. Duke's contract language would prohibit the neighbors from ever

suing Duke if family members were diagnosed in the future with cancer or other diseases caused by the coal ash. The families are worried about the risk of future disease, because they drank the tap water for years and let their infants and children drink it. Duke's contract language would also bar them from suing if one of the basins failed causing a spill. It would bar claims if there was coal ash dust in the air that harmed their health. It requires the families to "acknowledge" that Duke has completely compensated them for any harm – which is impossible for them to do because they do not know whether they will have any harm in the future, and if so, what the damages will be.

6. Accordingly, the Plaintiffs ask the Court to exercise its authority and instruct Duke to perform the agreement without the release. Plaintiffs ask that the Court declare that the contract terms releasing this public utility from any past or future liability amount to an unlawful exculpatory clause. Plaintiffs respectfully request that the Court specifically enforce the agreement between them and Duke with the invalid language stricken.

7. In addition, or in the alternative, Plaintiffs allege that Duke has engaged in unfair and deceptive trade practices within the meaning of Chapter 75 of the North Carolina General Statutes. They also allege that Duke has acted negligently with regard to managing its coal ash, the result of which has been to injure Plaintiffs. Finally, Plaintiffs allege that Duke's conduct under the circumstances amounts to a private nuisance. Based upon these allegations, they request injunctive relief and damages in the form of the compensation Duke is offering, without the exculpatory clause, and such other relief as the Court may deem appropriate.<sup>1</sup>

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<sup>1</sup> Plaintiffs understand that some individuals may have already signed the financial supplement agreement with Duke out of necessity or need for funds, or may feel compelled to do so in the near future. Should Plaintiffs prevail on their claim, they request that the Court notify those individuals that they have the right to strike the exculpatory clause if they so desire. Furthermore, any individual who chooses may opt out of the class.

## THE PARTIES

### The Plaintiffs

8. **Amy Brown** resides at 103 Mitchell Street, Belmont, North Carolina in Gaston County, near the Allen Plant of Duke and its coal ash ponds.

9. **Deborah Graham** resides at 310 Dukeville Road, Salisbury, North Carolina in Rowan County, near the Buck Plant of Duke and its coal ash waste.

10. **Eric Washam** resides at 8396 Sherrills Ford Road, Sherrills Ford, North Carolina in Catawba County, near the Marshall Plant of Duke and its coal ash waste.

11. **Guy Hutchins** resides at 2814 Riverfront Drive, Mooresboro, North Carolina in Cleveland County, near the Cliffside Plant of Duke and its coal ash waste.

12. **Sandra Majors** resides at 4072 McGhees Mill Road, Semora, North Carolina in Person County, near the Roxboro Plant of Duke and its coal ash waste.

13. **Geneva Shade** resides at 6 Shade Drive, Arden, North Carolina in Buncombe County, near the Asheville Plant of Duke and its coal ash waste.

14. **George “Bill” Dalton** resides at 1060 Georgia Road, Walnut Cove, North Carolina in Stokes County, near the Belews Creek Plant of Duke and its coal ash waste.

15. **Johnny Gurley** resides at 1350 Old Smithfield Road, Goldsboro, North Carolina in Wayne County, near the H.F. Lee Plant of Duke and its coal ash waste.

16. **Timothy Barwick** resides at 209 Mullins Lane, Roxboro, North Carolina in Person County, near the Mayo Plant of Duke and its coal ash waste.

### The Defendants

17. **Duke Energy Carolinas, LLC** is a limited liability company organized under the laws of North Carolina and has its principal place of business in North Carolina. Its registered

agent office is c/o CT Corporation System, 160 Mine Lake Ct Ste 200, Raleigh, NC 27615-6417. Its principal office is located at 526 South Church Street, Charlotte, NC 28202-1802.<sup>2</sup> It may be served with process at those addresses.

18. **Duke Energy Progress, LLC** is a limited liability company organized under the laws of North Carolina and has its principal place of business in North Carolina. Its registered agent office is c/o CT Corporation System, 160 Mine Lake Ct Ste 200, Raleigh, NC 27615-6417. Its principal office is located at 410 South Wilmington Street, Raleigh, NC 27601-1849.<sup>3</sup> It may be served with process at those addresses.

### **JURISDICTION AND VENUE**

19. This Court has personal jurisdiction over Defendants.

20. Venue is proper in this County in that Duke Energy Progress has its principal office in Raleigh and both Defendants have their registered office there.<sup>4</sup>

21. This Court has subject matter jurisdiction over the controversy.

### **FACTUAL BACKGROUND**

#### **The 2014 Dan River spill and its aftermath.**

22. On Sunday, February 2, 2014, one of the largest coal ash disasters in the nation occurred in North Carolina at Duke's Dan River Plant. A pipe that ran under a giant coal ash waste storage pond broke. It spilled approximately 39,000 tons of ash and 27 million gallons of

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<sup>2</sup> Duke Energy Carolinas, LLC was formerly known as Duke Energy Corporation and/or as Duke Power Company.

<sup>3</sup> Duke Energy Progress, LLC was formerly known as Cape Fear Power Company, Carolina Power & Light Company, and/or Duke Energy Progress, Inc.

<sup>4</sup> See N.C. Gen. Stat. § 1-82 ("In all other cases the action must be tried in the county in which the plaintiffs or the defendants, or any of them, reside at its commencement...."); § 1-79 (residence of domestic LLC is where its registered or principal office is located).

ash pond water into the environment.<sup>5</sup> As a result of this disaster and the attention it drew, federal and state authorities began investigating Duke's conduct.

23. Meanwhile, Amy Brown and the other Plaintiffs and their families went about their daily lives. They each lived less than half a mile from one of Duke's plants. They all used tap water to drink, cook with and provide to their children. This water came from private water wells, often in their own backyards.

24. They had no idea there could be a danger to them or their families from Duke's coal ash. Duke had assured them and the public at large that it was a good neighbor. Mailers they received with their power bills from Duke said that Duke was committed to clean safe power and protecting the environment.<sup>6</sup>

25. In fact, they were living near a ticking time bomb of coal ash. Coal ash waste is generated by coal-fired power plants. It is a pollutant. Over the years, Duke has generated massive amounts of coal ash waste at a dozen-plus plants across the State. Those plants include the plants that are near where the Plaintiffs reside: Allen, Asheville, Belews Creek, Buck, Cliffside, Lee, Marshall, Mayo and Roxboro.

26. For decades, the coal ash waste piled up at these sites. Duke stored it in huge open-air impoundments and in giant unlined basins full of water. Duke knew from years of

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<sup>5</sup> "According to EPA approximately 39,000 tons of ash and 27 million gallons of ash pond water were released." U.S. Department of the Interior, website information on Dan River Coal Ash Spill, available at [https://www.cerc.usgs.gov/orda\\_docs/CaseDetails?ID=984](https://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=984). See also Gabe Riven, Dan River Coal Ash Spill Timeline, North Carolina Health News, available at <http://www.northcarolinahealthnews.org/dan-river-coal-ash-spill-timeline/>.

<sup>6</sup> See, for example, the 2013 Duke Energy Progress residential insert available at <https://www.progress-energy.com/assets/www/docs/home/Welcome-insert-NC.pdf>. "We've been here for more than a century and are committed to continue serving this area's energy needs with clean, reliable, affordable power. Our balanced solution strategy combines energy efficiency, alternative energy and state-of-the-art power systems to ensure a secure energy future that meets our customers' changing energy needs. This innovative, environmentally responsible approach means you can continue to rely on us as an energy and community partner for many years to come." *Id.*

monitoring the waste that it contained many substances that are bad for human health. Internal corporate documents described how the waste included contaminants that could cause cancer, silicosis and other disease. Yet, the company did not tell its neighbors of these risks.

27. A federal investigation revealed that Duke had engaged in criminally negligent conduct which led to the Dan River spill. In May 2015, three subsidiaries of Duke Energy Corporation, including the two named Defendants herein, pleaded guilty to nine criminal violations of the Clean Water Act at several North Carolina facilities. They agreed to pay a \$68 million criminal fine and spend \$34 million on environmental projects and land conservation to benefit rivers and wetlands in North Carolina and Virginia. Four of the charges were the direct result of the massive coal ash spill from the Dan River power plant into the Dan River. The remaining violations were discovered as the scope of the investigation broadened based on allegations of historical violations at the companies' other facilities.<sup>7</sup>

28. The massive coal ash spill at the Dan River plant was a crime and it was the result of repeated failures by Duke Energy's subsidiaries to exercise controls over coal ash facilities.<sup>8</sup>

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<sup>7</sup> U.S. Department of Justice, press release number 15-651, "Duke Energy Subsidiaries Plead Guilty and Sentenced to Pay \$102 Million for Clean Water Act Crimes," May 14, 2015, available at <https://www.justice.gov/opa/pr/duke-energy-subsidiaries-plead-guilty-and-sentenced-pay-102-million-clean-water-act-crimes>. "Three subsidiaries of North Carolina-based Duke Energy Corporation, the largest utility in the United States, pleaded guilty today to nine criminal violations of the Clean Water Act at several of its North Carolina facilities and agreed to pay a \$68 million criminal fine and spend \$34 million on environmental projects and land conservation to benefit rivers and wetlands in North Carolina and Virginia. Four of the charges are the direct result of the massive coal ash spill from the Dan River steam station into the Dan River near Eden, North Carolina, in February 2014. The remaining violations were discovered as the scope of the investigation broadened based on allegations of historical violations at the companies' other facilities." *Id.* "As part of their plea agreements, Duke Energy Business Services LLC, Duke Energy Carolinas LLC and Duke Energy Progress Inc. will pay a \$68 million criminal fine and a total \$24 million community service payment to the National Fish and Wildlife Foundation for the benefit of the riparian environment and ecosystems of North Carolina and Virginia. The companies will also provide \$10 million to an authorized wetlands mitigation bank for the purchase of wetlands or riparian lands to offset the long-term environmental impacts of its coal ash basins. In addition, they will pay restitution to the federal, state and local governments that responded to the Dan River spill and be placed on a period of supervised probation for five years." *Id.*

<sup>8</sup> *See id.* ("The massive coal ash spill into North Carolina's Dan River last year was a crime and it was the result of repeated failures by Duke Energy's subsidiaries to exercise controls over coal ash facilities....").

Duke Energy's crimes reflected a breach of the public trust and a lack of stewardship for natural resources belonging to the citizens of North Carolina.<sup>9</sup> The massive release and subsequent investigation revealed criminal misconduct throughout the State.<sup>10</sup> Duke's actions adversely impacted the Dan River ecosystem and caused residents who live near and rely on the water supply much apprehension about the safety of the river.<sup>11</sup>

29. Over two hundred sixteen million Americans rely on surface water as their source of drinking water. Duke Energy put that resource at risk in North Carolina as the result of their criminal negligence.<sup>12</sup>

30. The federal court sentenced Duke to five years probation. It is unusual for a corporation to be placed on probation. The terms of the probation include that Duke is required to engage in environmental compliance programs at 14 facilities in North Carolina, including the ones near where the Plaintiffs reside.<sup>13</sup>

31. The same Duke management that was ultimately responsible for Dan River also has power over the other plants. The same Duke Business Services group that mismanaged environmental and public safety issues at Dan River, also oversees those issues at other plants.<sup>14</sup>

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<sup>9</sup> *See id.* ("Duke Energy's crimes reflect a breach of the public trust and a lack of stewardship for the natural resources belonging to all of the citizens of North Carolina....").

<sup>10</sup> *See id.* ("The massive release at the Dan River coal ash basin revealed criminal misconduct throughout the state....").

<sup>11</sup> *See id.* ("Duke's actions adversely impacted the Dan River ecosystem and caused residents who live near and rely on the water supply much apprehension about the safety of the river....").

<sup>12</sup> *See id.* ("Over two hundred sixteen million Americans rely on surface water as their source of drinking water ... Duke Energy put that precious resource at risk in North Carolina as the result of their negligence.").

<sup>13</sup> *See id.* ("Duke's subsidiaries operating 18 facilities in five states, including 14 in North Carolina, will also be required to develop and implement nationwide and statewide environmental compliance programs to be monitored by an independent court appointed monitor and be regularly and independently audited. Results of these audits will be made available to the public to ensure compliance with environmental laws and programs. The companies' compliance will be overseen by a court-appointed monitor who will report findings to the court and the U.S. Probation Office as well as ensuring public access to the information.").

<sup>14</sup> From the Joint Factual Statement: "DUKE ENERGY BUSINESS SERVICES provides shared services to all of Duke Energy Corporation's operating utilities nationwide, including: Legal Counsel; Central Engineering & Services;

The same Duke Energy Carolinas entity that owns and operates plants like Buck and Allen also ran the Dan River plant.<sup>15</sup> The Joint Factual Statement<sup>16</sup> which Defendants signed as part of the resolution of the criminal claims, includes an admission of misconduct extending throughout the sites: “DUKE ENERGY CAROLINAS' and DUKE ENERGY PROGRESS's coal combustion facilities throughout North Carolina allowed unauthorized discharges of pollutants from coal ash basins via ‘seeps’ into adjacent waters of the United States.” (Emphasis added).<sup>17</sup>

32. Ultimately, Duke’s criminal negligence which led to the Dan River spill also led to the situation the Plaintiffs face today, as discussed further below.

**The 2014 Coal Ash Management Act.**

33. On August 20, 2014, as a direct result of the Dan River spill and its aftermath, the State Legislature passed the Coal Ash Management Act (“CAMA”). *See generally* Coal Ash Management Act of 2014, N.C. Gen. Stat. § 130A-309.200 *et seq.*<sup>18</sup>

34. CAMA does not include any provision stating that it provides an exclusive remedy and does not preempt or bar a private cause of action for the injuries to neighboring landowners. CAMA only set forth a “floor” whose requirements apply “in addition” to other legal duties and remedies. N.C. Gen. Stat. § 130A.309.211(a) & (b).

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Environmental, Health & Safety; Ethics and Compliance; and Coal Combustion Products.” Case No. 5:15-cr-00062-H, Document 56, filed May 14, 2015, ¶ 11. A copy is available here:

[http://wwwcache.wral.com/asset/news/state/2015/05/14/14645414/Duke\\_Energy\\_plea\\_agreement.pdf](http://wwwcache.wral.com/asset/news/state/2015/05/14/14645414/Duke_Energy_plea_agreement.pdf).

<sup>15</sup> From the Joint Factual Statement: “From at least January 1, 2012, DUKE ENERGY CAROLINAS and DUKE ENERGY BUSINESS SERVICES failed to properly maintain and inspect the two stormwater pipes underneath the primary coal ash basin at the Dan River Steam Station in Eden, North Carolina. On February 2, 2014, one of those pipes failed, resulting in the discharge of approximately 27 million gallons of coal ash wastewater and between 30,000 and 39,000 tons of coal ash into the Dan River. The coal ash travelled more than 62 miles downriver....”

<sup>16</sup> Available at <https://www.justice.gov/opa/pr/duke-energy-subsidiaries-plead-guilty-and-sentenced-pay-102-million-clean-water-act-crimes>.

<sup>17</sup> Joint Factual Statement, ¶ 3.

<sup>18</sup> *See generally* Andrew Kenney, “NC lawmakers pass coal ash legislation; adjourn very long short session,” News & Observer, Aug. 20, 2014, available at <http://www.newsobserver.com/news/politics-government/state-politics/article10035944.html>.

35. The Act required Duke to over time shut down its coal ash waste basins on 14 properties including the ones near the Plaintiffs. N.C. Gen. Stat. § 130A.309.210(b)-(f). The construction of further coal ash basins was barred. N.C. Gen. Stat. § 130A.309.210(a). Duke was required to conduct groundwater monitoring and assessment. N.C. Gen. Stat. § 130A.309.211(a). By October 2014, Duke was required to conduct a Drinking Water Supply Well Survey to identify all drinking water supply wells within one-half mile of the compliance boundary of the impoundment. N.C. Gen. Stat. § 130A.309.211(c).

36. The homes in that half-mile zone included the Plaintiffs. Under the statute, the State would require sampling for drinking water supply wells where data regarding groundwater quality and flow and depth in the area of any surveyed well provide a reasonable basis to predict that the quality of water from the surveyed well may be adversely impacted by constituents associated with the presence of the impoundment. N.C. Gen. Stat. § 130A.309.211(c). By January 2015, Duke was required to initiate sampling and water quality analysis of the drinking water supply wells. *Id.*

37. Under CAMA, if the sampling and water quality analysis indicated that water from a drinking water supply well exceeds groundwater quality standards for constituents associated with the presence of the coal ash impoundment, then Duke had to replace the contaminated drinking water supply well with an alternate supply of potable drinking water and an alternate supply of water that is safe for other household uses. N.C. Gen. Stat. § 130A.309.211(c).

**Well sampling; 2015 “Do Not Drink” letters; 2015 plea bargain.**

38. The CAMA statute enacted in response to Duke’s criminal misconduct and the Dan River spill brought a focus upon the other Duke coal ash plants, and on the families who

lived within half a mile of them. Amy Brown and the other Plaintiffs watched as technicians came and took samples of their well water. Then, in the time period of April and May of 2015, they received letters from the State environmental agency advising them that their wells tested positive for contaminants associated with coal ash. They were told not to drink the water due to health concerns.

39. This news had a great effect on their quality of life and their ability to use and enjoy their homes. They began using bottled water for ordinary household uses such as for their children to drink and to cook with when preparing meals for their families. Their property values decreased and they began to fear the long-term effects on the health of their families. They had drank and used the water for years, not knowing of a risk. They became concerned about the long-term effects of all the years of coal ash exposure both airborne and waterborne.

40. Families then learned of Duke's plea bargain in the federal criminal case, which occurred in May 2015.<sup>19</sup> They could not, and cannot, reconcile Duke's public statements that it had done no wrong and the coal ash was safe, with Duke's admission of criminal liability in the federal case. In its May 2015 filing, the company admitted that coal ash was a pollutant<sup>20</sup> and that it had caused the Dan River spill.<sup>21</sup> Duke further admitted misconduct at other plants and that it had failed to account for nearly 200 seeps throughout its coal ash basins in the State.<sup>22</sup>

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<sup>19</sup> See the Joint Factual Statement, filed May 14, 2015. Available at

[http://wwwcache.wral.com/asset/news/state/2015/05/14/14645414/Duke\\_Energy\\_plea\\_agreement.pdf](http://wwwcache.wral.com/asset/news/state/2015/05/14/14645414/Duke_Energy_plea_agreement.pdf).

<sup>20</sup> See *id.* at ¶ 20 ("Coal ash and coal ash wastewater are pollutants."); ¶ 13 ("Coal ash contains various heavy metals and potentially hazardous constituents, including arsenic, barium, cadmium, chromium, lead, manganese, mercury, nitrates, sulfates, selenium, and thallium.").

<sup>21</sup> See *id.* at ¶ 80 ("From at least January 1, 2012, through February 2, 2014, DUKE ENERGY CAROLINAS and DUKE ENERGY BUSINESS SERVICES failed to take reasonable steps to minimize or prevent discharge of coal ash to the Dan River that would adversely affect the environment and failed to properly operate and maintain the DAN RIVER coal ash basins and the related stormwater pipes located beneath the Primary Coal Ash Basin, thus, negligently violating the DAN RIVER NPDES permit.").

<sup>22</sup> See *id.* at ¶ 12 (listing Allen, Buck and other facilities); ¶ 133 ("The Defendants have identified nearly 200 distinct seeps at the Defendants' coal ash basins throughout North Carolina.... Each of the facilities listed in the table at

### **2016 reversal of “Do Not Drink” letters; CAMA amendments.**

41. In March and April 2016, the State environmental agency reversed itself, after lobbying by Duke,<sup>23</sup> and sought to rescind the “do not drink” letter it had sent a year earlier. Several top environmental officials protested the decision. Megan Davies, M.D. was the Epidemiology Section Chief and State Epidemiologist in the Division of Public Health. On August 10, 2016, Dr. Davies resigned, stating that “I cannot work for a Department and Administration that deliberately misleads the public.”<sup>24</sup> The homeowners became more confused than ever and made the reasonable decision to keep using bottled water.

42. On July 14, 2016, the State legislature passed an amendment to CAMA. Among other things, it requires that Duke as the owner of the coal ash waste sites, “shall establish permanent replacement water supplies for ... each household” that had a drinking water supply well and was located within the half-mile vicinity of the coal ash. N.C. Gen. Stat. § 130A.309.211(c1) (emphasis added).<sup>25</sup>

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paragraph 12 had seeps of some form.”); ¶ 139 (“The Defendants did not begin gathering and providing detailed, specific, and comprehensive data concerning seeps, and particularly seeps discharging to waters of the United States, at each of the North Carolina coal ash basins to DENR until after the DAN RIVER spill in 2014.”).

<sup>23</sup> See Lisa Sorg, “‘Silence equals guilt’ and other internal DEQ, DHHS discussions about coal ash,” Dec. 21, 2016, NC Policy Watch, <http://www.ncpolicywatch.com/2016/12/21/silence-equals-guilt-internal-deq-dhhs-discussions-coal-ash/>; Nick Ochsner, “State toxicologist: Duke Energy lobbied to reverse ‘do not drink’ order,” May 12, 2016, WBTV, <http://www.wbvtv.com/story/31962180/state-toxicologist-duke-energy-lobbied-to-reverse-do-not-drink-order>; Alana Semuels, “The saga of North Carolina’s contaminated water,” April 18, 2017, The Atlantic, <https://www.theatlantic.com/business/archive/2017/04/the-saga-of-north-carolinas-contaminated-water/521211/>

<sup>24</sup> See Catherine Clabby and Rose Hoban, “Coal ash and water: timeline of a controversy,” Aug. 12, 2016, North Carolina Health News, <http://www.northcarolinahealthnews.org/2016/08/12/coal-ash-water-timeline-of-a-controversy/>. Dr. Davies letter is available at <http://www.northcarolinahealthnews.org/wp-content/uploads/2016/08/DaviesResignationPDF10Aug2016.pdf>.

<sup>25</sup> See bill summary located here: [https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course\\_materials/H630-SMRI-70%28sl%29\\_v3.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/H630-SMRI-70%28sl%29_v3.pdf). See N.C. Gen. Stat. § 130A.309.211(c1) (“As soon as practicable, but no later than October 15, 2018, the owner of a coal combustion residuals surface impoundment shall establish permanent replacement water supplies for (i) each household that has a drinking water supply well located within a one-half mile radius from the established compliance boundary of a coal combustion residuals impoundment....”).

43. The CAMA amendment also states that “if the Department determines that connection to a public water supply to a particular household would be cost-prohibitive, the Department shall authorize provision of a permanent replacement water supply to that household through installation of a filtration system. For households for which filtration systems are installed, the impoundment owner shall be responsible for periodic required maintenance of the filtration system.” N.C. Gen. Stat. § 130A.309.211(c1).

**Duke’s 2017 “financial supplement” offer.**

44. The CAMA amendment further provided that “[n]o later than December 15, 2016, an impoundment owner shall submit information on permanent replacement water supplies proposed to be provided to each household to the Department, including, at a minimum, the type of permanent water supply proposed; the location of the household and its proximity to the nearest connection point to a public water supply; projected cost of the permanent water supply option proposed for the household; and any proposal to connect to a public water supply. The Department shall evaluate information submitted by the impoundment owner and render a final decision to approve or disapprove the plan, including written findings of fact, no later than January 15, 2017.” N.C. Gen. Stat. § 130A.309.211(c1).

45. As Duke prepared and sent its proposed plans to the State to connect the neighboring households to public water, and provide water filter systems to other homes, Duke began to let State regulators and the public know that it was also planning to provide a “financial supplement” to the neighbors. On December 7, 2016, Duke announced that it “intends to offer a

financial supplement; along with new water supplies to homeowners.” However, the company would not say “what terms or conditions would accompany any payment.”<sup>26</sup>

46. Duke’s formal press release dated December 7, 2016 failed to include any mention of a release of liability. Rather, it touted that the utility would be “[o]ffering eligible property owners a connection to a public water supply and/or installation of whole-home water filter systems” for “about 950 eligible households.” “In the coming weeks, the company will finalize the details of a financial supplement to provide residents peace of mind by addressing concerns they've expressed about property values, new water bills or disturbance during construction or maintenance.” “The company remains committed to completing this work in ways that protect people, the environment and wallets.”<sup>27</sup>

47. Duke made its announcement of the “financial supplement” on the same date, December 7, that it submitted its permanent water replacement plans to the North Carolina Department of Environmental Quality.<sup>28</sup>

48. On January 13, 2017, the North Carolina Department of Environmental Quality approved Duke’s plans for supplying permanent replacement water for the neighbors.<sup>29</sup>

49. It was only after the DEQ approval of Duke’s water plans, that through the remainder of January and into February, 2017, homeowners began to learn that Duke was

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<sup>26</sup> Catherine Clabby, “Coal Ash Families Get Word of Water Replacement Plan,” North Carolina Health News, Dec. 7, 2016, available at <http://www.northcarolinahealthnews.org/2016/12/07/coal-ash-families-get-word-of-water-replacement-plan/> (describe that “Duke Energy intends to offer a financial supplement; along with new water supplies to homeowners living near 14 utility properties around North Carolina that contain coal ash waste” but that it was “not known how much money Duke will offer neighbors. Nor is it clear what terms or conditions would accompany any payment, utility spokeswoman Erin Culbert told NC Health News.”).

<sup>27</sup> Duke’s press release available at <https://www.hubs.com/power/explore/2016/12/duke-energy-files-required-drinking-water-assistance-plan-in-north-carolina>. See also <https://news.duke-energy.com/releases/releases-20161207>.

<sup>28</sup> See Duke letter to DEQ dated Dec. 7, 2016, available on DEQ website.

<sup>29</sup> See DENR press release dated Jan. 13, 2017, available at <https://deq.nc.gov/plans-alternate-water-supplies-near-coal-ash-facilities-get-preliminary-approval>.

requiring execution of a release that would mean residents would give up their right to sue Duke over coal ash claims anytime in the future.<sup>30</sup> Even then, residents were not clear as to the exact language of the release Duke was proposing.<sup>31</sup>

50. A Duke handout, mailed to families on or about January 26, 2017, still did not state the actual language of the release. It described that Duke in the future would provide “an agreement that describes what is covered or not covered as part of the permanent water solution.” Duke added that “the agreement will also include a standard release of any claims for further compensation or money from Duke Energy related to alleged groundwater impacts or the permanent water solution.”<sup>32</sup>

51. Duke also said it would meet with neighbors and take their views into account before submitting final plans for state approval. “Neighbor input and choice are critical elements of the strategy.”<sup>33</sup> When the meetings occurred, many neighbors expressed their desire for full compensation from Duke for the water costs. They also expressed to Duke their opinions as to the unfairness of the release.

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<sup>30</sup> Appalachian Voices blog, Jan. 20, 2017, <http://appvoices.org/2017/01/20/duke-neighbors-respond-to-goodwill-package/>. See also David Boraks, “Some Coal Ash Neighbors Balk At Duke ‘Goodwill’ Payments,” Jan. 20, 2017, WFAE website, <http://wfae.org/post/some-coal-ash-neighbors-balk-duke-goodwill-payments>; Alana Semuels, “The Saga of North Carolina’s Contaminated Water,” April 18, 2017, The Atlantic, available at <https://www.theatlantic.com/business/archive/2017/04/the-saga-of-north-carolinas-contaminated-water/521211/>; Emery Dalesio, “Duke offers ‘goodwill’ coal-ash payment,” Feb. 3, 2017, Associated Press, available at <http://www.robsonian.com/news/95732/duke-offers-goodwill-coal-ash-payment>.

<sup>31</sup> Catherine Clabby, Next Chapter of Coal Ash Saga: Duke Energy Encounters Neighbors, February 21, 2017, North Carolina Health News, <http://www.northcarolinahealthnews.org/2017/02/21/next-chapter-coal-ash-saga-duke-energy-encounters-neighbors/> (discussing community meetings and noting “exact wording not yet finalized” for the release).

<sup>32</sup> Eric Wildstein, “Duke neighbors to elect choices on water connections, stipends,” Feb. 4, 2017, Gaston Gazette, available at <http://www.gastongazette.com/news/20170204/duke-neighbors-to-elect-choices-on-water-connections-stipends>.

<sup>33</sup> Dec. 7, 2016 Duke press release.

**Terms of Duke's exculpatory clause.**

52. Plaintiffs did not receive the final language of the financial supplement agreement until as late as July 2017. When it came, they were disheartened to learn that far from removing the release of liability, Duke had set out final language that was extremely broad.

53. A copy of the agreement sent to Amy Brown on July 18, 2017 is attached hereto as **Exhibit 1**. This document is entitled "AUTHORIZATION FOR ENROLLMENT AND ACCEPTANCE OF DUKE ENERGY FINANCIAL SUPPLEMENT PROGRAM."<sup>34</sup>

54. The last page of the agreement includes the following release language:

BY ENROLLING IN THE FINANCIAL SUPPLEMENT PROGRAM AND ACCEPTING THESE BENEFITS FROM DUKE ENERGY, I ACKNOWLEDGE THAT DUKE ENERGY HAS FULLY COMPENSATED ME FOR ANY HARM OR LOSS THAT I HAVE SUFFERED, OR MAY SUFFER, AS A RESULT OF ANY CONTAMINATION IN MY WELL WATER AT THE PROPERTY IDENTIFIED BELOW, INCLUDING ANY INJURY TO ME OR DAMAGE TO MY PROPERTY, THAT IS ALLEGED TO HAVE BEEN CAUSED BY DUKE ENERGY OR ANY OF ITS AFFILIATES. I, INDIVIDUALLY, AND ON BEHALF OF MY HEIRS, SUCCESSORS AND ASSIGNS, AGREE NOT TO SEEK ANY FURTHER COMPENSATION FROM, OR TAKE ANY LEGAL ACTION AGAINST, DUKE ENERGY OR ANY OF ITS AFFILIATES ARISING FROM OR RELATING TO ANY CONTAMINATION OF WELL WATER OR DAMAGE TO MY PROPERTY ALLEGEDLY CAUSED BY DUKE ENERGY'S COAL COMBUSTION RESIDUAL IMPOUNDMENTS.

(See Exhibit 1, p. 6 of 10).

55. Far from providing residents "peace of mind," this language made neighbors more concerned than ever. Duke after insisting its coal ash waste was safe, now wanted a broad release of any claims of contamination, harm or loss, based on what the homeowners "alleged" when they had not even sued.

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<sup>34</sup> It is also available in generic form on Duke's website at <https://www.duke-energy.com/our-company/about-us/power-plants/ash-management/water-plans>. The generic form itself is available here: [https://www.duke-energy.com/\\_/media/pdfs/our-company/ash-management/financial-supplement-agreement-and-release.pdf](https://www.duke-energy.com/_/media/pdfs/our-company/ash-management/financial-supplement-agreement-and-release.pdf).

**Reasons why the clause is unfair and invalid.**

56. This release language is invalid, first, because it violates public policy. The courts have stated that a public utility cannot force consumers to sign a prospective waiver of claims that may include future negligence of the company. Duke Energy Carolinas, LLC and Duke Energy Progress, LLC are each a regulated public utility. See case law cited in the declaratory judgment claim, below.

57. Second, under the circumstances, Duke is implicitly obligated under CAMA to provide payment for out-of-pocket city water connection costs, including deposits some people may have to pay to turn on the water service, and periodic public water bills. As it stands, Duke has construed CAMA in a confusing manner as to covered costs:

- a. Running out the public water line – covered.
- b. Payment of tap fee – covered.
- c. Payment to cap private well or adapt for use to water lawn or other non-potable uses and put in backflow preventer – covered.
- d. Payment to install filter system – covered.
- e. Periodic payment for maintenance of backflow preventer – not covered.
- f. Payment for periodic maintenance of filter system – covered.
- g. Payment for periodic fees for public water – not covered.
- h. Payment for deposit for public water – not covered.

58. Because CAMA is a remedial statute, it should be construed in favor of coverage. Third, the release reflects unfair and deceptive conduct. Duke has stated that the \$5000 amount offered is meant to “support your transition to a new water supply,” not to compensate for any claim of harm or loss. And the additional lump sum it is offering some households is meant to offset future water bills. This would mean none of the money is to compensate or settle any claim of harm. Yet, the release requires the person who signs to “ACKNOWLEDGE THAT DUKE ENERGY HAS FULLY COMPENSATED ME FOR ANY HARM OR LOSS THAT I HAVE SUFFERED, OR MAY SUFFER, AS A RESULT OF ANY CONTAMINATION IN

MY WELL WATER.” These two representations cannot be squared. Certainly, the neighbors have suffered harm and loss from their well water contamination – ranging from the nuisance of bottled water dependency to plunging property value. By signing the release, Duke would have them agree the harm and loss was zero. That is not true.

59. Fourth, while Duke denies it caused any well contamination, it is undisputed that the State did find contamination in the wells. These contaminants included iron, manganese, hexavalent chromium, vanadium, total suspended solids, sulphate, pH, cobalt, and lead.<sup>35</sup> Again, though, Duke demands homeowners sign away their rights in this regard.

60. Fifth, Duke has said its coal ash causes no danger to neighbors. It is unfair for the public utility to make this assurance then demand neighbors sign away their rights to sue as a condition of compensation. If Duke truly believes that it has caused no damage, then why does it need a release? On the first page of its letter to Plaintiffs, Duke states that “several scientific studies continue to show that coal ash basins are not impacting neighbors’ wells.” (Ex. 1, p. 1). If true, then no release should be necessary.

61. Sixth, the amount of payment offered does not justify the release. For some families, the total amount offered is only \$5000 -- before taxes. The amount is a “transition supplement” to “support your transition to a new water supply.” Duke considers these payments taxable, as Duke includes with its package a form W-9. No monetary amount is included to compensate the family for the loss of use and enjoyment and the burden and the headache represented by having to rely for years on bottled water for ordinary household uses. And yet, the release would bar any such claims in the future.

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<sup>35</sup> See documents on the public DEQ website here: <http://portal.ncdenr.org/web/capr/>.

62. Seventh, the release language makes homeowners agree that “Duke Energy has fully compensated me for any harm or loss” -- not only harm or loss to date, but even any possible loss in the future – *i.e.* harm or loss the person signing “may suffer” in the future. This language would force Plaintiffs like Ms. Brown to agree to a lie. She does not know the extent to which the gradually migrating coal ash contamination will pollute the groundwater under her home. She has no idea whether, at some time which may not come until years in the future, a family member may be diagnosed with an illness attributable to the years of drinking the water and breathing the air. Coal ash contaminants include carcinogens. If a family member develops a tumor in the future, which medical science ties to the coal ash, this release required by Duke would bar them from making a claim. This is clearly unfair.

63. Eighth, the release explicitly obligates the neighbor to acknowledge that she has been fully compensated for any past or even future “injury to me” as well as any “damage to my property.” It is a prospective release, for a lawsuit not even yet brought. If in the future there is a coal ash spill like the one that occurred at Dan River, the right to sue for such a claim should not be barred. The “damage to my property” provision also makes the scope of the release conflict with Duke’s separately offered purported Property Value Protection Plan (“PVPP”). The PVPP is said to help mitigate any loss in property value caused by the coal ash, and comes with its own release. However, if the homeowner signs the present release, then under its language she has already freed Duke from any property damage liability.

64. Ninth, the release absolves Duke from liability not just for the person who signs it, but also for any heirs, successors, or assigns. Does this mean she is signing away the rights of her children, if at some time in the future, one of them becomes ill from coal ash contaminants? Likewise, if she sells the house, and there are more coal ash problems for the new owner of the

home, does this language mean that new owner is also barred from a claim as a “successor”? If the release extends to bar claims by children, its is against public policy because it purports to release claims of minors without Court approval.

65. Tenth, the release extends beyond well water contamination, to also include other coal ash issues, such as airborne contaminants, surface flooding, or other pollution. Coal ash contamination can spread through the air as well – including from dry dusty accumulations on the ground, on the surfaces of the ponds, from plant smokestacks, from cenospheres said to include carcinogens,<sup>36</sup> or from other coal ash handling. Many Plaintiffs can remember times in the past when the air was dark from soot or fly ash fell like snow. The release is unconscionable because the consumer who signs it is not fully informed by Duke. Duke has not made a full disclosure of the nature of the risks that are being released. Duke has not set forth for the consumer the different health risks from coal ash, the nature of its constituents, details on the full extent of its use at the plants, and other details to allow for a knowing and informed decision.

**Amy Brown’s facts.**

66. Amy Brown and her family live in a nice neighborhood in Belmont, North Carolina. She lives there with her husband and two children. They moved there in 2006 because it was a safe neighborhood in a beautiful location with access to recreation on nearby Lake Wylie. Ms. Brown is a Duke Energy Carolinas power customer.

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<sup>36</sup> While Duke claims its cenospheres are harmless, its contractor Sphere One issued a material safety data sheet listing hazards including the presence of carcinogens. A copy of a Sphere One Material Safety Data Sheet for cenospheres can be found at <https://ehslegacy.unr.edu/msdsfiles/22809.pdf>. It states that they may cause irritation or abrasion to the eyes, dehydration and irritation to skin, irritation to the respiratory tract, difficulty breathing, cough, wheezing, weakness, increased heart rate, cyanosis, sputum production, changes in lung function tests, abdominal pain, nausea, diarrhea, and vomiting. At page 2 it notes silica residue as a carcinogen. Sphere One “harvested” cenospheres from Duke’s coal ash pond in Asheville. In 2009, it was reported that “cenospheres, another product of coal combustion floating on the top of the coal ash pond, blew into Lake Julian Trails.” Mountaintrue, <http://mountaintrue.org/epa-considers-coal-ash-regulations-which-would-affect-progress-energys-skyland-plant/>.

67. When they bought their home, it needed work but was a nice home with plenty of space for their family and a backyard pool. Over the years, they invested time and money in improving their home and increasing its value.

68. Ms. Brown and her husband are proud of their home and have worked for it to have value as an asset in the event that they need to sell it someday, or if it is inherited by their children.

69. Over the years, Ms. Brown and her family used their tap water, which was drawn from a private well they owned on their property, for ordinary household uses. Their children drank and bathed in the water. Ms. Brown used it for cooking. Her children brushed their teeth with it. They had no idea it could cause any danger.

70. In April, 2015, they received a letter from the North Carolina Division of Water Resources advising them that their well water might be dangerous and that they should stop using the water for drinking, cooking or for their children to drink.

71. Since that time, they have been using bottled water for ordinary day-to-day household uses – as any reasonable parent would do who received such a letter.

72. Having to use bottled water has been cumbersome and inconvenient for the Brown family. Access to clean tap water is something we take for granted. Having to stockpile bulk quantities of bottled water for household uses has caused the Brown family significant discomfort and annoyance.

73. Over the days and weeks following receipt of the letter, Ms. Brown learned more about the issues with her water. She learned that Duke had been storing up vast quantities of waste from its power plant in giant unlined impoundments or ponds.

74. The Duke plant near her house is called the G.G. Allen Steam Station. Aerial views show giant accumulations of wet and dry coal ash around the plant. Coal ash is the waste byproduct of the coal-fired plant. Plant Allen continues to be coal-fired to this day. Duke purchased 23,716 tons of coal for use there in June 2017.<sup>37</sup>

75. Ms. Brown learned that for many years Duke had stored up the coal ash waste around its plant. The ponds were unlined, meaning coal ash could seep through the soil. Coal ash contaminants were going into the groundwater. Her well drew from the groundwater.

76. Ms. Brown learned that Duke has long known of the dangers and risks associated with coal ash waste. Duke knew that its coal ash waste included trace toxic contaminants and heavy metals, which could accumulate. Duke knew that fine dusty “fly ash” contaminants could blow through the air onto neighboring lands. It knew that the coal ash in the unlined ponds was seeping and leaking into nearby bodies of water.

77. In 2006 when the Browns moved into their home in their neighborhood within one-half mile of Plant Allen, they did not know Duke was acting negligently in how it managed its coal ash nor that eight years later, the Dan River spill would occur.

78. Ms. Brown desires to have the public water connection to her house to ensure her family has drinking water subject to the purification of a public water system and which she can rely on to be free of coal ash contaminants.

79. Ms. Brown’s family has now been on bottled water for over 800 days, waiting for the public water connection. Having to rely on cumbersome supplies of bottled water for ordinary household uses such as for children to drink, or to cook with or for other uses, has substantially interfered with her family’s use and enjoyment of their home.

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<sup>37</sup> See Duke Energy Carolinas, LLC Monthly Fuel Report, NCUC Docket No. E-7 Sub 1133.

80. Ms. Brown wants to accept the funds being offered by Duke, but not if she is required to sign the release of liability. The plain language of that release forces her to acknowledge and agree that she and her family have been fully compensated for any harm that they have suffered, as well as for any future harm that may someday arise out of disease, illness, further contamination, or acts or omissions of Duke that she cannot foresee or predict.

81. Ms. Brown is confused by Duke's contradictory statements. Duke has insisted that it has not contaminated its neighbors' properties and the coal ash from its plants will not cause them to develop an illness. Why, then, is Duke's offer conditioned by forcing any families who take it to sign a broad-brush release of claims that would insulate Duke from liability. If Duke believes it has not caused any pollution, it should not insist on signing a release.

82. Ms. Brown accepts Duke's offer but with the exculpatory clause stricken.

**Exhibit 2.** She attaches proof of ownership of her property at **Exhibit 4.**

**Deborah Graham's facts.**

83. Deborah Graham lives with her husband at 310 Dukeville Road, close to Duke's Buck Steam Station Plant. They have lived at this address for many years. Ms. Graham is a Duke Energy Carolinas power customer.

84. In April, 2015 Deborah Graham received correspondence from DEQ advising her family not to drink the water. She and her husband were advised that their well water contained iron at 1,100 µg/L, more than three times greater than the State Groundwater Standard of 300 µg/L. Iron is a contaminant associated with coal ash.

85. According to the test data provided by DEQ to Mr. and Mrs. Graham, their well water vanadium level was at 14 µg/L, over 46 times higher than the then-applicable 0.3 µg/L interim standard. Vanadium is a contaminant associated with coal ash.

86. The Grahams were advised that the measured levels for vanadium and iron “exceeded the North Carolina Health Screening Level, and may result in an increased health risk.” They were advised that “[i]n order to reduce or eliminate this increased health risk, the North Carolina Division of Public Health recommends that your well water not be used for drinking and cooking.”

87. Beginning in May 2015, Duke began to provide the Grahams with bottled water. The Grahams have also personally purchased bottled water. Not being able to use their tap water with peace of mind has impaired their use and enjoyment of their homestead.

88. Ms. Graham is now concerned about the health effects to her family of the past years of drinking and using the water. She has also suffered loss of value of her home and other damages and harm.

89. Ms. Graham has received the same financial supplement offer as Ms. Brown. Like Ms. Brown, she would like to accept the offer without having to agree to a release she believes to be unfair and unconscionable. Attached as **Exhibit 3** is a signed financial supplement agreement for Ms. Graham with the offensive language stricken. Attached as **Exhibit 5** is proof of ownership of the property.

**Johnny Gurley’s facts.**

90. Johnny Gurley lives in Goldsboro, NC. Attached as **Exhibit 11** is proof of ownership of the property. He lives within one-half mile of the H.F. Lee Plant, which began as a coal-fired plant in 1951. Mr. Gurley is a power customer of Tri-County Electric Membership Corporation, which purchases power generated by Duke Energy.

91. Mr. Gurley and his wife have lived in their home since 1991. They used their groundwater well for all household needs for 25 years at no cost, until 2015 when they were

advised that their well was at risk for coal ash contamination. Because Duke refused to test their water, Mr. Gurley secured independent testing that confirmed high levels of cobalt. Cobalt is a contaminant associated with coal ash.

92. They began buying and using bottled water until Duke finally began delivery of bottled water earlier this year. They continue to rely on bottled water for many uses.

93. Due to concerns about the health impacts, Mr. Gurley and his wife for a time stopped using the tap water for bathing or showering, and instead, used the facilities at their YMCA. Relying on bottled water is cumbersome, inconvenient and causes a significant burden.

94. Connection to a community water supply through the Fork Township Sanitary District is currently available and would ease the burden of reliance on bottled water. However, Mr. Gurley will be required to pay \$100 to establish service in addition to monthly water bills, which would be a new financial burden.

95. Mr. Gurley would like to connect to the permanent water supply and agree to Duke's financial supplement but with the exculpatory clause stricken. Duke has offered Mr. Gurley \$14,645, gross.

**Timothy Barwick's facts.**

96. Timothy Barwick lives near Roxboro, NC. Attached as **Exhibit 12** is proof of ownership. He lives within one-half mile of the Duke Energy Progress Mayo Plant, which began operations in 1983. Mr. Barwick is also a power customer of Duke Energy Progress.

97. Mr. Barwick purchased his property without any knowledge of potential groundwater contamination, expecting to make a home for his wife and family. His family used a groundwater well for all household needs, including drinking, cooking, bathing and caring for children, until they were advised that the well was at risk for coal ash contamination. Well tests

confirmed high levels of manganese and vanadium. Manganese and vanadium are substances found in coal ash.

98. The family has begun using bottled water for many uses. Mr. Barwick and his wife have two young children, including an infant son who developed significant skin rash shortly after his birth. The rash clears when the child is bathed either in heated bottled water, or at a relative's home several miles away. Their pediatrician has recommended that the infant not be bathed in tap water.

99. Relying on bottled water is cumbersome, inconvenient and continues to cause a significant burden on Mr. Barwick and his family.

100. Connection to a permanent water supply is not currently available and Duke has recommended a water filtration system for the Barwick home. That recommendation is pending review and approval by the DEQ.

101. Mr. Barwick would prefer a public water supply connection, or a buyout of his property. If those options are not available, Mr. Barwick would like, at a minimum, to accept the funds currently available (\$5,000) through Duke's "financial supplement program" without being required to sign the exculpatory release of liability required by Duke, which he believes is unfair and unconscionable.

**Geneva Shade's facts.**

102. Geneva Shade lives in Arden, NC. Attached as **Exhibit 9** is proof of ownership of the property. She lives within one-half mile of the Duke Energy Progress Asheville Plant, which is the largest electric generating facility in Western North Carolina and began operations in 1964. Ms. Shade is also a power customer of Duke Energy Progress.

103. Ms. Shade has lived in her home since 1954. She used her groundwater well for all household needs for more than 60 years at no cost, until when she was advised that her well was at risk for coal ash contamination and Duke began delivery of bottled water.

104. Ms. Shade owns two parcels and two wells. Her home is on one of the parcels, and her son's home and well are on the other.

105. Ms. Shade is in her 80s, lives alone and is unable to manage the use of bottled water without assistance from her son. Relying on bottled water is cumbersome, inconvenient and continues to cause a significant burden.

106. Connection to a permanent water supply through the City of Asheville is currently available and would ease the burden of reliance on bottled water. However, Ms. Shade will be required to pay monthly water bills in order to connect to that supply, which would be a new financial burden on her limited income.

107. Ms. Shade would like to connect to the permanent water supply and accept the funds available through Duke's financial supplement to pay the water bills. Duke has offered Ms. Shade \$29,950, gross, but demands that she sign its broad release of liability.

108. Ms. Shade asks the Court to enforce the agreement without the release which she believes is unfair and unconscionable.

**Eric Washam's facts.**

109. Eric Washam resides at 8396 Sherrills Ford Road, Sherills Ford, NC in Catawba County. Proof of ownership of his property is found at **Exhibit 6**. He is a Duke Energy Carolinas power customer and lives in the vicinity of the Marshall plant.

110. Mr. Washam began to reside at his property without any knowledge of potential groundwater contamination. He used a groundwater well for all household needs, including

drinking, cooking and bathing, until when advised that the well was at risk for coal ash contamination.

111. He received a letter dated May 13, 2015 from the North Carolina Department of the Environment and Natural Resources, Division of Water Resources, advising him that drinking the water “may result in an increased health risk.” The letter is attached as **Exhibit 13**.

112. Relying on bottled water is cumbersome, inconvenient and continues to cause a significant burden on Mr. Washam and his family.

113. On March 5, 2017, Mr. Washam and his wife, Joan, signed the election card for their “permanent water solution for your property.” They checked the box for “Connection to Public Water Supply.” A copy of the completed card is attached as **Exhibit 14**.

114. Mr. Washam and his wife have written to the North Carolina Utilities Commission registering their complaints about the coal ash. His understanding is that if Duke’s recent application for a rate increase is approved, he and others will have to pay higher rates for electricity, to Duke, in part to compensate Duke for its coal ash costs. A copy of his statement to the Commission dated July 5, 2017 is attached as **Exhibit 15**.

115. Mr. Washam himself used to work for Duke. He began working for Duke in 1979. After many years of work for Duke, he was diagnosed with asbestosis, which he believes was caused by his exposure to asbestos while working at Duke. He worked at the McGuire Nuclear Station in Huntersville, NC.

116. He has lived at his home with his wife since 1969, for many years. They brought up a daughter and son there. Their son was born in 1978 and their daughter in 1974. He was born in 1940. He wants to leave his home to his family as a valuable asset.

117. He remembers how there was coal ash visible in the air in his neighborhood in years past. He remembers seeing fly ash and soot coming from the plant. He believes there is still coal ash dust in his home, and he now knows it may contain contaminants. He still finds a sooty substance on items around his property from time to time.

118. He believes the release is unconscionable because it would release Duke from any coal ash damage that could happen to his home, and, because it would release Duke from any future illness from the coal ash, and, because Duke is a public utility and should not be allowed to bully its neighbors.

119. Mr. Washam notes that it is common knowledge that people who switch from well systems to commercial systems can start having plumbing problems such as leaky or busted pipes. This is because commercial systems can have higher water pressure. When his home gets connected to public water, he may have problems with his pipes and fittings or his hot water heater. This is one reason why he claims that he should be entitled to the financial supplement without any strings attached.

120. Duke wants him to sign a broad release, and yet has not provided him with any information regarding the exact nature of all the risks and dangers. He is informed and believes that Duke has scientific and medical information regarding each of the contaminants associated with coal ash. Duke also has information regarding the potential short term and long term effects of those substances. Yet, Duke has shared none of that so that he can be educated and informed as to what he would be releasing in the way of claims.

121. Mr. Washam will accept the financial supplement provided the Court strike the exculpatory release, which he believes is unfair and unconscionable.

**Guy Hutchins' facts.**

122. Guy Hutchins resides at 2814 Riverfront Drive, Mooresboro, NC in Cleveland County. Proof of his property ownership is attached as **Exhibit 7**. He is a Duke Energy Carolinas power customer and lives near the Rogers Energy Complex a/k/a Cliffside plant.

123. Mr. Hutchins began to reside at his property without any knowledge of potential contamination. He used a groundwater well for all household needs, including drinking, cooking and bathing, until when advised that the well was at risk for coal ash contamination.

124. Relying on bottled water is cumbersome, inconvenient and continues to cause a significant burden on Mr. Hutchins and his family.

125. Mr. Hutchins and his wife, Victoria, have lived at their home for approximately 12 years. They also own and operate a small business that offers related property for retreats and events. In addition to their home address, they also own 2954 Riverfront Drive, which fronts the Broad River and is closer to the coal ash. After the purchased 2954 Riverfront Drive, they invested in significant renovations to the property. Their small business was impaired when coal ash concerns received public attention in the wake of the Dan River spill.

126. Mr. Hutchins used to fish every weekend, primarily from his pier on the Broad River. He also used to fish on the Broad River via boat. They cooked and ate the fish they caught. Now, though, these activities are impaired.

127. Dependence on bottled water impairs their home life. For example, they could not use bottled water for the ice maker in their home refrigerator. They had to purchase a separate ice maker that they could fill with bottled water.

128. Mr. Hutchins desires to accept the funds available through Duke's "financial supplement program" but asks that he not be required to sign the exculpatory release of liability required by Duke, which he believes is false, unfair and unconscionable.

**Sandra Majors' facts.**

129. Sandra Majors resides at 4072 McGhees Mill Road, Semora, NC in Person County. Proof of her property ownership is attached at **Exhibit 8**. She is a Piedmont Electric Membership Corporation power customer and lives in the vicinity of the Roxboro plant.

130. Ms. Majors began to reside at her property without any knowledge of potential contamination. She used a groundwater well for all household needs, including drinking, cooking and bathing, until when advised that the well was at risk for coal ash contamination.

131. Relying on bottled water is cumbersome, inconvenient and continues to cause a significant burden on Ms. Majors and her family.

132. Duke has offered her a financial supplement of \$5,000. She asks that the Court strike the exculpatory release of liability.

**George "Bill" Dalton's facts.**

133. George "Bill" Dalton resides at 1060 Georgia Road, Walnut Cove, NC in Stokes County. Proof of property ownership is attached as **Exhibit 10**. He is a EnergyUnited power customer and lives in the vicinity of the Belews Creek plant.

134. Mr. Dalton owns two parcels and two wells. Each of the wells supports two families. Mr. Dalton began to reside at his property without any knowledge of potential contamination. He and his renters have used a groundwater well for all household needs, including drinking, cooking and bathing, until they were advised that the well was at risk for coal ash contamination.

135. Relying on bottled water is cumbersome, inconvenient and continues to cause a significant burden on Mr. Dalton and his family.

136. Mr. Dalton was offered a financial supplement of \$10,000, gross for two wells and four households. He asks the Court to strike the exculpatory release of liability required by Duke, which he believes is unfair and unconscionable.

### **CLASS ACTION ALLEGATIONS**

137. In accordance with N.C. R. Civ. P. 23, Plaintiffs assert their claims against Defendants both individually, and on behalf of an “opt-out” class defined as follows: “All persons who will receive permanent replacement water supplies or filtration systems for their homes under the Coal Ash Management Act and/or who otherwise have received or are listed to receive Duke’s financial supplement offer and exculpatory provision.” The Named Plaintiffs request designation as class representatives.

138. Numerosity: The class is so numerous that joinder of all class members is impracticable. The past, current and future impacts of coal ash contamination have affected hundreds of individuals and families. Duke has reported in hundreds of properties within the general half-mile vicinity of the coal ash sites that have been reliant on local water wells. State environmental officials in August 2016 indicated that when they notified well owners within half a mile of coal ash facilities that they will receive a permanent alternate drinking water supply, the notification went out by letter to about 1,000 households.<sup>38</sup>

139. Typicality: Plaintiffs’ claims are typical of the class members’ claims. The violations suffered by Plaintiffs are typical of those suffered by other class members.

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<sup>38</sup> DEQ press release dated August 31, 2016, available at <https://deq.nc.gov/press-release/alternate-drinking-water-be-provided-near-coal-ash-facilities>.

140. Adequacy: Plaintiffs will fairly and adequately protect the interests of the class, has no known conflicts and have retained counsel experienced in complex class action litigation.

141. Commonality: Common issues exist in that Duke has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. In addition, common questions of law and fact exist as to all class members and predominate over any questions solely affecting individual class members, including but not limited to whether the uniform exculpatory language found in Defendants' agreements is invalid. Questions of law and fact common to the class predominate over any questions affecting only individual members, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Many class members' individual claims may be small compared to the expense and burden of individual prosecution. Class certification also will obviate the need for duplicative litigation that might result in inconsistent judgments. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all class members' claims in a single forum.

**COUNT I**  
**Declaratory Judgment; Injunctive and Equitable Relief**

142. Plaintiffs re-allege and incorporate by reference the preceding paragraphs herein.

143. Under the Declaratory Judgment Act, the Court may declare the respective rights and obligations of the parties. *See* N.C. Gen. Stat. § 1-253. "Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force

and effect of a final judgment or decree.” *Id.*

144. Under N.C. Gen. Stat. § 1-254, “[a]ny person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder. A contract may be construed either before or after there has been a breach thereof.”

145. The Plaintiffs are entitled to a declaratory judgment that the exculpatory clause in Defendants’ financial supplement agreement is void.

146. The Plaintiffs are entitled to a declaratory judgment that in carrying out its duties under CAMA, Duke is not permitted to include an exculpatory clause.

147. This release language is invalid as a matter of public policy under the circumstances which involve a public utility carrying out statutory obligations related to its core mission of delivering safe clean power while protecting the environment.<sup>39</sup>

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<sup>39</sup> *Gas House, Inc. v. Southern Bell Telephone & Telegraph Co.*, 289 N.C. 175, 176-77, 221 S.E.2d 499, 500-01 (1976) (“True it is that the courts will scrutinize with care clauses exonerating public utility companies, such as railroads, telegraph and telephone companies and others, from liability for the consequences of their own negligence, with reference to the public services rendered by them.”); *Gibbs v. Carolina Power & Light Co.*, 265 N.C. 459, 467, 144 S.E.2d 393, 400 (1965) (“A public service corporation or a public utility cannot contract against its negligence in the regular course of its business or in performing one of its duties of public service.”); *Hall v. Sinclair Refining Co.*, 242 N.C. 707, 710, 89 S.E.2d 396, 398 (1955) (holding that “a party cannot protect himself by contract against liability for negligence in the performance of a duty of public service, or where a public duty is owed, or public interest is involved, or where public interest requires the performance of a private duty”); *Hill v. Freight Carriers Corp.*, 235 N.C. 705, 71 S.E.2d 133 (1952) (“Suffice it to say that defendant is a common carrier, and a public service corporation cannot contract against its own negligence in the regular course of its business or in performing one of its duties of public service.”); *Miller’s Mutual Fire Ins. Ass’n of Alton, Illinois v. Parker*, 234 N.C. 20, 22, 65 S.E.2d 341, 342 (1951) (“Under this limitation the courts are in complete accord in holding that a public service corporation or a public utility cannot contract against its negligence in the regular course of its business or in performing one of its duties of public service.”); *Collins v. Virginia Power & Electric Co.*, 204 N.C. 320, 168 S.E. 500, 1933 N.C. LEXIS 393, \*14-17 (1933) (“The defendant is a public-service corporation. It is given the extraordinary power and authority to take the private property of individuals or corporations, upon payment of a just compensation necessary for its public purposes.... For the benefits it assumes the burdens. It cannot contract against its negligence when discharging its primary duty to the public. Any other holding would put the individual

148. Duke is a public utility. It has a public duty. On its website it says, “[w]e have a responsibility to produce and deliver energy that’s reliable, affordable and clean.”<sup>40</sup> It has a public duty to engage in “[m]anaging coal combustion products and safely closing ash basins in ways that protect the public and the environment.”<sup>41</sup> (Emphasis added).

149. Duke Energy Progress, in support of its recent rate hike request filed with the North Carolina Utilities Commission, emphasizes its public duty to ensure “the provision of safe,

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or corporation using and paying for its power at the mercy of the public-service corporation.... Under the facts and circumstances of this case, the position contended for by defendant cannot be sustained--the contract is against public policy, null and void, and of no avail as a defense to this action. Any other holding would limit and endanger the use in the homes and elsewhere of electric power....”); *Fortson v. McClellan*, 508 S.E.2d 549, 551, 131 N.C. App. 635 (1998) (“[A]n exculpatory contract will be enforced unless it violates a statute, is gained through inequality of bargaining power, or is contrary to a substantial public interest.... An activity falls within the public policy exception when the activity is extensively regulated to protect the public from danger, and it would violate public policy to allow those engaged in such an activity to “absolve themselves from the duty to use reasonable care.”); *Brockwell v. Lake Gaston Sales & Serv.*, 412 S.E.2d 104, 106, 105 N.C. App. 226 (1992) (noting that “some contractual provisions which attempt to avoid liability for a party’s negligence which are contrary to law and against public policy are void and unenforceable”); *Alston v. Monk*, 92 N.C.App. 59, 64, 373 S.E.2d 463, 466 (1988), *disc. rev. denied*, 324 N.C. 246, 378 S.E.2d 420 (1989) (“[O]ur courts have stated ‘that a party cannot protect himself by contract[ing] against liability for negligence in the performance of a duty of public service, or where a public duty is owed, or public interest is involved.’”); *Beachboard v. Southern Ry. Co.*, 193 S.E.2d 577, 583, 16 N.C. App. 671, 193 S.E.2d 577 (1972), *cert. denied*, 283 N.C. 106, 194 S.E.2d 633 (1973) (noting “the well-established principle that a public service corporation or public utility cannot contract so as to escape liability from its own negligence occurring in the regular course of its business or in performing one of its duties of public service”); *Novo Nordisk Pharm. Indus., Inc. v. Carolina Power & Light Co.*, 2008 NCBC 16 (N.C. Business Court Sept. 15, 2008) (noting that “CP&L is acting as a public utility, and that as a matter of public policy, such an entity may not contract against its negligence in the regular course of its business” but that on the facts presented liability limitation was allowable because “exculpatory clauses, although not favored, are permissible when the contract is not related to public service”); *McMurray v. United States*, No. 13-1129 (4th Cir. Jan. 7, 2014) (unpub.) (“We therefore conclude that, under North Carolina law, there is a strong public-safety interest in careful driving and the observance of all traffic-related rules and regulations. Permitting the government to absolve itself of the duty to exercise reasonable care when driving puts members of the public at great risk and is contrary to that strong public interest.... As explained by the Supreme Court of North Carolina, the public-policy exception prohibits a person from contracting to protect himself from ‘liability for negligence in the performance of a duty of public service, or where a public duty is owed, or public interest is involved, or where public interest requires the performance of a private duty.’” *Citing Hall*, 89 S.E.2d at 398); *Tatham v. Hoke*, 469 F. Supp. 914, 918 (W.D.N.C. 1979), *aff’d*, 622 F.2d 587 (4th Cir. 1980) (holding that exculpatory contracts between physician and patient are unenforceable because medicine is “heavily regulated by state authorities who have demonstrated the public interest in the activity” and noting that “a public service corporation or a public utility cannot contract against its negligence in the regular course of its business or in performing one of its duties of public service....”); *Fairfax Gas & Supply Co. v. Hadary*, 151 F.2d 939, 940 (4th Cir. 1945) (“The law seems well settled that a common carrier, owing a duty to serve all proper persons who apply, cannot, when acting in its public capacity, validly exempt itself by contract from liability for negligence.”).

<sup>40</sup> Duke Energy website, <https://www.duke-energy.com/our-company/environment>.

<sup>41</sup> *Id.*

reliable electric service to a utility's customers."<sup>42</sup> It states that "environmental compliance costs are a necessary cost of providing electric service."<sup>43</sup>

150. Duke Energy Progress describes its public duty as being "to provide electricity that is reliable, is delivered using the best practices and latest technologies at the time, and is available at reasonable rates."<sup>44</sup> It admits that "[c]ustomers expect us to deliver electricity that is safe, reliable, affordable and increasingly clean..."<sup>45</sup> Yet, the families herein received, along with the electricity from Duke's power plants, unwanted pollution and nuisance.

151. The exculpatory clause is also invalid under the circumstances because, under CAMA, Duke as a public utility is obligated to provide permanent replacement water supplies which implicitly includes the duty to make certain payments. As a public utility Duke should be required to make necessary payments under these circumstances which arose out of its own coal ash mismanagement. The statute does not allow Duke to include a release of claims in carrying out its duties to the public.

152. The Plaintiffs are entitled to equitable and injunctive relief including that the Court enjoin Defendants from seeking to enforce the exculpatory clause or demand that it be signed as a condition to acceptance of the financial supplement.

## **COUNT II** **Specific Performance**

153. Plaintiffs re-allege and incorporate by reference the preceding paragraphs herein.

154. Plaintiffs have demanded that Duke perform the financial supplement with the unconscionable release term stricken.

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<sup>42</sup> Duke Energy Progress, LLC, NCUC Docket No. E-2, Sub 1142, filings dated June 1, 2017, testimony of Julius Wright.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*, testimony of David Fountain.

<sup>45</sup> *Id.*

155. Plaintiffs stand ready to perform under the agreement, provided that the unconscionable release language is stricken from it.

156. In return for Duke paying the compensatory amount and otherwise fulfilling its duties under the agreement, the Plaintiffs stand ready to perform their enumerated duties.

157. Ms. Brown asks that the Court order Duke to perform the agreement in the form as she has signed it with the offensive language stricken. Ms. Graham asks the Court likewise to enforce her signed and reformed agreement. The other Plaintiffs ask the same.

158. This Court accordingly should order Duke to specifically perform the agreement as appropriately reformed to eliminate its unconscionable provisions.

**COUNT III**  
**Promissory Estoppel**

159. Plaintiffs re-allege and incorporate by reference the preceding paragraphs herein.

160. Plaintiffs, and each of them, are in lawful possession of their properties, and use them as residences and for other legitimate uses.

161. As shown above, Duke represented and promised to the Plaintiffs that it would provide permanent replacement water supplies.

162. Plaintiffs and their neighbors relied on Duke's assurance that Duke would provide permanent replacement water supplies and a financial supplement. They agreed to complete the election cards and proceed with the water plans based on Duke's representations and assurances.

163. Their reliance was reasonable. Duke nowhere said that its offer was revocable. Under the doctrine of promissory estoppel, Duke must follow-through on its promise. However, the exculpatory clause should be stricken.

**COUNT IV**  
**Nuisance**

164. Plaintiffs re-allege and incorporate by reference the preceding paragraphs herein.

165. Plaintiffs, and each of them, are in lawful possession of their properties, and use them as residences and for other legitimate uses.

166. Defendants, during the pertinent times, owned and controlled facilities throughout the State and near the homes of the Plaintiffs that contained large quantities of coal ash waste.

167. Defendants, during the pertinent times, managed their coal ash waste on their properties in a negligent, reckless and intentional manner so as to cause a private nuisance.

168. Plaintiffs' right to use and enjoy their properties has been substantially and unreasonably impaired by Defendants' acts and omissions with regard to their use of their properties and operations.

169. The nuisance caused by Defendants has substantially impaired Plaintiffs' use and enjoyment of their property, and has caused anger, embarrassment, discomfort, annoyance, inconvenience, decreased quality of life, deprivation of opportunity to continue to develop properties, injury to and diminished value of properties, discomfort, and other harm.

170. Defendants' conduct has been unreasonable. Reasonable persons, generally, looking at Defendants' conduct, the problems it has caused, the character of the neighborhoods, the nature, utility and social value of the uses of the land, and the extent and nature of the harm to Plaintiffs' interests, would consider Defendants' conduct to be unreasonable.

171. The invasions, harms and injuries complained of herein by Plaintiffs are more than slight inconveniences or petty annoyances, but rather substantial invasions, harms, and injuries to Plaintiffs' comfort, property, and use of their land.

172. As a result of Defendant's liability for nuisance, Plaintiffs and class members are

entitled to entry of equitable and injunctive relief and/or compensatory damages in an amount in excess of \$25,000 to be determined at trial.

**COUNT V**  
**Negligence and Negligence *Per Se***

173. Plaintiffs re-allege and incorporate by reference the preceding paragraphs herein.

174. Plaintiffs, and each of them, are in lawful possession of their properties, and use them as residences and for other legitimate uses.

175. Defendants, during the pertinent times, owned and controlled plant facilities throughout the State and near the homes of the Plaintiffs that contained large quantities of coal ash waste.

176. At all pertinent times, Defendants had a duty of reasonable care with regard to management of its coal ash waste generated by its coal-fired power plant facilities. Duke admitted that duty in public statements. For many years the company has held itself out as having “a reputation for good citizenship and service to the communities where we do business.”<sup>46</sup> Thus in 1972 Duke represented itself to be “involved, responsible citizens” who “demonstrate our concern for our community and the environment.”<sup>47</sup>

177. Duke continued to dispose of coal ash residuals in unlined ash ponds long after it knew it had environmental problems. By the 1990s, Duke submitted insurance claims to some of its carriers for the same ash ponds that are now concerning neighbors. Although Duke was aware of the environmental issues caused by unlined ponds, the company continued operating them for decades. Had Duke acted reasonably to manage its ash in the past, the current events now affecting the neighbors would not have occurred.

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<sup>46</sup> Duke Power Code of Business Conduct, 1972.

<sup>47</sup> *Id.*

178. Duke also knew from air contamination workplace testing, performed especially during outages, that some of the contaminants coming from the coal ash were harmful. Air monitoring for arsenic, lead, silica, and other trace metals showed that some maintenance activities were resulting in employee exposures to fly ash and its constituents at concentrations above regulatory guidelines.

179. For example, a December 4, 1980 Duke internal memo labeled “CONFIDENTIAL” described that at the Lee Steam Station, fly ash samples showed “large amounts of silica and varying amounts of Arsenic, Cadmium, Nickel, Lead and other contaminants.”

180. An internal memo dated February 23, 1981 added “silica will present the highest exposure risk.” Another internal memo described that “we are more concerned with trace metals than chemical content.... Trace metals are systemic poisons.”

181. On March 10, 1989, an internal memo regarding the “Employee Fly Ash Exposure Project” described “employee exposures to fly ash and constituents at concentrations above regulatory guidelines.” “Preliminary sample analysis results indicate that of the air contaminants that have been evaluated (arsenic, lead, silica, trace metals), our primary concern should be with the arsenic exposures.” The memo recommended that “contaminated clothing should be removed or vacuumed” and “coveralls should be placed in a closed container.”

182. An industrial hygiene guide dated May 1, 1996 described the hazards of arsenic, cadmium, chromium VI, crystalline silica, lead and other contaminants. One of the “sources of contaminants” for arsenic was from “coal combustion by-product” and “vacuuming fly ash.” The substance “can target liver, kidneys, lungs, skin or lymphatic system” and was a “known carcinogen.”

183. Cadmium “can attack respiratory system, kidneys, prostate, and the blood stream” and is a “known carcinogen.” Chromium VI “can attack skin or respiratory system” and was a “known human carcinogen.” Crystalline silica can come from “‘dusty’ flyash work” and causes “silicosis” and was a “suspected human carcinogen.” Lead can cause “lead poisoning.”

184. A material safety data sheet dating from January 20, 1997 from Duke’s predecessor Carolina Power and Light warned that “Bituminous Coal Flyash” contained silica, crystalline silica, barium oxide, and trace metals chromium and arsenic. Exposure routes included inhalation, skin contact and eye contact. “Inhaled Crystalline silica may cause pulmonary damage, resulting in Silicosis.” Further, the International Agency for Research on Cancer had classified it as a “probable human carcinogen.” A similar data sheet from Duke Energy Company, dated December 11, 1997, added that carcinogens “sometimes found in ash in trace concentrations” included “arsenic, beryllium, cadmium, chromium, and nickel.”

185. As to hexavalent chromium, which can be found in coal ash, Duke in internal corporate documents warned, “DANGER, HEXAVALENT CHROMIUM, CANCER HAZARD,” and instructed employees to “wear respirators for protection against hexavalent chromium,” receive medical surveillance and keep “[t]ransport hexavalent chromium contaminated clothing in sealed, labeled bags.”

186. Defendants breached their duty of care with regard to the management of its coal ash waste in North Carolina.

187. As a direct and proximate result of Defendants’ breach of their duty of care, the Plaintiffs and class members have been injured.

188. During the pertinent times, Defendants knew or should have known that their actions and omissions were causing and contributing to cause harm to the Plaintiffs and the class.

189. Defendants violated one or more federal or state statutes or regulations meant to protect the class of individuals which includes the Plaintiffs and the class. Accordingly, Defendants have engaged in negligence *per se*.

190. Plaintiffs and class members are entitled to of equitable and injunctive relief and/or actual damages in a fair and reasonable sum in an amount in excess of \$25,000 to be determined at trial sufficient to compensate Plaintiffs for the negligence of Defendants.

**COUNT VI**  
**Unfair and Deceptive Trade Practices**

191. Plaintiffs re-allege and incorporate by reference the preceding paragraphs herein.

192. Under the N.C. Gen. Stat. § 75-1.1, “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.” Under the statute, “commerce” generally includes all business activities, however denominated, and any party claiming to be exempt from the statutory provisions shall have the burden of proof with respect to such claim.

193. Duke has sold these consumers electrical power, insisting that its actions in generating electricity and managing related waste have been safe and that Duke has engaged in no negligence or improper conduct and has caused no pollution. At the same time, Duke has insisted that Plaintiffs release it from broad-ranging liability for their “alleged” claims when they had not even sued.

194. The facts alleged hereinabove otherwise reflect that under the circumstances, Duke engaged in one or more unfair or deceptive acts or practices, in or affecting commerce, which proximately caused the injury to the Plaintiffs.

195. As a proximate result of the Defendants’ unfair and deceptive practices, the Plaintiffs and class members have been injured, including through having to use bottled water,

experiencing diminished property value, and having to pay water bill costs and other out-of-pocket expenses.

196. Duke's conduct as alleged hereinabove, in its totality, was unfair in that it offended established public policy or was immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

197. Further, Duke engaged in conduct which amounts to an inequitable assertion of its power or position.

198. Plaintiffs have suffered actual injury including the loss of the use of specific and unique property, the loss of any appreciated value of property, and other elements of damage shown by the evidence.

199. Under N.C. Gen. Stat. § 75-16, the Plaintiffs are entitled to recover treble damages.

200. Under N.C. Gen. Stat. § 75-16.1, the Plaintiffs are entitled to an award of a reasonable attorney fee.

### **DEMAND FOR JURY TRIAL**

Plaintiffs respectfully demand a trial by jury.

### **PRAYER FOR RELIEF**

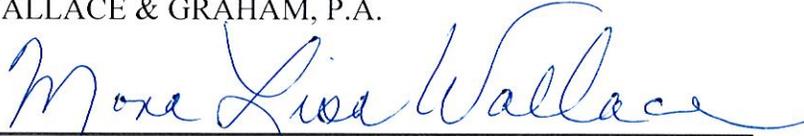
WHEREFORE, Plaintiffs, on behalf of themselves and the class, pray for relief as follows and that the Court order and award as follows:

- A. Declare the respective rights and duties of the parties;
- B. Order the specific performance of the agreement under appropriate terms of reformation;
- C. Certify a class under an appropriate class definition, order the Defendants to provide Court-approved notice to the class members, and designate the Named Plaintiffs and their attorneys as the class representatives and class counsel;

- D. Enter judgment in favor of Plaintiffs on all counts;
- E. Award all allowable compensatory and treble damages as sought herein;
- F. Award all allowable pre-judgment and post-judgment interest as provided by law;
- G. Order appropriate declaratory, injunctive and equitable relief; and
- H. Award reasonable attorneys' fees and costs to the extent allowable by law.

Respectfully submitted, this the 23rd day of August, 2017.

WALLACE & GRAHAM, P.A.



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*pro hac vice to be filed*

*Attorneys for Plaintiffs*

**EXHIBITS:**

- 1. Duke letter to Amy Brown.**
- 2. Amy Brown's signed and revised agreement.**
- 3. Deborah Graham's signed and revised agreement.**
- 4. Amy Brown – proof of property ownership.**
- 5. Deborah Graham – proof of property ownership.**
- 6. Eric Washam – proof of property ownership.**
- 7. Guy Hutchins – proof of property ownership.**
- 8. Sandra Majors – proof of property ownership.**
- 9. Geneva Shade – proof of property ownership.**
- 10. George "Bill" Dalton – proof of property ownership.**
- 11. Johnny Gurley – proof of property ownership.**
- 12. Timothy Barwick – proof of property ownership.**
- 13. Letter dated May 13, 2015 from DENR to Washam.**
- 14. March 5, 2017 election card for Mr. Washam.**
- 15. Mr. Washam's statement to the NCUC dated July 5, 2017.**