

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

GAP INC., a Delaware corporation,

Plaintiff,

v.

DYSON, INC., an Illinois corporation;
EXCEL DRYER, INC., a Massachusetts
corporation, and, NSF INTERNATIONAL, SGS
NORTH AMERICA, INC., UL SOLUTIONS
INC., SMART EPD LLC, and ANNA LASSO,
individually

Defendants.

Case No. _____

COMPLAINT FOR:

- (1) Breach of Express Warranty
- (2) Breach of Implied Warranty
- (3) Negligent Misrepresentation
- (4) Products Liability—Design Defect
- (5) Products Liability—Failure to Warn
- (6) Violation of California Business
and Professions Code § 17200
- (7) Violation of California Business
and Professions Code § 17500
- (8)—(11) Negligent Misrepresentation (Certifier
Defendants)
- (12) Negligent Undertaking (§ 324A)
- (13) Negligent Standard Creation
- (14) EPD Verification Negligence
- (15) Unjust Enrichment
- (16) Declaratory and Injunctive Relief

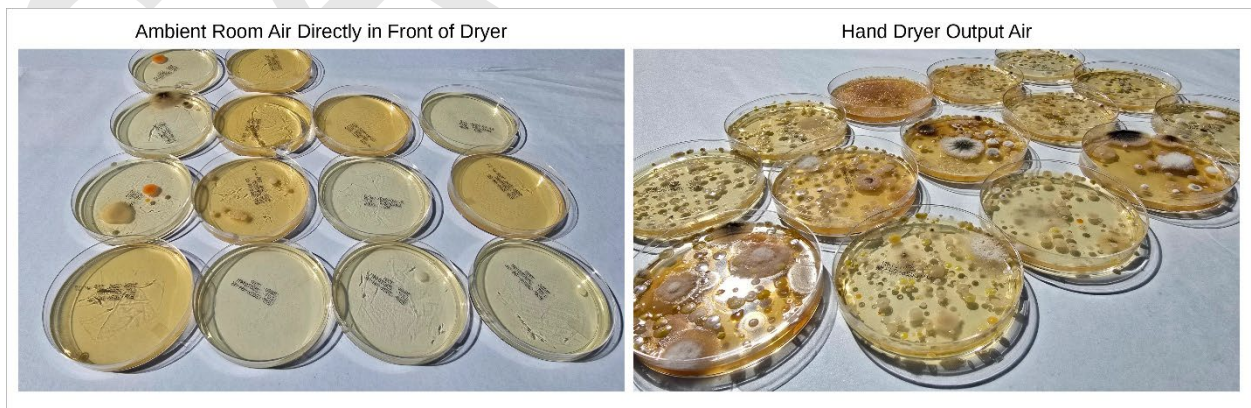
I. INTRODUCTION

The Test

1. The claims made in this case can be verified effortlessly by anyone in a few minutes. They can be experienced directly, without scientific equipment, without expert testimony, without specialized knowledge. Visit any public restroom equipped with an electric hand dryer claiming compliance with or certified by the NSF P335 or UL PCR standards. Wash your hands. Place them in the dryer for 15 seconds—the least stringent drying time standard among all claims made by Defendants. We begin by giving Defendants the benefit of the doubt. Observe three things: (1) Watch where the water goes as it leaves your hands. (2) Remove your hands at 15 seconds. They will be visibly and obviously wet. (3) Look at the walls and floor near the dryer's air outlet. Note the growing mold, dirt and water staining originating from that point.

The Hypothetical

2. All aspects of hand dryer performance can be understood if you remove it from the room. Does a dryer improve or degrade the room by being there?



SAMPLE LEGAL COMPLAINT GAP VERSUS DYSON, EXCEL, AND THE CERTIFIERS

This document is a supplemental guide we created to aid harmed parties pursuing litigation against the manufacturers and certifiers of hand dryers. We wrote it in the form of a complaint for clarity. It is modeled on our Federal and State cases, filed in court, and due diligence was done in both law and science, but this document is not fileable without verification, evaluation, and proper analysis by the legal teams who will be litigating the case. We are not attorneys and we do not offer legal guidance.

We are uniquely positioned in this case because we did the science then we wrote the law, holding both in context at the same time. Further, we spent a year untangling twenty-five years of interconnected webs of companies and individuals and know who did what, when. We are available for consultation and guidance at www.forensicdryergroup.com

The Nature of This Case

3. This case concerns commercial hand dryers manufactured and sold by Defendants Dyson, Inc. and Excel Dryer, Inc. Plaintiff Gap Inc., through its Old Navy retail brand, purchased these products in reliance on Defendants' representations regarding drying time, hygiene, and environmental benefits. Every material representation was false.
4. Defendants represented that their hand dryers would dry hands in 8 to 14 seconds. Independent scientific testing of 462 dryer trials across three manufacturers—including both Defendants—established a 0% compliance rate at claimed drying times. Zero dryers achieved manufacturer specifications. The failure is not marginal; actual drying requires 70 to 90 seconds, a discrepancy of 7 to 10 times.
5. Defendants represented that their hand dryers were hygienic. Independent scientific testing established that 100% of hand dryers tested amplified microbial contamination—136 consecutive tests showing amplification with zero reductions,

yielding a probability under the null hypothesis of $p < 10^{-41}$. Median amplification was 49.6 to 110 times ambient air levels. Defendants' products do not reduce contamination; they amplify it and disperse it throughout the room.

6. Defendants represented that their hand dryers provided environmental benefits through reduced energy consumption and carbon emissions compared to paper towels. These calculations were predicated on 8 to 14 second drying cycles. Because actual drying requires 70 to 90 seconds, energy consumption is 600 to 900 percent higher than claimed, and the purported carbon advantage over paper towels collapses entirely.
7. The failures documented herein are not manufacturing defects, installation errors, or maintenance failures. They are inherent to the products' design. Independent testing revealed that different manufacturers using different engineering approaches produce functionally identical failure curves, with correlation coefficients exceeding $r = 0.99$ across all pairwise comparisons. Physics does not negotiate. All dispersal-type hand dryers hit the same physical limitation: water trapped in skin texture by capillary action resists removal regardless of air velocity or blade design.
8. Plaintiff purchased Defendants' products for installation in retail restrooms used by the public. Plaintiff's customers, employees, and visitors have been exposed to contamination amplification, inadequate hand drying, and the resulting increased risk of pathogen transfer. Plaintiff's facilities have sustained property damage from water dispersal and mold colonization. Plaintiff seeks damages and injunctive relief.

II. PARTIES

9. Plaintiff Gap Inc. is a Delaware corporation with its principal place of business at 2 Folsom Street, San Francisco, California 94105. Gap Inc. owns and operates retail stores under multiple brands including Old Navy, Gap, Banana Republic, and Athleta, with more than 2,800 stores globally. Plaintiff purchased hand dryers manufactured by Defendants for installation in restrooms at its retail locations.
10. Defendant Dyson, Inc. is a Delaware corporation that designs, manufactures, markets, distributes, and sells commercial hand dryers, including the Dyson Airblade product line. Dyson, Inc. is a subsidiary of Dyson Limited, a United Kingdom company. Defendant Dyson conducts substantial business in this District and throughout California.
11. Defendant Excel Dryer, Inc. is a Massachusetts corporation with its principal place of business in East Longmeadow, Massachusetts. Excel Dryer designs, manufactures, markets, distributes, and sells commercial hand dryers, including the XLERATOR and XLERATOReco product lines. Defendant Excel Dryer conducts substantial business in this County and throughout California.
12. Defendant NSF International (“NSF”) is a Michigan nonprofit corporation with its principal place of business in Ann Arbor, Michigan. NSF holds itself out as an independent, authoritative certification body for public health and safety standards, is accredited by the American National Standards Institute, and is recognized by OSHA as a Nationally Recognized Testing Laboratory under 29 C.F.R. § 1910.7. NSF developed Protocol P335 for “Hygienic Commercial Hand Dryers” and certifies Dyson Airblade products under it. NSF's P335 certification is the foundation of Dyson's “only hand dryer certified hygienic” marketing claim.
13. Defendant UL Solutions Inc. (“UL”) is a Delaware corporation with its principal place of business in Northbrook, Illinois. UL provides testing, certification, standard-development, and environmental-declaration services and is recognized

by OSHA as a Nationally Recognized Testing Laboratory. In 2016, at Excel Dryer's request, UL authored the Product Category Rule for hand dryers: UL chose the ISO 14025 Type III declaration system, wrote the rule, and selected the governing methodology under which hand-dryer Environmental Product Declarations are made. The rule committee held ten manufacturer seats and two UL seats; Excel held four of the manufacturer seats, and Excel's Vice President and Chief Operating Officer chaired the committee.

14. Defendant SGS North America Inc. ("SGS") is a New Jersey limited liability company with its principal place of business at 400 Broadacres Drive, Bloomfield, New Jersey. SGS provides testing, inspection, and certification services. SGS Performance Test Report No. 2774929EFF-001, dated September 7, 2012, is the only public SGS test of hand-dryer drying performance, and the drying-time and energy figures in the Excel certifications are attributed to SGS testing.
15. Defendant Smart EPD LLC ("Smart EPD") is a Virginia limited liability company formed on April 26, 2022 under the name EPD USA LLC and renamed by amendment on July 6, 2022. Smart EPD operates as a program operator for Environmental Product Declarations and issued the current XLERATOR declaration, which states on its face that its Core PCR is the UL Product Category Rule for Hand Dryers.
16. Defendant Anna Lasso is an individual residing in Virginia. From 2016 to 2022 she was employed by UL Environment as Product Manager of EPDs and PCR Project Manager, working directly with the Excel executive who chaired the PCR committee. She is identified on the current XLERATOR Environmental Product Declaration as program operator, independent critical reviewer, and independent external verifier — three roles ISO 14025 requires to be independent of one another, occupied by one person.

III. JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over this civil action as a court of general jurisdiction, and the amount in controversy exceeds the jurisdictional minimum for an unlimited civil case. This action proceeds in the courts of California because federal diversity jurisdiction is unavailable: Plaintiff is incorporated in Delaware, and Defendant UL Solutions Inc. is also incorporated in Delaware, defeating complete diversity under 28 U.S.C. § 1332 while UL — the author of the governing Product Category Rule — remains a defendant.

18. This Court has personal jurisdiction over Defendants. Defendants conduct substantial business in California, have purposefully availed themselves of the privilege of conducting business in this state, and have specifically targeted California consumers and businesses with their products and marketing. Plaintiff's claims arise from Defendants' business activities in California.

19. Venue is proper in this County under Code of Civil Procedure §§ 395 and 395.5. Plaintiff's principal place of business is located in this County, and a substantial part of the events giving rise to Plaintiff's claims occurred in this County, including Plaintiff's receipt of Defendants' marketing materials, Plaintiff's purchasing decisions, and the installation and operation of Defendants' products.

IV. FACTUAL ALLEGATIONS

A. Defendants' Representations

20. Defendants marketed their hand dryer products with specific, quantified performance claims regarding drying time, hygiene, and environmental impact. These representations formed the basis of Plaintiff's purchasing decisions.

Dyson's Representations

21. Defendant Dyson represented in its marketing materials, product specifications, and website that its Airblade hand dryers achieve complete hand drying in 10 to 14 seconds to a residual moisture threshold of 0.1 grams, as measured under NSF Protocol P335.
22. Defendant Dyson represented that its products are "hygienic," "independently proven safe," and "help to create a cleaner, more hygienic washroom." Dyson's marketing materials state: "Dyson Airblade™ hand dryers have been independently proven to aerosolize no more than paper towels."
23. Defendant Dyson represented that its products provide environmental benefits, including reduced CO₂ emissions compared to paper towels, with carbon footprint claims "measured and verified by the Carbon Trust in accordance with ISO 14067."
24. Defendant Dyson represented that its HEPA filtration system captures 99.97% of particles and delivers "HEPA-purified air, not dirty air," implying hygienic operation.
25. Defendant Dyson explicitly represented awareness of the relationship between hand dryness and bacterial transfer. Dyson's marketing materials cite Patrick et al. on three separate occasions, stating: "Damp hands can spread up to 1,000 times more bacteria than dry hands." Dyson represented that its products address this concern through rapid, hygienic drying.

26. Defendant Dyson represented that its products were "the only hand dryer certified by the NSF International Protocol P335," invoking third-party certification as validation of its hygiene claims.
27. Defendant Dyson's marketing materials include a "Handwashing guide" described as "Adapted from WHO and CDC hand washing guidelines," with URLs to official WHO and CDC resources. Steps 1 through 9 accurately reproduce public health guidance. Step 10 inserts Dyson's false drying claims: "Dry hands hygienically with Dyson Airblade™ technology and HEPA-purified air" with specific model claims of 10 to 14 second drying times. This document appropriates public health authority to legitimize Defendants' commercial claims.
28. Defendant Dyson represented that its drying time claims were "determined using Dyson test method 769 based on NSF P335 to a measurement of 0.1g residual moisture." This representation explicitly identified the standard and threshold against which Dyson warranted its products would perform.

Excel Dryer's Representations

29. Defendant Excel Dryer represented in its marketing materials, product specifications, Environmental Product Declarations, and website that its XLERATOR hand dryers achieve complete hand drying in 8 seconds or less.
30. Defendant Excel Dryer represented "95% Cost Saving vs. Paper Towels" and "Up to 88% Reduction of Carbon Footprint vs. Paper Towels"—calculations predicated entirely on the claimed 8-second drying cycle.
31. Defendant Excel Dryer represented "> 80% Less Energy Than Conventional Hand Dryers," a comparison that assumes Excel's products achieve their claimed drying times.

32. Defendant Excel Dryer represented "Over a Decade of Proven Performance" and "Less Than 1% Failure Rate," implying reliable achievement of product specifications.
33. Defendant Excel Dryer marketed optional "Electrostatic HEPA (eHEPA®) Filtration" as a hygiene feature, representing that filtration addresses contamination concerns.
34. Defendant Excel Dryer obtained and marketed Environmental Product Declarations certifying 8-second drying times and corresponding energy consumption of 3.680 watt-hours per use. These declarations were presented to purchasers as third-party validated performance specifications.
35. Defendant Excel Dryer represented that its products were tested to a residual moisture threshold of 0.25 grams—a standard 2.5 times weaker than the NSF P335 threshold of 0.1 grams, though this distinction was not disclosed to purchasers.

B. The Transaction

36. Plaintiff operates more than 2,800 retail stores globally under the Old Navy, Gap, Banana Republic, and Athleta brands. Each store includes restroom facilities used by customers, employees, and visitors.
37. Plaintiff, through its facilities management and procurement functions, purchased hand dryers manufactured by Defendants for installation in restrooms at its retail locations. Old Navy locations predominantly utilize Defendant Dyson's Airblade V model. At least one Old Navy location utilizes Defendant Excel Dryer's XLERATOR model.
38. Plaintiff's purchasing decisions were made in reliance on Defendants' representations regarding drying time, hygiene, cost savings, and environmental benefits. Plaintiff selected Defendants' products over alternatives, including paper towel dispensers, based on these representations.

39. Plaintiff paid substantial sums—ranging from approximately \$500 to \$2,000 per unit depending on model and configuration—for products warranted to perform specific functions. Plaintiff incurred additional costs for installation, electrical work, and integration into restroom facilities.

40. Plaintiff purchased Defendants' products through authorized distribution channels. Defendants marketed their products directly to retail facilities including Plaintiff, provided marketing materials and representations directly to Plaintiff's decision-makers, and specifically targeted large retail operations for adoption of their products. Defendants' express representations regarding hygiene, drying time, and environmental benefits were directed to Plaintiff as the ultimate purchaser and end user, and were intended to induce Plaintiff's purchase decisions regardless of the distribution channel.

C. The Science: Exposed Performance Failures

41. The performance failures alleged herein are documented in an eleven-study research program conducted between August 2023 and December 2025, comprising 931 individual tests at 226 retail and public locations in five states and the District of Columbia, examining 169 hand dryers and 94 paper-towel dispensers across 1,076 culture dishes. The research is archived with registered DOIs through Zenodo and Harvard Dataverse, with complete chain-of-custody documentation comprising 1.3 terabytes across approximately 13,000 files available for independent verification.

42. These are not "studies that suggest" or "evidence that indicates." These are physical facts established to scientific certainty.

Finding 1: Drying Time Failure (0% Compliance)

43. Independent testing of 462 hand dryer trials across three manufacturers—Dyson, Excel Dryer (XLERATOR), and World Dryer—established universal failure to achieve claimed drying times. Zero of 462 trials achieved manufacturer specifications at claimed times. The failure rate is 100%. (Blouch, R.A. Jr. (2025), "Catastrophic Time-To-Dry Failures by Dyson, Excel and World Dryer Hand Dryers via the Bi-Modal Loose Water and Bound Water Mechanism," DOI: 10.5281/zenodo.17869567)

44. Defendant Dyson claims its Airblade V achieves 0.1 grams residual moisture at 12 seconds. Actual measured residual moisture at 12 seconds: mean 2.29 grams—2,190% above the claimed threshold. The best-performing Dyson unit tested left 1.80 grams residual moisture, still 1,700% above specification.

45. Defendant Excel Dryer claims its XLERATOR achieves 0.25 grams residual moisture at 8 seconds. Actual measured residual moisture at 8 seconds: mean 2.87 to 3.02 grams—1,048% to 1,108% above the claimed threshold.

46. Statistical analysis confirms the finding is not measurement error: $t(20) = 22.91$, $p < 0.001$, Cohen's $d = 5.00$. This effect size indicates the discrepancy between claimed and actual performance is not marginal but categorical.

47. Actual time to achieve manufacturer-specified dryness thresholds: 70 to 90 seconds—not 8 to 14 seconds. The discrepancy is 7 to 10 times. Defendant Dyson's Airblade V first achieved compliance with the 0.25-gram threshold at 80 seconds but never achieved consistent compliance with its own 0.1-gram specification at any tested interval through 105 seconds. Defendant Excel Dryer's XLERATOR Standard first achieved its 0.25-gram threshold at 50 seconds, with consistent compliance at 80 seconds.

Finding 2: Microbial Amplification (100% of Units)

48. Independent testing established that commercial hand dryers amplify microbial contamination in 100% of units tested. Of 136 valid paired tests comparing dryer output air to ambient room air, 136 showed higher organism counts in dryer output—a 100% amplification rate with zero reductions. The probability of this result under the null hypothesis (that dryers do not systematically amplify contamination) is $p < 10^{-41}$. (Blouch, R.A. Jr. (2025), "Transmission of Bacteria and Fungus via Dyson and Xlerator Hand Dryers," DOI: 10.5281/zenodo.15504115; validated in Blouch, R.A. Jr. (2025), "Validation of Hand Dryer Microbial Amplification Using Broad-Spectrum Growth Media," DOI: 10.5281/zenodo.17859894)

49. Median amplification: 49.6 times ambient air levels using LB agar; 110 times ambient using broad-spectrum TSA media. Ambient room air showed median 1 to 2 colony-forming units (CFU) per sample. Hand dryer output showed median 67 to 200 CFU per sample.

50. Defendants Dyson and Excel Dryer showed no significant difference in contamination amplification despite Dyson's HEPA filtration claims. Mann-Whitney

comparison: $p = 0.803$. HEPA filtration of intake air provides zero demonstrated hygiene benefit because contamination originates downstream—from water dispersed off users' hands and from biofilm accumulation within the device.

51. Brand-new dryers in a pristine newly-constructed facility with zero detectable ambient contamination immediately produced 45 CFU per sample, establishing that contamination is inherent to operation rather than attributable to age or maintenance.

52. Diversity analysis revealed dryer output contained 6 to 10 morphotypes versus 2 to 3 in ambient air, with diversity exceeding ambient in 100% of tests. Hand dryers contribute organisms not present in the surrounding environment—they do not merely concentrate room air.

Finding 3: Water Dispersal (7.3 Grams Per Use)

53. Patrick et al. established that wet hands transfer up to 1,000 times more bacteria than dry hands. Defendants' products leave hands wet at claimed drying times, creating the precise condition the research warns against—then amplify the contamination and disperse it throughout the room. (Blouch, R.A. Jr. (2025), "Visual Analysis of Water Dispersion Patterns During Hand Drying," DOI: 10.5281/zenodo.15503304)

54. Mean water mass on freshly washed hands: 7.3 grams. This water must go somewhere during dryer operation. (Blouch, R.A. Jr. (2025), "Baseline Water Mass on Freshly Washed Hands," DOI: 10.5281/zenodo.17858834)

55. High-speed videography at 1,000 frames per second documented water dispersal patterns. Hand dryers produce dense clouds of visible droplets surrounding hands during operation, with droplets remaining airborne for three or more seconds and settling on walls, floors, fixtures, and users' clothing—forearms, torso, thighs, and faces.

56. Defendants' documentation contains zero statements addressing where water goes after air jets strike it. Excel Dryer's only comment in any reviewed materials: water "drips onto the floor, where it evaporates naturally." This is false. Water disperses onto environmental surfaces where it does not evaporate but instead supports mold colonization.

57. At 150 million daily United States hand dryer uses, 7.3 grams of water dispersal per use equals 4.6 million cups of water sprayed into public restrooms daily—1.7 billion cups annually. Paper towels disperse effectively zero.

Finding 4: Mold Colonization (100% of Installations)

58. Visual audit of 127 public restrooms across five states and the District of Columbia, with paired microbiological sampling at all locations, established that dispersal-type hand dryers show visible wall mold in 100% of installations (50 of 50 dispersal-type units). Plumes averaged 10 square feet, originating narrow at the device (median 1.0 foot) and fanning outward toward the floor (median 3.0 feet), consistent with aerosol dispersion physics. (Blouch, R.A. Jr. (2025), "The Wandering Plume of Filth: A Randomized, Empirical Assessment of Visible Wall Contamination," DOI: 10.5281/zenodo.17860971)

59. Independent EPA-certified laboratory analysis (Hayes Microbial Consulting, EPA Laboratory ID: VA01419) confirmed fungal presence in 70% of wall plume samples: *Aspergillus*, *Penicillium*, *Alternaria*, *Cladosporium*, and *Chaetomium*—organisms documented to cause allergic reactions, hypersensitivity pneumonitis, and mycotoxin production.

60. Compare to white paper towel dispensers: 13% mold rate—an 8-fold difference ($\chi^2 = 72.0$, $p < 0.001$).

61. Every person entering a restroom with a dispersal-type hand dryer enters a space with confirmed mold colonization, regardless of whether that person uses the dryer.

Finding 5: Energy and Environmental Claim Invalidity

62. Every energy and environmental claim made by Defendants is predicated on drying times of 8 to 14 seconds. Because actual drying requires 70 to 90 seconds, these claims are categorically false. (Blouch, R.A. Jr. (2025), "An Empirical Refutation of Green Energy Claims for Dyson and Xlerator Hand Dryers," DOI: 10.5281/zenodo.17859198)
63. Defendants claim 3 to 4 watt-hours and approximately 2 to 4 grams CO₂ per drying cycle. At empirically verified drying times, actual consumption is 25 to 37 watt-hours and 12 to 18 grams CO₂ per use—600% to 900% higher for energy and 500% to 800% higher for carbon emissions.
64. The claimed 85% to 90% CO₂ advantage over paper towels collapses entirely at actual drying times. Under conservative analysis, hand dryers and paper towels are statistically equivalent in carbon impact. Under comprehensive analysis accounting for primary energy and full lifecycle impacts, hand dryers are 2 to 3 times worse than paper towels.
65. Scaled nationally, the discrepancy represents 5.8 to 45 terawatt-hours of excess energy consumption and 2.85 to 20 million metric tons of excess CO₂ annually—equivalent to powering 550,000 to 4.3 million American homes.

Finding 6: Paper Towel Superiority

66. White paper towels eliminate all five problems identified in this Complaint. White paper towels are frequently sterile (55.6% showed zero colonies), tested as statistically indistinguishable from ambient air (Wilcoxon W = 312, p = 0.24), achieve hand drying in 20 to 30 seconds through absorption rather than dispersal, cause no microbial amplification, create no water dispersal onto walls or floors, and produce no mold colonization (13% versus 100% for dispersal-type dryers). The solution is simpler than the problem. (Blouch, R.A. Jr. (2025), "Bacterial and Fungal

Contamination Assessment of Paper Towel Types," DOI:
10.5281/zenodo.15504144)

SAMPLE

D. The Bimodal Mechanism: Why All Dryers Fail Identically

67. The 462-trial dataset revealed an extraordinary finding: correlation coefficients across different manufacturers exceeded $r = 0.99$. Different blade designs, different motor specifications, different air delivery systems—yet functionally identical drying curves. Dyson versus XLERATOR Standard: $r = 0.9996$. Dyson versus XLERATOR ECO: $r = 0.9995$. XLERATOR Standard versus ECO: $r = 0.9992$. World Dryer versus all others: $r > 0.99$.
68. This convergence has a physical explanation. Water on hands exists in two states with dramatically different resistance to removal:
69. **Loose Water (0 to 20 seconds):** Droplets, pooled water, and surface films held weakly by surface tension. This water strips rapidly under air shear—it is the dramatic visible spray, the water blown onto walls, floors, and clothing. Loose water accounts for 70% to 80% of water removed in the first 15% to 20% of total drying time. This is what Defendants measure, what certifiers test, and what marketing demonstrates.
70. **Bound Water (20+ seconds):** Water trapped in skin texture, cuticles, finger creases, and hair follicles by capillary action and molecular adhesion. This water resists mechanical shear regardless of air velocity. Bound water accounts for 20% to 30% of total water but requires 80% to 85% of total drying time to remove. Physics does not negotiate.
71. Defendants' specifications describe loose water removal while implying complete drying. When Defendant Excel Dryer claims "8-second dry time," it measures loose water removal—the point at which visible pooled water is gone. Users need bound water removal, which requires 70 to 90 seconds regardless of engineering approach.
72. The framework generated a pre-registered prediction: any third manufacturer would demonstrate the same convergence because bound water resistance cannot be

engineered around. This prediction was formally documented on December 4, 2025. Field testing of World Dryer VerdeDri units on December 5, 2025 confirmed the prediction—correlation coefficients exceeded $r = 0.99$ with both Dyson and Excel Dryer curves. Three manufacturers, three different engineering philosophies, effectively identical performance limitations. The joint probability of this convergence occurring by chance is $p < 0.000000001$.

73. The defect alleged herein is not a manufacturing flaw in particular units. The defect is the design itself. All dispersal-type hand dryers are physically incapable of achieving claimed performance because they cannot overcome bound water adhesion in claimed timeframes.

E. The Two Certification Chains

74. Each manufacturer's claims travel through its own certification chain, and the two chains share no certifier. Dyson's chain is NSF: Protocol P335, issued in 2007, defines dry hands as less than 0.1 gram of residual moisture, requires drying within one operating cycle of no more than fifteen seconds at 95 percent effectiveness across at least twenty replications, and is the basis of Dyson's "only hand dryer certified hygienic" marketing. Excel's chain is UL, SGS, Smart EPD, and Anna Lasso: the UL Product Category Rule, the SGS test attribution, and the declarations issued under them.
75. Toby Saville, a Dyson microbiologist, served on the NSF P335 Protocol Development Panel that created the certification Dyson markets, and Dyson's own internal test method — DTM 553 — was incorporated into the protocol as a normative reference. Dyson participated in writing the test its products would pass. Dyson's website footnotes further disclose that marketed drying times are "determined using Dyson test method 769 based on NSF P335" — a proprietary method, never published, described as based on the standard rather than

complying with it. The method is Dyson's, the description is Dyson's, and what Dyson understood in choosing both is a matter for discovery.

76. NSF has maintained Dyson's P335 certification for approximately nineteen years. NSF has disclosed no surveillance testing verifying ongoing compliance, and the certified specification has never been reproduced: across 462 independent drying trials, zero achieved the certified threshold at any claimed time.
77. In 2012, Excel proposed amending NSF P335 to raise the dryness threshold from 0.1 grams to 0.2 grams. NSF rejected the proposal — a fact stated in Dyson's own federal court filings. SGS testing commissioned by Excel that year applied “a revised version of NSF Protocol P335 currently being developed,” and its annex redefined “thoroughly dry” as 0.1 grams per hand for a total of 0.2 grams — the threshold NSF had rejected, with the allowable moisture doubled while the 0.1 figure was preserved in appearance.
78. SGS Performance Test Report No. 2774929EFF-001, dated September 7, 2012, tested five dryer models at 12 and 15 seconds — not the 8 seconds Excel markets and not the 10-to-14 seconds Dyson markets. It recorded 0.186 grams for the XLERATOR at 12 seconds and 0.183 grams for the Dyson AB04 at 12 seconds. Independent testing across 462 trials documents 2.5 to 3.0 grams at the same intervals — thirteen to sixteen times the SGS results. The certified results cannot be independently reproduced, and every subsequent certification rests on them.
79. In July 2016, UL published the Product Category Rule for Hand Dryers. The drafting committee seated ten manufacturer representatives and two UL employees; Excel held four seats, and Excel's Vice President and Chief Operating Officer, William Gagnon, chaired the committee. The rule adopted a 0.25-gram residual-moisture endpoint — weaker than the proposal NSF had rejected — for which it supplied no scientific explanation, and it contains no standard, test, or specification for the water dispersed from the device. The rule's own Figure 2 shows 0.456 grams of

residual moisture at 8 seconds — 82 percent above the rule's own threshold at Excel's claimed time.

80. From 2017 to 2022, UL Environment's Environmental Product Declaration certified the XLERATOR at 8-second drying and 3.68 watt-hours per use. That declaration expired in July 2022 and was not renewed. In April 2022, UL certified a competing manufacturer, Hokwang, at 30 to 35 seconds drying time — the same month Anna Lasso, then UL's PCR Project Manager, formed EPD USA LLC, later renamed Smart EPD LLC.

81. In June 2023, Smart EPD issued Certificate No. SmartEPD-2023-002-0006-01 for the XLERATOR, certifying the identical figures UL had allowed to lapse: 8 seconds and 3.68 watt-hours. On that certificate Anna Lasso appears as program operator, independent critical reviewer, and independent external verifier — three functions ISO 14025 requires to be independent of one another. The underlying life-cycle assessment states that dry time and energy figures are “based on the average test results provided by Excel” and that “hygiene is not considered in this study.”

82. The 8-second figure has no published test supporting it. The only public SGS report tested at 12 and 15 seconds. Excel's own president testified under oath in 2012 that XLERATOR drying time was 12 seconds. Either the additional testing exists and can be produced and reconciled with the public record, or the certified figure lacks disclosed support. Both chains' certifications reached Plaintiff embedded in the price of the certified products, and Plaintiff relied on them.

F. The Certification Chain

THE CERTIFICATION CHAIN — COMPLETE SUPPORTING BRIEF

This is a complete 22 page brief presenting novel law upon which the rest of the case is built and is best understood in full. There is a chain of liability from certifier to the user and we have built it out completely, in detail. Litigation teams will decide if it applies but we present it for your consideration. It sets out how a certification — which begins as a private transaction between a manufacturer and a certifier — becomes a representation that is both binding on and relied upon

by the party who ultimately purchases the certified product. It is presented complete, rather than summarized, because the chain does not reduce to a summary without losing the force that makes it persuasive: each step is an act a party performed, in the order performed, and the conclusion follows only from the whole.

Two features of this brief bear on Gap's claims before the reader begins. First, the brief was originally composed to establish the obligation owed to a user — a person at the end of the chain who purchases nothing and relies only on the public-facing mark. That is the hardest case the chain has to carry, and the brief carries it. Gap's position is stronger and sits earlier in the chain. Gap is the purchaser — the party who paid the price in which the certification premium was embedded. The obligation the brief labors to extend all the way to a non-purchasing user reaches Gap directly, at the contract link, without the final extension the user's case requires.

Second, the brief establishes two separate obligations, and both are available to Gap. The first is a contract obligation, which runs from the certifier to the party who paid. The second is a duty — negligent misrepresentation under Restatement (Second) of Torts § 552 — which runs to everyone who relied, purchaser and user alike, and which has never required privity. Because Gap is the purchaser, it stands on both grounds. A reader satisfied of these two propositions may proceed directly to the Gap application and the counts that follow; the brief is provided in full for the reader who wishes to see the whole demonstration.

We believe the contract claim against the mark is the theory the certifiers have the most reason to fear.

PURPOSE OF THIS MEMORANDUM

A certification begins as a private transaction between a manufacturer and a certifier. It ends on a wall in a public restroom, where a person who has never seen the certificate, never read the standard, and never heard of the certifying body places his hands into a machine and trusts that someone competent has evaluated it.

This memorandum describes how the certifier's representation travels that distance. It sets out eighteen steps, each an act a party performed, running from the manufacturer's first approach to the certifier through to the user standing in the room. Nothing in the sequence is inferred. Each step is an ordinary feature of how third-party certification operates, and the Defendants' own documents record the steps that matter most.

The chain is followed by three sections stating the obligations the law attaches to it. The Mark Is a Contract describes what the certification does when it reaches the party who pays for it. The Mark Is a Duty describes the obligation that runs to every party who relied. Obligations to the User identifies where the user stands, why the duty reaches him — and where Plaintiff, the purchaser, stands relative to him.

The user is the fourth party in the chain and the last. He purchases no hand dryer and holds no contract claim; his claim rests on the duty alone. The contract analysis is stated because the obligation owed at the fourth link cannot be described without showing how the certification traveled to reach it. Plaintiff stands earlier — at the third link, where the money changed hands — and holds both obligations.

Two propositions are tested at the end of the chain by subtraction. Remove the mark, and the certifier's relationship with the manufacturer is untouched while everything downstream disappears. Remove the user, and the certified event itself ceases to exist — there is nothing to certify, no reason to seek certification, and no standard worth writing. Together the two tests establish what the mark is for and whom the certification is about.

This memorandum is submitted in support of the Complaint and is referenced in its factual allegations.

THE PROPOSITION

A standard exists to define the harms that occur if it is not met; testing and certification exist to prevent them. Failed testing, failed certifications and failed standards execute those harms; a harm named and never measured is a harm never prevented. The measure of each is the certifier's own document — the one it wrote, and the one it bound itself to.

That proposition sorts this memorandum. A certifier that defines a harm, fixes the level at which it occurs, and then declares that level not exceeded has done something a manufacturer cannot do. The manufacturer builds a machine. The certifier defines what the machine must not do, prescribes the test, and declares the boundary uncrossed. A certificate is not a report about how a product performs. It is a statement about how the product must perform, followed by a declaration that it does.

Two certifiers did exactly that. NSF Protocol P335 is titled Hygienic Commercial Hand Dryers. Section 6.4 states that "the operational intent of a hygienic commercial hand dryer is to prevent the hand dryer from using air contaminated with microbes to dry a user's hands," and derives a threshold on the order of one culturable organism per operating cycle. Broad-spectrum testing at the output of certified machines recorded a median of two hundred. UL's Product Category Rule for Hand Dryers states the function of the product it governs: hand dryers are electric devices used to provide a hygienic method to dry hands in public washrooms.

The omission half matters as much as the failure half. P335 names the hazards its protocol exists to address and prescribes no test that measures the air a functioning machine emits. Its section 6.5 requires six-log bacterial and four-log fungal disinfection of water captured in a tank, and says nothing about the same water thrown at a wall. UL's rule declares the function hygienic and its conformance table lists electrical and electromagnetic standards and no hygiene standard at all. Each is a harm the certifier named and never wrote a measure for.

The event and its nine elements

NSF's operating cycle and UL's functional unit define the same completed physical event: the drying of human hands to a specified residual-moisture endpoint in an occupied room. No regulator supplied either definition. NSF wrote its own. UL wrote its own and bound it to standards UL selected. The event contains nine elements: a dryer, electricity, a wall, a floor, air, hands, water, time and dryness. Remove any one and the declared cycle fails. Plaintiff did not select them.

Two tests cover four of the nine. A single gravimetric procedure measures the dryness of the hands within a stated time; UL adds electricity. Five were never measured, and not in the same way. The air was named, its hazard stated, its acceptable level fixed at approximately one organism per operating cycle — and the prescribed test looks at the intake filter. The water was regulated to six-log sterility inside a tank and left entirely alone in the room. The dryer's own surfaces carry an unconditional requirement with no test attached. The wall and the floor appear in neither document. Three requirements written, three tests aimed away from the harm. And the four elements that were measured were certified wrong by an order of magnitude.

One distinction runs through everything that follows. Protocol P335 makes no claim concerning energy consumption, carbon, or environmental impact, and prescribes no test of any of them. It is a hygiene and dryness protocol, and the energy and environmental failures described in this memorandum are UL's, Smart EPD's, and SGS's as the source of the figure they rest on. NSF chose a hygiene protocol and stayed inside it. UL chose a system that required the reporting of hazards and of substances affecting human health, and produced a declaration reporting energy.

The two tracks

This memorandum states two obligations and they are separate. The first is the contract, and it runs from the certifier to the party who paid. The second is the duty, and it runs to everyone who relied — the purchaser and the user alike. Neither depends on the other. The contract does not become the duty, and the duty does not require the contract. The Mark Is a Contract states the first. The Mark Is a Duty states the second. Obligations to the User states where the second lands.

The user holds no contract with the certifier and needs none. What reaches him is the obligation of a person who supplies information for the guidance of others in their business transactions — an obligation that has never required privity, never required that the relying party be identified, and never required that he read the document the information came from.

THE CHAIN

1. ORIGIN

Manufacturer hires certifier to apply agreed upon standards to the device for testing.

A manufacturer and a certifier complete a transaction in which the manufacturer contracts with the certifier for agreed upon standards, testing and certification of a product the manufacturer builds for sale.

2. RESPONSIBILITY STANDARDS

Certifier promises valid standards and accurate testing.

The certifier is responsible for the standards it creates and the testing it performs. The certificate is the result, binding to the manufacturer.

3. RESPONSIBILITY PRODUCT

The built machine is the manufacturer's product, not the certifier's.

The manufacture builds the product. It is responsible for the performance of the product, binding to the customer and user.

4. DOCUMENT

Tested units are certified via a document explaining the tests and results.

The certificate binds manufacturer to certifier by agreement and contract.

5. THE DOCUMENT CONFERS STATUS

A certified device is substantially and identifiably different than an uncertified device.

The certification, a declaration of compliance with a set of standards, alters the product. The certification is not a report about how a product performs through objective testing, it is a report about how the product must perform and that it complies.

Two machines perform the same function. One is certified, the other is not. The certifier did not test the machine to see what it does, the certifier stated, "it must do this" then tested it to verify that it complies. It is the action that transforms the device, adding value for all parties.

Manufacturers cannot certify. They can test, using certifiers' standards, but they cannot confer the authority held by the certifier. Certifiers prohibit the use of their mark on untested devices and enforce that prohibition.

The consequence is commercial and it is absolute. A certifier's listing controls whether some products can be sold at all: an unlisted pipe is unmarketable. The uncertified device is not a device with less information attached to it. In many cases it is a device that cannot enter the market the certified device occupies.

6. TRANSACTION COMPLETE

Certification documents are held by the manufacture, filed in a cabinet.

The manufacturer holds the document, the transaction is complete.

7. THE INVENTION OF THE MARK

Certifier realizes it can establish its brand to the public through the manufacturer with a public facing physical label, increasing value for both.

A certifier at sometime in the past had the thought to offer a seal or sticker with the certifier's logo on it to the manufacturer to place on the device.

UL began in 1894. Its own historical account says that in 1906, William Henry Merrill created the UL Label Service and introduced the first UL labels specifically to give consumers the ability to select products tested to UL's safety standards. The private laboratory existed first; the public-facing label came later as a deliberate mechanism for carrying the laboratory's conclusion to consumers.

8. THE OFFER OF THE MARK

Certifier offers manufacturer a certifier branded sticker for the device.

The mark makes the certifier public facing. That is its sole purpose. The certification already exists, the manufacturer has it, the mark has no reason for existence except to bring the certifier's brand to consumers via the claims made in the certification. The offer is specific and defined, not broad and undefinable. It is not the Nike Swoosh, promising everything the consumer wants it to mean. Be Like Mike is valuable but it not is the guaranteed result of purchasing a Nike sneaker. Proper function and safety are the guaranteed promises of a certifiers' mark. Certifiers claim that this product meets our standards and we have tested it. You should purchase and use it because it performs as we said it does and it is safe.

The certifier controls the mark, specifies its form, and conditions its use. The manufacturer already holds the certificate; what it acquires with the mark is the certifier's reputation operating on people who will never read one.

9. ACCEPTANCE OF THE MARK

Manufacturer accepts.

The contract and all necessary duties between the certifier and the manufacturer are extended to the purchaser. Duty, through reliance, extends to the user.

10. MARK IS BOUND TO THE CERTIFICATE

The brand sticker is permanently bound directly to the paper in the file for that device.

The contract and all necessary duties between the certifier and the manufacturer are extended to the purchaser via the certification document. Duty extends to the user.

11. THE MARK TRANSMITS STATUS

The sticker makes the status of the device, conferred through the certification document, public facing.

12. BINDING THE CERTIFICATE TO THE CONSUMER

The sticker's purpose is purely public-facing, representative of the held certification made by the certifier and manufacturer jointly to the consumer. The manufacturer already has the certification. The contract and all necessary duties between the certifier and the manufacturer are extended to the purchaser via the certification document via the purely public facing mark. Duty extends to the user.

The mark does not inform the manufacturer who holds the certificate. It does not inform the certifier who wrote it. It is placed on the exterior of the product, facing outward, toward purchasers and users, bound to the certification in the filing cabinet. A symbol positioned to be read by the public is positioned for the public. Placement is purpose.

13. CONTRACT

Purchaser evaluates and buys, in part, for the value of the document in the drawer via the branded sticker advertisement.

The purchaser pays a price that includes the certification. That money moves through the manufacturer to the certifier, every party informed. The certification fee is not absorbed out of goodwill; it is recovered in the price of the goods. The Third Circuit accepted that this is how the cost travels, treating the certification cost as "passed through ... as part of the per-unit price." *Brand Marketing Group LLC v. Intertek Testing Services, N.A.*, 801 F.3d 347 (3d Cir. 2015). It is recoverable because the mark increases the value of the product. The manufacturer already held the certificate before the mark was applied. The purchaser selects the marked product over the unmarked one and pays the difference. The certifier collects it.

14. DEPLOYMENT

Purchaser puts the device, sticker on it, into use.

The mark travels with the device and remains visible. The certification, which began as a private document, is now presented to the public as they encounter it.

Users dry their hands on machines purchased by others. Plaintiff is the party who purchased them. The value of the sticker is now transferred from the certifier to the user via the purchaser. Without users there is no product, no market and there are no certifiers. The manufacturer implies quality and increases income via the promises made by the certifier, paid for by the purchaser, paid for by the user.

15. BINDING BY DUTY

Users see the sticker and trust the device, directly linked to the document in the drawer, amplified by brand reputation.

The user has no contract with the certifier and needs none. The obligation that reaches him is duty, and duty requires only that the certifier supplied information for the guidance of others and that reliance on it was foreseeable. Both conditions are satisfied at the moment the mark is placed. The certifier's mark binds through the manufacturer by reliance and duty.

16. RELIANCE

Users assume certification for public facing products in public buildings.

The user enters the room. The device is present. The user assumes any device present in a commercial building in 2026 has been tested, vetted, retested, certified, and found to be safe for use. A certified hand dryer's presence is itself a representation that the evaluations a reasonable person assumes were performed have in fact been performed. The user relies on this without examination, often without noticing it. Millions do so daily in Plaintiff's own restrooms.

That reliance is not careless. It is the condition the certification system exists to produce

The entire system's success - certifier to manufacturer to purchaser - is measured by how completely it removes the need to ask.

17. THE TEST

Remove the sticker.

Nothing upstream changes. The contract and certification between certifier and manufacturer is untouched. Contracted services have been rendered and the transaction is complete. A device has been shown safe to produce and safe to use, the value to the manufacturer and the payment to the certifier are equitable, and if the standards and testing are valid both parties received exactly what they bargained for. No further action is required of either.

Everything downstream disappears.

The absence of the sticker impacts only the purchaser and the user. A purchaser no longer believes the product is superior to any competing product, offering no increased value. A manufacturer could post the complete certification document on every public document and representative dryer in a sales room exposed to purchasers, not a footnote to an incomprehensible document a

reasonable user cannot understand, but the mark, the sticker, offered by the certifier to the manufacturer to provide the imprimatur of its brand reputation does it so much more efficiently. A user, absent the sticker, no longer has the expectation of quality, safety, and validity no matter what the product is. There are millions of uncertified products competing in the marketplace including hundreds of hand dryers. A dryer with no mark is not the same as a dryer with a mark. Reliance collapses.

18. THE SECOND TEST

Remove the user

There is no product and no market, certified or uncertified, mark or no mark. Manufacturers do not seek certification, there are no certifiers.

Certifiers wrote standards about hands. The user is not peripheral. The user is the subject.

Remove the user and the entire chain collapses. The mark is user-facing. That is its purpose.

THE MARK IS A CONTRACT

The chain describes what the certifier built: a status conferred in private, and an instrument for carrying it into public view. This section states what that instrument does when it reaches the party who pays for it.

1. The certifier's product

The certifier does not manufacture the hand dryer. The hand dryer belongs to the manufacturer, and the manufacturer answers for it. *Toman v. Underwriters Laboratories, Inc.*, 532 F. Supp. 1017, 1019 (D. Mass. 1982) (“UL can be held liable only for its own negligence, not vicariously for that of [the manufacturer]”). Plaintiff adopts that rule and does not disturb it.

The certifier's product is the certification — the standard it wrote, the test it specified, the evaluation it performed, and the mark it created to carry the result into commerce. That is its entire output and its entire revenue.

When a purchaser buys a marked product, two things are bought in one transaction: the device from its maker, and the certification from the certifier, the mark having informed the purchaser before the transaction. The published standard states the terms of the second. The mark represents conformance to those terms. The price includes both.

2. The mark is an offer

An offer is “a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” *O'Brien v. Nationwide*, 689 A.2d 254, 258 (Pa. Super. 1997) (quoting *Cobaugh*).

A posted public offer, accepted by performance, is a binding unilateral contract, and the defense that the offer was a mere gift unsupported by consideration fails where “the offer specified the performance which was the price or consideration to be given.” *Cobaugh v. Klick-Lewis, Inc.*, 561 A.2d 1248, 1249 (Pa. Super. 1989).

The mark is knowingly posted. It is placed on the exterior of the product, facing outward. It cannot inform the manufacturer, who holds the certificate. It cannot inform the certifier, who wrote it. It is directed at the person deciding whether to buy.

Both certifiers recorded that purpose in their own materials. UL introduced the UL Label Service in 1906, twelve years after founding the laboratory, specifically to give consumers the ability to select products tested to UL's safety standards. NSF specified the mark in Annex A.1 of Protocol P335, reproduced it, and directed that certified products bear it.

3. The terms are definite

An offer “must be intentional, definite, in its terms and communicated.” *Stumpp v. Stroudsburg Municipal Authority*, 658 A.2d 333, 335 (Pa. 1995). No offer exists where essential terms are unclear. *Columbian Rope Co. v. Rinek Cordage*, 461 A.2d 312, 316 (Pa. Super. 1983).

The terms are published quantities. Among other things, UL's Product Category Rule fixes the functional unit at 100,000 completed dryings to 0.25 grams residual moisture. UL's Environmental Product Declaration states 8.355 seconds and 3.68 watt-hours per drying. NSF Protocol P335 §4.3.3 requires 0.1 gram within one operating cycle or fifteen seconds, and §6.3 requires 95% effectiveness across a minimum of twenty replications.

Each is a number, in a published document, attached to a named product. They are as definite as the hole-in-one in Cobaugh.

4. Acceptance

The purchaser accepts by purchasing. Assent may be manifested “wholly or partly by written or spoken words or by other acts.” Restatement (Second) of Contracts §19. A promise “may be stated in words ... or may be inferred wholly or partly from conduct.” *Id.* §4.

The certifier has never asked a purchaser to sign anything. The mark was built to produce the purchase without a signature, and it does.

5. Consideration

The certification fee is not absorbed by the manufacturer out of charity. It is recovered in the price of the goods, and it is recoverable because the mark makes the goods worth more. The Third Circuit accepted that this is how the cost travels, treating the certification cost as “passed through ... as part of the per-unit price.” *Brand Marketing Group LLC v. Intertek Testing Services, N.A.*, 801 F.3d 347 (3d Cir. 2015). The purchaser pays it. The certifier collects it through that channel. The manufacturer already holds the certificate before the mark is applied. What the fee buys beyond the certificate is the mark, and the mark's only function is its effect on people who will never read the certificate.

6. Subjective intent is not the question

“In ascertaining the intent of the parties to a contract, it is their outward and objective manifestations of assent, as opposed to their undisclosed and subjective intentions, that matter.” *Ingrassia Constr. Co. v. Walsh*, 486 A.2d 478, 483 (Pa. Super. 1984), followed verbatim in *Espenshade v. Espenshade*, 729 A.2d 1239, 1243 (Pa. Super. 1999).

What governs is what the certifier's conduct communicated to a reasonable person who saw it. That conduct is documented in the certifiers' own instruments: the mark created, specified, reproduced, licensed, charged for, and policed. NSF prohibits unauthorized use of the designation “through the marking of products or packaging, or by any other means.” NSF Protocol P335, front matter. NSF commits to audits “of all facilities and production locations at least annually,” covering changes in labeling and product literature. *Id.*, Annex A.2. NSF commits to retesting certified systems every five years. *Id.*, Annex A.3.

A party does not specify, license, police, audit, and retest an instrument that communicates nothing.

7. The law implies the contract

Where a bargain is disputed, the law supplies one. “Where unjust enrichment is found, the law implies a contract ... which requires that the defendant pay to plaintiff the value of the benefit conferred.” The focus “is not on the intention of the parties, but rather on whether the defendant has been unjustly enriched.” *Schenck v. K.E. David, Ltd.*, 666 A.2d 327, 328 (Pa. Super. 1995).

8. Capacity and legality

UL Solutions, Inc. is a Delaware corporation recognized by OSHA as a Nationally Recognized Testing Laboratory under 29 C.F.R. § 1910.7. NSF International holds the same recognition, first granted December 10, 1998. Each contracts to certify products as its business. Certifying a product under a published standard is lawful and serves the public.

9. The purchasers in this chain

The certification passed through more than one purchaser. Excel Dryer paid UL for certification and for the mark. Distributors and retailers acquired marked product. Facility operators — the apparel retailers, building owners, and property managers who install commercial hand dryers — purchased marked devices and installed them in restrooms they open to the public.

Each of those parties paid a price that included the certification, and each received the terms the certifier published.

10. What Plaintiff claims

The elements of formation are stated because they are present at the third link — and the third link is Plaintiff's.

Plaintiff is the purchaser. The contract belongs to it, and the Counts below plead it — together with the duty, in the alternative, needing to prevail on only one. What follows belongs to Plaintiff on both grounds.

11. The terms, stated by the certifiers

The terms are not inferred. UL's Product Category Rule fixes the functional unit at 100,000 dryings to 0.25 grams of residual water or less. Its Environmental Product Declaration for the XLERATOR states a dry time of 8.355 seconds and approximately 3.68 watt-hours per use, and normalises the reported environmental results to that functional unit. NSF Protocol P335 §4.3.3 requires 0.1 gram of residual moisture within one normal operating cycle or fifteen seconds, whichever is lower, and §6.3 requires 95 percent effectiveness across not fewer than twenty replications. Each figure is the certifier's own, published in the certifier's own document.

Against those terms: 462 drying trials on downdraft dispersal units recorded zero compliance at any manufacturer-claimed time, with mean residual moisture of 2.83 grams — more than twenty-eight times the strictest certified threshold. A specification stated to a thousandth of a second is a definite term. So is a threshold stated to a hundredth of a gram.

12. What the certifiers did with the mark

The certifiers' conduct is documented in their own instruments. The mark was created, specified, reproduced, licensed, charged for, and policed against unauthorised use. NSF Protocol P335 conditions display of the mark on certification and reserves enforcement against use "by any other means." UL controls the form of its mark and the conditions of its use. A party that specifies a symbol, charges for the right to display it, and prohibits its display by anyone who has not paid is not passively permitting a courtesy. It is selling something.

THE MARK IS A DUTY

The Mark Is a Contract, above, describes what the mark does where money changes hands. That obligation stops at the parties who paid.

The duty does not stop. It runs the full length of the chain, because reliance runs the full length of the chain, and every party who relied was owed the same care.

1. The obligation

One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable

reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information. Restatement (Second) of Torts §552.

Pennsylvania adopted §552 in *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270 (Pa. 2005), to “clarify the elements of the tort as they apply to those in the business of supplying information to others for pecuniary gain.” *Id.* at 280.

A certification body is the paradigm occupant of that category. It manufactures nothing. Its output is evaluative information — the standard, the test, the record, the mark — supplied for the guidance of others, for a fee.

2. Privity is not required

Because §552 does not require privity, “the economic loss rule does not apply to claims of negligent misrepresentation sounding under Section 552.” *Bilt-Rite*, 866 A.2d at 288. The section reaches circumstances “where it is foreseeable that the information will be used and relied upon by third persons, even if the third parties have no direct contractual relationship with the supplier of information.” *Id.* at 287.

The Third Circuit has applied the rule to a testing laboratory of the Defendants' own category. In *Brand Marketing Group LLC v. Intertek Testing Services, N.A.*, 801 F.3d 347 (3d Cir. 2015), a jury verdict of \$6,045,000 — including \$5,000,000 in punitive damages — was affirmed against a Nationally Recognized Testing Laboratory that negligently certified a product to a standard the product did not meet.

3. The relying party need not be identified

Intertek “didn't need to know that Brand, specifically, would rely on its testing data for §552 to apply.” It “needed to know only that somebody aside from [the entity that submitted the product] would rely on it.” *Brand Marketing*, 801 F.3d at 360.

The Restatement states the rule twice. “It is not necessary that the maker should have any particular person in mind as the intended, or even the probable, recipient.” Restatement (Second) of Torts §552 cmt. h. “It is not required that the person who is to become the plaintiff be identified or known to the defendant as an individual.” *Id.*

Illustration 9 applies it. A city engages an engineering firm to prepare a subsurface report, notifying the firm the report will be furnished to bidders. Without knowing the identity of any bidder, the firm negligently prepares an inaccurate report. A general contractor bids in reliance. A subcontractor — who contracts with the general contractor rather than the city, and who never receives the report — contracts to perform part of the work. The firm “is subject to liability to C and to D.”

The subcontractor is two steps removed, never identified, and never in possession of the document. Liability attaches in his favor.

4. No physical injury is required

“What matters is that *Intertek* acted in reckless disregard of the risk of harm; that the risk did not come to fruition is a product of chance for which *Intertek* should not be rewarded.” *Brand Marketing*, 801 F.3d 347, majority op. n.4.

5. The duty runs to every party the mark reached

The certifier supplied one representation. Every party downstream of it relied on the same representation, and each was owed the same care.

The manufacturer relied when it built a product line around a certification it paid for. The distributor and the retailer relied when they stocked marked goods. The facility operator relied when it selected a machine certified as hygienic and installed it in a room where its customers wash their hands. The user relied when he put his hands in the machine.

Four positions, one representation, one standard of care. The certifier does not owe less to the last of them because it also owed something to the first. That multiple parties relied does not divide the obligation; it establishes that reliance was foreseeable in exactly the way §552 requires. A certifier that places its mark on billions of products annually has not diluted its duty. It has multiplied the transactions its information was intended to influence.

6. What the certifier undertook

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if his failure to exercise reasonable care increases the risk of such harm. Restatement (Second) of Torts §324A.

Section 324A is the law of Pennsylvania. *Farabaugh v. Pa. Turnpike Commission*, 911 A.2d 1264 (Pa. 2006).

A standards-writing certifier that lists conforming products “has undertaken to render the service of inspecting ... and delisting those ... unable to adhere to standards it has promulgated. It should recognize that these services are necessary for the protection of third persons, consumers who will acquire the [product].” *FNS Mortgage Service Corp. v. Pacific General Group, Inc.*, 24 Cal. App. 4th 1564, 1572 (1994). Summary judgment for the certifier was reversed. The certifier's listing controlled marketability: “an unlisted pipe ... is unmarketable.”

“It is straining at words to say that Underwriters does not approve the design of a product ... when Underwriters lists it, it thereby tacitly impresses its approval upon the design.” *Hempstead v. General Fire Extinguisher Corp.*, 269 F. Supp. 109, 117 (D. Del. 1967).

7. The scope of the undertaking is what the certifier defined

Section 324A liability is measured by what the certifier undertook to do. Where the harm fell outside the undertaking — and where the certifier had affirmatively disclaimed the subject — no duty attached. *Dekens v. Underwriters Laboratories*, 107 Cal. App. 4th 1177 (2003) (“toxicity is one of them — we use a disclaimer, indicating that we have not looked into toxic effects”).

Neither certifier disclaimed hygiene. Each defined it.

UL's Product Category Rule states the product's function, as ISO 14025 §6.7.1(a) requires, as a hygienic method to dry hands in public washrooms. NSF titled its protocol “Hygienic Commercial Hand Dryers” and stated in §1.1 that it “establishes minimum requirements for health and sanitation characteristics of hygienic commercial hand dryers.” NSF's Scope section identifies the hazards the protocol addresses: that commercial hand dryers “discharge ambient air that could also contain bacteria, mold spores or viruses”; that insufficient drying leaves “residual moisture ... [that] could facilitate transmission of transient microorganisms”; and that such dryers “can promote distribution of potentially pathogenic bacteria and allergenic mold spores or recontaminate hands.” NSF Protocol P335 §1.2.

The harm alleged is not outside the undertaking. It is the undertaking, unperformed.

The undertaking UL defined was mandatory in its content, and UL did not perform it. ISO 14025, the standard UL selected and declared conformance with, requires the Environmental Product Declaration to carry a content declaration covering materials and substances that can adversely affect human health across all stages of the life cycle. That requirement is core content under ISO 14025 §7.2.1(i). It is not additional information under §7.2.3, and the exclusion clause UL relies upon sits in §7.2.3 and cannot reach backward into the core content the standard compels.

UL defined the functional unit as the drying of 100,000 hand dryings to a residual-moisture endpoint — a completed physical event performed on human hands, in a room, one hundred

thousand times. The outputs of that event — the water dispersed, the microbial load amplified in the output air, the deposition on surrounding surfaces — occur inside the boundary UL drew. They are not external merely because they occur locally. Safety is a label, not a system boundary.

UL's own declaration removed the subject from its comparison. Under the heading Application, the XLERATOR declaration states that "the purpose of this product is to dry hands," that "it is possible that the system has secondary functions, such as hygiene," and that "for purposes of the present study it is assumed that any other functions are equivalent among different systems and that the systems can be evenly compared on the basis of the hand-drying function alone." The comparative results the declaration reports therefore rest on an assumption that hygienic performance does not differ between systems. Independent testing measured that difference directly. Either UL meant the assumption, and a rule defining a hygienic function while establishing no evaluation of it has omitted assessment of the function it declared; or UL did not mean it, and the mandatory functional definition purchasers are entitled to rely upon is inaccurate. The place a reader would look for those outputs was covered over. EN 15804, which UL selected as its reporting framework, divides the use stage into modules, and Module B1 covers the emissions connected to the normal use of the product — what the device releases into the room during operation. UL's Product Category Rule states in a footnote that it "deviates from this approach by using B1 for reporting operational energy use." The footnote recites what B1 is for, recites that operational energy belongs in B6, and announces that the rule will do otherwise. The section where a reader would be guided to question device emissions was thereby occupied by a figure already reported elsewhere.

The 2017 XLERATOR Environmental Product Declaration reported energy under B1 across its results tables, and its section headed "Environmental and Health During Use Stage" contains a single sentence, concerning electrical safety. Nothing in the declaration disclosed that the emissions module had been repurposed. The 2023 declaration issued under the same Product Category Rule, and verified by the same person, did it again: it reported energy under B1, covering over the room-emissions block a second time, and it carried no footnote at all — leaving a reader no way to learn from the declaration that a module reserved for what the device releases had been given to energy.

EN 15804 supplied two compliant courses and UL took neither. A declarant may report the module, or mark it "ND" — not declared — and either course leaves the certifier on record as to the room emissions. UL declared neither. Gap, and every purchaser who read the declaration to compare hand drying against paper towels, received a document that appeared complete and was silent, by construction, on the outputs of the very event it was built to measure.

8. Reliance on a certification is justifiable

Implicit in a seal and certification "is the representation [the certifier] has taken reasonable steps to make an independent examination of the product endorsed, with some degree of expertise, and found it satisfactory." *Hanberry v. Hearst Corp.*, 276 Cal. App. 2d 680, 683 (1969). Because "the very purpose of [the] seal and certification is to induce consumers to purchase," the certifier owes a duty "to use ordinary care ... so that members of the consuming public who rely on its endorsement are not unreasonably exposed to the risk of harm." A disclaimer does not bar the tort. *Id.* at 685.

Justifiable reliance does not require independent verification. Where an insurer argued that reliance was unjustified because the plaintiffs "could have simply read the policy to discover the actual coverage the policy afforded," the evidence was held sufficient to present a jury question

notwithstanding. *Rempel v. Nationwide Ins. Co.*, 471 Pa. 404, 370 A.2d 366 (1977), as recited in *Bilt-Rite*, 866 A.2d 270.

A facility operator does not reproduce a microbial-kill protocol. A designer does not repeat a life-cycle assessment. A user does not audit a Product Category Rule before drying his hands. The certification exists so that none of them must. That is the product the certifier sells.

9. Reasonable care

The standard is the certifier's document. The test method is the certifier's design. The evaluation is the certifier's execution of its own protocol. The certification is the certifier's act, issued in the course of the business from which it earns its revenue.

Across 462 drying trials conducted under the certifiers' stated method, zero achieved the certified specification. Residual moisture measured 2.83 grams where the certifications state 0.1 to 0.25 grams. Bacterial amplification measured 49.6 to 110 times ambient in products certified as hygienic. Visible mold colonization appeared at 100% of dispersal-type installations.

The falsity is the measured difference between a published specification and a reproducible result.

10. Custom is no defense

"[A] whole calling may have unduly lagged in the adoption of new and available devices ... [T]here are precautions so imperative that even their universal disregard will not excuse their omission." *The T.J. Hooper*, 60 F.2d 737, 740 (2d Cir. 1932) (L. Hand, J.).

That the industry has certified hand dryers this way since 2007 establishes the practice. It does not establish that the practice was careful.

11. The rule, in full

One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information. Restatement (Second) of Torts §552. Pennsylvania adopted the section in *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270, 280 (Pa. 2005).

The Third Circuit applied it to a testing and certification laboratory, affirming a verdict of \$6,045,000 including \$5,000,000 in punitive damages. *Brand Marketing Group LLC v. Intertek Testing Services, N.A., Inc.*, 801 F.3d 347 (3d Cir. 2015). The laboratory needed to know only that somebody other than the party commissioning the test would rely on it. *Id.* at 360. The Restatement states the rule twice, and Illustration 9 imposes liability in favour of a subcontractor two steps removed, never identified, who never received the document.

A negligent-misrepresentation claim against UL survived dismissal on the reasoning that UL internally controls its certification process and decides unilaterally what authorisation to use its mark means. *Hounen Solar, Inc. v. UL LLC*, 2023 U.S. Dist. LEXIS 134978 (N.D. Ill. 2023). And a nationally recognised testing laboratory is answerable where it failed to meet its own standards for testing, interpreted the standard inconsistently, or lacked independence. *Warren Technology, Inc. v. UL LLC*, 962 F.3d 1324 (11th Cir. 2020).

12. The undertaking, and how old the rule is

One who undertakes to render services to another which he should recognise as necessary for the protection of a third person is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care. Restatement (Second) of Torts §324A. The essential provisions of that section "have been the law in Pennsylvania for many years." *Cantwell v. Allegheny County*, 506 Pa. 35, 483 A.2d 1350 (1984). Pennsylvania applied it to a party undertaking safety-related evaluation in *Farabaugh v. Pennsylvania Turnpike Commission*, 590

Pa. 46, 911 A.2d 1264 (2006). This is not a novel theory. It is a rule Pennsylvania has applied for four decades.

What the certifier undertook is stated in its own front matter. NSF titled its protocol Hygienic Commercial Hand Dryers and states at §1.1 that it "establishes minimum requirements for health and sanitation characteristics." Its Scope identifies the hazards: dryers "discharge ambient air that could also contain bacteria, mold spores or viruses," and insufficient drying leaves residual moisture that "could facilitate transmission of transient microorganisms." The protocol also states what it declined to cover: provisions for safety were not included, because other bodies supply them. It named safety and carved it out. It did not name hygiene, and could not have — hygiene is the subject the document is titled after.

13. The measure of reasonable care is the certifier's own document

Where a certifier writes the standard, specifies the test method, and executes its own protocol, the standard of care needs no expert to construct it. The standard is the certifier's document, the test method its design, the evaluation its execution of its own procedure. Measured that way: residual moisture of 2.83 grams against certifications of 0.1 to 0.25 grams; a median of two hundred colony-forming units against a derived acceptance of approximately one; and a declared hygienic function with no hygiene standard anywhere in the conformance regime the rule itself prescribes.

A certifier that departs from its own published procedure has not exercised the care its own document defines. That is the whole of the standard-of-care question, and both certifiers supplied the answer before the question was asked.

OBLIGATIONS TO THE USER

The Mark Is a Contract states the obligation where the mark was paid for. The Mark Is a Duty states the obligation to everyone who relied on it. This section identifies where the user stands — the hardest case the chain must carry, and the case this brief was composed to win. Plaintiff stands a link earlier and holds more; what follows shows how much reaches even the party who bought nothing.

The user never bought a hand dryer. The user bought clothes.

1. The fourth link

The certification travels four links, and every link is an act a Defendant performed or an act the Defendants intended.

First, the manufacturer contracts with the certifier. The certifier writes the standard, specifies the test, conducts the evaluation, and issues the certificate. The certificate is not a record of what the machine did. It states what the machine must do and declares that it complies, and the device that carries it is a different commercial object from the identical device that does not. The status is conferred at that moment, inside a private transaction, where no purchaser and no user can see it. This link is uncontested. It is the Defendants' business model.

Second, the certifier makes that status visible. It offers the manufacturer a public-facing mark and directs its application to the product. The mark confers nothing; the conferral already occurred at the certificate. The mark carries no content of its own and states no specification. It is bound to the certificate, exclusively, by the certifier's design and under the certifier's control, and its only function is to make a private status legible to people who will never see the document that created it.

Third, the marked product enters commerce and reaches purchasers. Each pays a price that includes the certification. The certifier is paid through that channel.

Fourth, a purchaser installs the certified product for the use of the people it serves, and the certification arrives at them. It arrives whether or not they read the mark. It arrives whether or not

they know the certifier's name. It arrives because the machine is on the wall, and the machine is on the wall because it was certified.

2. The fourth link is why the first three occur

A commercial hand dryer is not bought to be owned. It is bought to be used, and it is bought to be used by someone other than the buyer.

A clothing retailer does not install a hygienic hand dryer because the retailer has hands. The retailer installs it because the retailer's customers do. The certified quality the retailer purchased can only be delivered to a third party — the person standing at the sink. A certification of hygienic hand drying has no value to a purchaser who will never use the device. Its entire value to the purchaser is its effect on the people the purchaser serves.

The purchaser is a conduit. The certification's destination is the user.

3. How the certification reached Plaintiff

Plaintiff is a sophisticated commercial purchaser. In selecting and deploying commercial hand dryers at scale across its retail locations, Plaintiff relied on the NSF and UL certification marks, and on the manufacturers' representations built upon them, as independent, third-party validation that the products performed as claimed. Plaintiff relied on those certifications specifically in its national procurement across its retail brands, and in maintaining for its customers and employees clean, well-kept store facilities.

Plaintiff deployed the certified dryers throughout its retail locations in reliance on that validation, and was entitled to do so without independently auditing the underlying testing protocols.

That reliance is not a defect. It is precisely the product the certifiers sell. The purpose of a certification system is to make independent verification unnecessary for those who rely on the mark. If a commercial purchaser had to audit each testing protocol before deploying a certified product, the certification would have failed at the only task it has. The certifiers do not sell documents to readers. They sell the assurance that permits a purchaser to rely on a certified product without re-testing it.

4. What §552 requires

Section 552 requires false information supplied for the guidance of others, justifiable reliance, pecuniary loss, and a failure of reasonable care.

It does not require that the relying party receive the certifier's document. It does not require that the relying party read it. It does not require that the relying party know the certifier's name. It does not require privity. *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270, 287 (Pa. 2005).

Comment h forecloses the identification requirement in terms, and Illustration 9 imposes liability in favor of a party two steps removed who never received the document. Restatement (Second) of Torts §552 cmt. h & illus. 9.

5. The transaction the information was intended to influence

Section 552(2)(b) limits liability to loss suffered through reliance “in a transaction that [the supplier] intends the information to influence, or knows that the recipient so intends, or in a substantially similar transaction.”

The certifications identify that transaction in their own terms.

NSF Protocol P335 is titled “Hygienic Commercial Hand Dryers.” Section 1.1 states that it “establishes minimum requirements for health and sanitation characteristics.” Section 3.4 defines dry hands as “[a]dult human hands with less than 0.1 g residual moisture.” Section 4.3.3 requires that “[t]he unit must dry the user's hands to a satisfactory level.” Section 4.3.2 requires that surfaces contacting the emitted air “be designed or treated to inhibit the growth of bacteria and mold.”

Section 6.4 states that “[t]he operational intent of a hygienic commercial hand dryer is to prevent the hand dryer from using air contaminated with microbes to dry a user's hands.”

UL's Product Category Rule fixes the functional unit at 100,000 completed dryings of human hands.

Every term describes something that happens to a person who is not the purchaser. The transaction the certification was written to influence is the delivery of certified hand drying to users.

6. Plaintiff entered that transaction and paid for it

When Plaintiff purchased commercial hand dryers and the associated certified performance from its suppliers, the price included the represented and certified drying performance and hygiene benefit. Plaintiff paid for certified performance it did not receive.

Plaintiff paid, as part of the price of the goods and services it purchased from its suppliers and passed through in its own operations, for hand drying certified to reach a stated residual-moisture threshold within a stated time and to leave the user's hands more hygienic than it found them. It did not receive what the certification promised.

The difference is Plaintiff's loss. It is pecuniary, it is Plaintiff's, and it is measurable. No physical injury is required. *Brand Marketing Group LLC v. Intertek Testing Services, N.A.*, 801 F.3d 347, majority op. n.4 (3d Cir. 2015).

7. The persons owed this duty are defined by the certifiers

The class to whom these representations run is not the public at large. It is the persons who use a commercial hand dryer that a purchaser selected, bought, and installed in reliance on the mark.

The Defendants defined that class themselves. NSF's protocol speaks of “the user's hands.” UL's functional unit counts completed dryings. A person who never encounters a certified dryer is outside the class however it is described. A person who uses one is inside it, because the certification is about what happens to him.

Section 552 does not limit liability by headcount. It limits liability by the transaction the supplier intended the information to influence. Restatement §552(2)(b). Comment h forecloses any requirement that the plaintiff be identified.

Plaintiff pleads its own injury, at its own locations, sustained through its reliance on the Defendants' false certifications and representations, and established by the independent testing set out in the exhibits to this Complaint. It seeks relief for itself.

8. Where the harm lands

The first three links are commerce. The fourth link is the reason the certification exists.

A certification of hygienic hand drying that never reaches a user has certified nothing. Its terms describe an event that occurs only at the fourth link: hands, wet, entering a machine, and leaving it. Every threshold the Defendants wrote — 0.1 grams, 0.25 grams, fifteen seconds, one operating cycle, four logs, six logs — measures what happens to a user.

The certifiers did not write standards about procurement. They wrote standards about hands.

The certified event is the event the users of Plaintiff's restrooms experience daily — the event independent testing documented 462 times, at zero-percent compliance.

Plaintiff is not a bystander to the Defendants' transaction with the manufacturers. It is the reason the transaction exists.

Independence is a condition of holding the mark

The obligation the mark carries is not only a duty of care. It is a condition of the mark itself. In *Idaho Potato Commission v. M & M Produce Farm & Sales*, 335 F.3d 130 (2d Cir. 2003), the Second Circuit vacated an order barring a licensee from seeking cancellation of a certification mark, holding that a no-challenge provision in the licensing agreement was unenforceable because

it violated the public policy embodied in the Lanham Act, and remanded for consideration on the merits of allegations that the mark owner had discriminatorily refused to certify, imposed standards beyond those the mark was registered to certify, and lacked the independence necessary for certification mark owners. The Eleventh Circuit cited that case in *Warren Technology, Inc. v. UL LLC*, 962 F.3d 1324, 1329 (11th Cir. 2020), when naming what a nationally recognized testing laboratory may be answerable for. Independence is not a courtesy the certifier extends. It is a condition of holding the mark, and a licensee cannot be made to contract away the right to say so. The science behind the figures

The measurements stated in this memorandum rest on 931 individual tests conducted at 226 stores across five states and the District of Columbia, examining 169 hand dryers and 94 paper-towel dispensers, across 1,076 culture dishes from which approximately 50,000 bacterial and fungal colonies were hand counted. Every result is public, replicable, and open for inspection and debate. Every counting decision is documented and every error found and corrected is disclosed in the record. The complete methodology and the underlying data are published at handdryerstudy.com. WHAT THIS MEMORANDUM ESTABLISHES

The certifier defined the harm. The certifier fixed the level at which it occurs. The certifier prescribed the test, or prescribed none. The certifier declared the level not exceeded. The certifier created a mark whose only function is to carry that declaration to people who will never read the document behind it, charged for the right to display it, and enforced against display by anyone who had not paid. The purchaser paid a price that included the fee. The user encountered the mark in the room where the machine was installed and did what the system was built to make him do, which is not ask.

Two obligations arise from that sequence and they arise independently. Where money changed hands there is a contract, and it belongs to the party who paid. Everywhere the mark reached there is a duty, and it belongs to everyone who relied. The user is not at the end of that chain as an afterthought. He is the reason every earlier link exists: no user, no product, no market, no certification, no certifier.

A plaintiff who purchased a certified machine holds both. A plaintiff who only used one holds the second, which is sufficient. Neither needs to prove what a symbol means in the abstract, because the certifiers wrote down what it means, in their own documents, in numbers, and then declared compliance with figures their own products do not meet.

APPLICATION OF THE CERTIFICATION CHAIN TO GAP INC.

The foregoing brief establishes the chain in full. Its application to Gap is direct, because Gap occupies the link the brief identifies as the paying party.

Gap is the purchaser — the party who paid. Gap selected, purchased, and installed the certified hand dryers throughout its retail locations, paying a price that included, and was elevated by, the certifications the Defendants issued. The certification premium the brief describes — the fee that moves from the purchaser through the manufacturer to the certifier — was paid by Gap. Gap is not a stranger to the certification who happened to encounter a mark on a wall; it is the commercial party for whose reliance the certification system exists and from whose payment the certifiers were ultimately compensated.

Two grounds follow, and Gap stands on both. Ground one — contract. As set out in *The Mark Is a Contract*, the certifier's obligations, created in its transaction with the manufacturer and carried forward by the certification document and the mark bound to it, extend to the purchaser who pays for the certified product. Gap is that purchaser. The certifiers' obligations — that the standards are valid, that the testing is accurate, that the certified levels are met — ran to Gap as the party who

paid for the certified article and relied on the certification in paying. Because this obligation is grounded in the certification transaction and the price Gap paid, Gap's certifier claims do not depend on the absence of a contractual relationship, and California's economic loss rule does not bar them: the claims rest on representations and duties independent of any contract, California recognizes negligent misrepresentation as an independent tort, and California is the home of the certifier-duty authorities themselves — *Hanberry v. Hearst Corp.*, 276 Cal. App. 2d 680 (1969), and *FNS Mortgage Service Corp. v. Pacific General Group, Inc.*, 24 Cal. App. 4th 1564 (1994), are California decisions.

Ground two — duty (§ 552), in the alternative and independently. As set out in *The Mark Is a Duty*, the certifiers separately owed Gap the duty of a party who supplies information for the guidance of others in their business transactions. That duty requires no privity. It is owed to every party the certifier knows will rely on its representation — a class that includes, at its paradigm center, a commercial purchaser selecting products for thousands of retail locations. On this ground Gap stands together with every other relying party, and the presence or absence of a contractual relationship is immaterial.

The two grounds are pleaded together and in the alternative. Gap need prevail on only one. The endorser-liability line of authority reinforces both: one who, for economic gain, lends its reputation to induce the purchase of a product owes a duty to those it induces. *Hanberry v. Hearst Corp.*, 276 Cal. App. 2d 680, 685 (1969). The certifier Defendants are Nationally Recognized Testing Laboratories or their functional equivalents, holding out federally recognized authority under 29 C.F.R. § 1910.7, and cannot take the benefits of the trust that authority commands while disclaiming responsibility for the representations it carries. The distinction that governs is settled: a defective product is the manufacturer's liability; a defective standard and defective testing are the certifier's. This case, as against the certifier Defendants, concerns the latter two.

G. Timeliness

83. Continuing Conduct. Defendants' false representations are ongoing. The same drying time claims, hygiene representations, and environmental assertions appear on Defendants' current websites, in current marketing materials, and on current product packaging. Each sale made today repeats the misrepresentations.

Defendants' false advertising continues to this day.

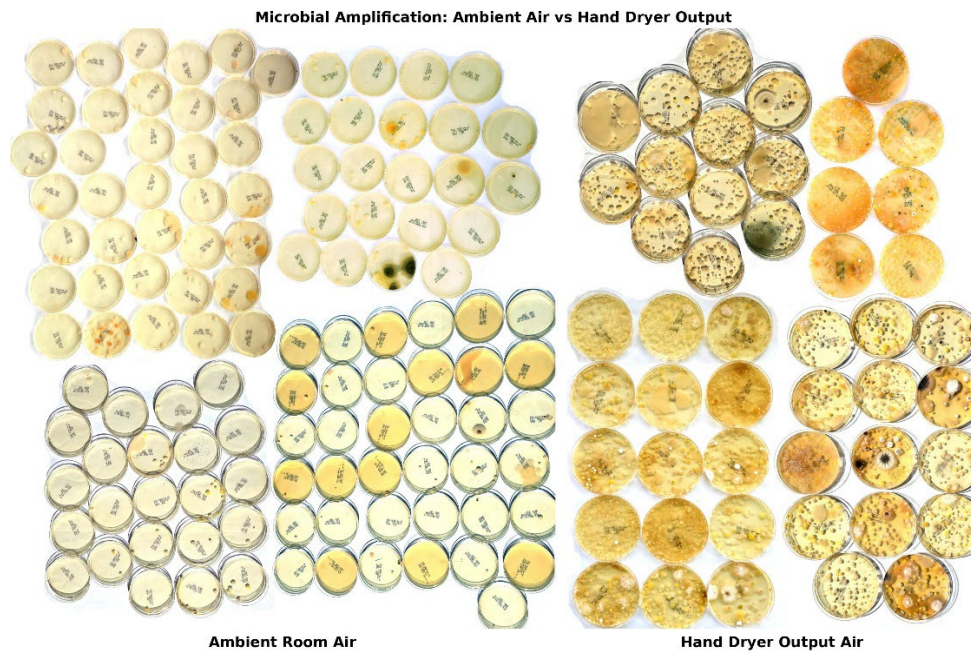
84. Continuing Relationship. Plaintiff has purchased replacement units, additional units for new store locations, and maintenance services in ongoing reliance on Defendants' representations. The commercial relationship between Plaintiff and Defendants is continuous.

85. **Discovery Rule.** The scientific research establishing the specific nature and magnitude of Defendants' specification failures was conducted between 2023 and 2025. Prior to this research, the bimodal drying mechanism was not understood, the 7 to 10 times discrepancy between claimed and actual performance was not quantified, the 100% mold colonization rate was not documented, and the causal chain from water dispersal to wall contamination was not established with scientific precision. Plaintiff could not reasonably have discovered the full scope of Defendants' misrepresentations until this research was published and disseminated.

86. **Defendants' Superior Knowledge.** Defendants possessed information and testing capabilities that would have revealed the falsity of their claims. Defendant Dyson's marketing materials state that "Dyson microbiologists sampled drain tanks and detected high levels of bacteria," establishing in-house microbiological testing capability. Defendant Dyson cites Patrick et al. three times in its marketing materials, establishing knowledge that wet hands pose hygiene risks—yet continued to sell products that leave hands wet at claimed times. Defendant Excel Dryer had four representatives on the committee that developed the UL Product Category Rules for hand dryers, with access to testing methodologies and performance data. Defendants' superior knowledge of product performance limitations tolls any applicable limitations period.

The Hypothetical

87. All aspects of hand dryer performance can be understood if you remove it from the room. Does a dryer improve or degrade the room by being there?



V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Breach of Express Warranty

(Against Defendants Dyson, Inc. and Excel Dryer, Inc.)

88. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

89. Defendants made express warranties regarding their hand dryer products.

Defendant Dyson expressly warranted that its Airblade products would dry hands in 10 to 14 seconds to a residual moisture threshold of 0.1 grams. Defendant Excel Dryer expressly warranted that its XLERATOR products would dry hands in 8 seconds or less to a threshold of 0.25 grams. Both Defendants expressly warranted that their products were hygienic and provided environmental benefits.

90. These express warranties were made in Defendants' marketing materials, product specifications, websites, Environmental Product Declarations, and

communications directed to Plaintiff and other purchasers. The warranties were part of the basis of the bargain between Plaintiff and Defendants.

91. Defendants' products do not conform to these express warranties. Zero of 462 trials achieved claimed drying specifications. 100% of units tested amplified microbial contamination rather than providing hygienic operation. Energy consumption and carbon emissions are 600% to 900% higher than warranted.

92. Plaintiff provided Defendants with reasonable opportunity to cure. The nonconformity is incurable because it is inherent to product design rather than attributable to manufacturing defects or maintenance failures.

93. As a direct and proximate result of Defendants' breach of express warranty, Plaintiff has suffered damages including but not limited to the purchase price of nonconforming products, installation costs, excess energy costs, property damage from water dispersal and mold colonization, and costs of remediation.

SECOND CAUSE OF ACTION

Breach of Implied Warranty of Merchantability

(Against Defendants Dyson, Inc. and Excel Dryer, Inc.)

94. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

95. Defendants are merchants with respect to hand dryer products. Defendants sold hand dryers to Plaintiff in the ordinary course of business.

96. Under California Commercial Code § 2314, a warranty of merchantability is implied in every sale by a merchant. To be merchantable, goods must be fit for the ordinary purposes for which such goods are used.

97. Plaintiff purchased through Defendants' authorized distribution channels as the intended end purchaser to whom Defendants' representations were directed; to the

extent vertical privity is required, Plaintiff pleads the direct-representation and third-party-beneficiary exceptions. The ordinary purpose of a hand dryer is to dry hands. Defendants' products do not dry hands at claimed times. Devices that leave 2.29 to 3.02 grams of residual moisture at claimed drying times—when specifications require 0.1 to 0.25 grams—are not fit for the ordinary purpose of drying hands.

98. Defendants' products are further unfit for their ordinary purpose because they amplify microbial contamination by 49.6 to 110 times ambient levels, disperse water onto walls and floors causing property damage, and create mold colonization in 100% of installations. Products that degrade restroom hygiene are not fit for installation in restrooms.

99. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff has suffered damages.

THIRD CAUSE OF ACTION

Negligent Misrepresentation

(Against Defendants Dyson, Inc. and Excel Dryer, Inc.)

100. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

101. Defendants made representations of material fact regarding their products' drying time, hygiene performance, and environmental benefits. These representations were made in the course of Defendants' business and for the purpose of inducing Plaintiff and other purchasers to buy Defendants' products.

102. Defendants failed to exercise reasonable care in obtaining and communicating information regarding product performance. Defendants represented specific, quantified performance metrics—8 to 14 second drying times,

0.1 to 0.25 gram moisture thresholds, 85% to 95% cost and emissions reductions—without exercising reasonable care to verify that products would achieve these specifications under real-world conditions.

103. Defendants had access to information demonstrating the falsity of their claims:
104. Defendant Dyson possessed in-house microbiological testing capability, as evidenced by its marketing statement that "Dyson microbiologists sampled drain tanks and detected high levels of bacteria." Defendant Dyson cited Patrick et al. three times in marketing materials, establishing knowledge that wet hands pose hygiene risks. Reasonable testing would have revealed that Dyson products leave hands wet at claimed drying times.
105. Defendant Excel Dryer had four representatives serving on the committee that developed the UL Product Category Rules for hand dryers. The UL PCR contains a hypothetical drying curve used to illustrate calculation methodology. Defendant Excel Dryer obtained certifications based on 8-second drying claims that independent testing proves are physically impossible to achieve.
106. Plaintiff justifiably relied on Defendants' representations. Defendants held themselves out as experts in commercial hand drying technology. Defendants invoked third-party certifications and scientific studies to bolster their credibility. Plaintiff lacked the specialized knowledge to independently verify Defendants' technical claims and reasonably relied on Defendants' expertise.
107. As a direct and proximate result of Defendants' negligent misrepresentations, Plaintiff purchased products that do not perform as represented and has suffered damages.

FOURTH CAUSE OF ACTION

Products Liability—Design Defect

(Against Defendants Dyson, Inc. and Excel Dryer, Inc.)

108. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

109. Defendants designed, manufactured, and sold hand dryer products installed in Plaintiff's retail facilities.

110. The defect is the design itself, not a manufacturing flaw. All dispersal-type hand dryers share the same fundamental design characteristic: they attempt to remove water from hands by blowing it into the surrounding environment. This design is inherently defective because:

111. Under the consumer expectations test, Defendants' products do not perform as safely as an ordinary consumer would expect. Consumers expect hand dryers to dry hands within claimed timeframes and to operate hygienically. Defendants' products fail both expectations: they leave hands wet at claimed times (facilitating up to 1,000 times increased bacterial transfer) and amplify contamination by 49.6 to 110 times ambient levels while dispersing water onto walls, floors, and users.

112. Under the risk-utility test, the risks of Defendants' design outweigh its benefits. The risks include: (a) inadequate hand drying at claimed times, facilitating pathogen transfer; (b) microbial amplification exposing users to contamination 50 to 110 times ambient levels; (c) water dispersal causing property damage to walls, floors, and fixtures; (d) mold colonization in 100% of installations, creating ongoing health hazards and building damage; and (e) false environmental claims inducing environmentally-motivated purchasing decisions. These risks substantially outweigh any utility of the dispersal design.

113. The harm was preventable at trivial burden: a safer, feasible, and universally available means of accomplishing the identical function existed — white paper towels, which eliminate all five problems identified in this Complaint. White paper towels are frequently sterile (55.6% showed zero colonies), tested as statistically indistinguishable from ambient air ($p = 0.24$), achieve hand drying in 20 to 30 seconds through absorption rather than dispersal, cause no microbial amplification, create no water dispersal onto walls or floors, and produce no mold colonization (13% versus 100% for dispersal-type dryers). The solution is simpler than the problem.

114. The harm claimed under this Count is the physical damage to property other than the products themselves, as California's economic loss rule directs; the economic losses arising from the purchases are pleaded under the warranty and § 17200 Counts. The defective design was a substantial factor in causing that property damage, distinct from the hand dryers themselves—specifically, damage to walls, floors, and fixtures from water dispersal and mold colonization requiring drywall replacement, repainting, tile repair, and fixture replacement.

FIFTH CAUSE OF ACTION

Products Liability—Failure to Warn

(Against Defendants Dyson, Inc. and Excel Dryer, Inc.)

115. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

116. Defendants' hand dryer products present risks that were known or knowable through reasonable testing:

- (a) That hands would not be dry at specified times, exposing users to up to 1,000 times increased bacterial transfer;

- (b) That water would disperse onto walls, floors, and users rather than evaporating;
- (c) That microbial contamination would be amplified by 50 to 110 times ambient levels;
- (d) That mold colonization would occur at the point of water dispersal;
- (e) That users face increased pathogen transfer risk whether they leave early with wet hands or remain for extended periods exposed to amplified contamination.

117. Defendants failed to warn purchasers or users of these known or knowable risks. Defendants' marketing materials, product packaging, and user instructions contain no warnings regarding inadequate drying performance, contamination amplification, water dispersal, or mold colonization.

118. Defendants' failure to warn was a substantial factor in causing harm to Plaintiff. Had Plaintiff been warned of these risks, Plaintiff would not have purchased Defendants' products or would have taken measures to mitigate the harms.

SIXTH CAUSE OF ACTION

Violation of California Business and Professions Code § 17200

(Unfair Competition Law—Against All Defendants)

119. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

120. California Business and Professions Code § 17200 prohibits unfair competition, including any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising.

121. Defendants engaged in unlawful business practices by breaching express and implied warranties, negligently misrepresenting product performance, and selling defective products, as alleged herein.
122. Defendants engaged in unfair business practices by marketing products with performance claims that are physically impossible to achieve, by failing to disclose known product limitations, and by continuing to make false claims despite the availability of information demonstrating their falsity.
123. Defendants engaged in deceptive business practices by making specific, quantified performance representations—drying times of 8 to 14 seconds, moisture thresholds of 0.1 to 0.25 grams, cost savings of 95%, emissions reductions of 85% to 88%—that reasonable consumers would interpret as achievable product specifications, when in fact these specifications are never achieved in real-world operation.
124. As a direct and proximate result of Defendants' unfair competition, Plaintiff has suffered injury in fact and has lost money or property.

SEVENTH CAUSE OF ACTION

Violation of California Business and Professions Code § 17500

(False Advertising—Against All Defendants)

125. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
126. California Business and Professions Code § 17500 prohibits disseminating any statement concerning property or services that is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

127. Defendants disseminated advertising statements that are untrue or misleading, including but not limited to:

- (f) Statements that Defendants' products dry hands in 8 to 14 seconds, when actual drying requires 70 to 90 seconds;
- (g) Statements that Defendants' products are "hygienic" and create "cleaner" restrooms, when Defendants' products amplify contamination by 50 to 110 times and cause 100% mold colonization;
- (h) Statements that Defendants' products provide 85% to 95% cost savings and emissions reductions compared to paper towels, when these calculations are predicated on false drying time assumptions;
- (i) Statements invoking third-party certifications as validation of performance claims that are never achieved in real-world operation.

128. Defendants knew or should have known these statements were untrue or misleading. Defendants possessed testing capabilities, had access to performance data, and received information demonstrating the falsity of their claims, yet continued to disseminate false advertising.

129. As a direct and proximate result of Defendants' false advertising, Plaintiff has suffered injury in fact and has lost money or property.

THE CERTIFIER COUNTS

130. The following Causes of Action are brought against the certifier Defendants on both grounds set out in the Application of the Certification Chain above: the contract ground — the certifiers' obligations extended to Gap as the purchasing party who paid the certification premium carried in the per-unit price — and, independently and in the alternative, the ground of Restatement (Second) of Torts § 552: the duty of one who, in the course of business, supplies information for the guidance of others in their business transactions, which requires no privity. California law reaches certifiers directly: *Hanberry v. Hearst Corp.*, 276 Cal. App. 2d 680 (1969) (one who endorses products for economic gain owes a duty of care to those who rely on the endorsement), and *FNS Mortgage Service Corp. v. Pacific General Group, Inc.*, 24 Cal. App. 4th 1564 (1994), are California decisions, and the commercial purchasers of certified products are the paradigm class for whose guidance certification information is supplied.

EIGHTH CAUSE OF ACTION

Negligent Misrepresentation

(Against Defendant NSF International)

131. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein. This Cause of Action is brought on both the contract ground and the § 552 ground set out above.
132. NSF made false representations of material fact by certifying Dyson Airblade products under Protocol P335 — representing that the products dry hands to 0.1 gram of residual moisture within one operating cycle of no more than fifteen seconds — when independent testing across 462 trials establishes zero compliance with that specification at any claimed time, and by maintaining that

certification for approximately nineteen years without disclosed surveillance testing.

133. NSF made these representations in the course of its business and in transactions in which it had a pecuniary interest, for the guidance of commercial purchasers including Plaintiff. NSF failed to exercise reasonable care in creating the protocol — whose development panel seated a Dyson microbiologist and whose normative references incorporate a Dyson internal test method — and in certifying and maintaining the certification.

134. Plaintiff justifiably relied on NSF's certification, which was invoked by name in Dyson's marketing directed to Plaintiff. As a direct and proximate result, Plaintiff has suffered damages.

NINTH CAUSE OF ACTION

Negligent Misrepresentation

(Against Defendant UL Solutions Inc.)

135. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein. This Cause of Action is brought on both the contract ground and the § 552 ground set out above.

136. UL made false representations of material fact by authoring and publishing the Product Category Rule for Hand Dryers and by issuing Environmental Product Declaration No. 4787137936.102.1 certifying 8-second drying and 3.68 watt-hours per use — specifications that UL's own Figure 2 data, published in the same rule, shows are not achieved: 0.456 grams at 8 seconds, 82 percent above the rule's own threshold.

137. UL made these representations in the course of its business and for the guidance of commercial purchasers. UL failed to exercise reasonable care in

creating the standard — through a committee of ten manufacturer seats chaired by Excel's own executive, adopting a threshold weaker than the proposal NSF had rejected, and omitting any standard for the water the products disperse — and in certifying figures its own published data contradicted.

138. Plaintiff justifiably relied on UL's rule and declaration, which were presented to purchasers as independent third-party validation. As a direct and proximate result, Plaintiff has suffered damages.

TENTH CAUSE OF ACTION

Negligent Misrepresentation

(Against Defendants Smart EPD LLC and Anna Lasso)

139. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein. This Cause of Action is brought on both the contract ground and the § 552 ground set out above.
140. Smart EPD and Anna Lasso made false representations of material fact by issuing Certificate No. SmartEPD-2023-002-0006-01 certifying that the XLERATOR dries hands in 8 seconds at 3.68 watt-hours — the identical figures UL had allowed to lapse — while the underlying life-cycle assessment states that the figures are based on average test results provided by Excel and that hygiene is not considered in the study.
141. Smart EPD and Anna Lasso made these representations in the course of their business. They failed to exercise reasonable care: Anna Lasso occupies all three verification roles — program operator, independent critical reviewer, and independent external verifier — that ISO 14025 requires to be independent of one another, on a certificate issued for a manufacturer whose executive she had worked closely with at UL.

142. Plaintiff justifiably relied on the declaration, which Excel presented to purchasers as third-party validated. As a direct and proximate result, Plaintiff has suffered damages.

ELEVENTH CAUSE OF ACTION

Negligent Misrepresentation

(Against Defendant SGS North America Inc.)

143. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein. This Cause of Action is brought on both the contract ground and the § 552 ground set out above.

144. SGS made false representations of material fact by issuing Performance Test Report No. 2774929EFF-001, which purports to validate hand-dryer drying performance under “a revised version of NSF Protocol P335 currently being developed” — a revision NSF had rejected — with an annex that redefined the dryness threshold from 0.1 grams total to 0.1 grams per hand, doubling the allowable moisture, and by reporting results (0.186 grams at 12 seconds) that independent testing across 462 trials cannot reproduce within an order of magnitude.

145. SGS made these representations in the course of its business, and the figures in the subsequent certifications are attributed to SGS testing. SGS failed to exercise reasonable care in conducting the testing and issuing the report.

146. Plaintiff justifiably relied on the SGS attribution carried in the certifications. As a direct and proximate result, Plaintiff has suffered damages.

TWELFTH CAUSE OF ACTION

Negligent Undertaking (Restatement § 324A)

(Against Defendants NSF, UL Solutions, Smart EPD, Anna Lasso, and SGS)

147. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein. The certifier Defendants voluntarily undertook to render certification, standard-development, verification, and testing services of a kind they knew were for the protection of third parties, including the purchasers and users of certified products. They failed to exercise reasonable care in those undertakings, and their failures increased the risk of harm to the persons who use the certified products in Plaintiff's facilities. See *FNS Mortgage Service Corp. v. Pacific General Group, Inc.*, 24 Cal. App. 4th 1564 (1994).

148. This Cause of Action addresses the increased risk of physical harm that the certifiers' failed undertakings create for the persons who use the certified products in Plaintiff's facilities — a risk for which Plaintiff, as the operator of those facilities, bears responsibility and cost. Plaintiff's economic recovery for the certifications themselves is pleaded under the negligent-misrepresentation and § 17200 Causes of Action; this Cause of Action is pleaded in addition and in the alternative, to the extent the evidence establishes physical harm or the risk thereof within the scope of Restatement (Second) of Torts § 324A. As a direct and proximate result, Plaintiff has suffered damages.

THIRTEENTH CAUSE OF ACTION

Negligent Standard Creation

(Against Defendant UL Solutions Inc.)

149. Plaintiff incorporates by reference all preceding paragraphs. UL voluntarily undertook to create the governing standard for hand-dryer environmental declarations, knowing commercial purchasers would rely on products certified under it. UL failed to exercise reasonable care by constituting the drafting committee of ten manufacturer seats and two UL seats under the chairmanship of

Excel's own executive; by adopting a 0.25-gram threshold — weaker than the proposal NSF had rejected — without scientific explanation; by publishing Figure 2 data showing the threshold is not met at claimed times while enabling certifications at those times; and by omitting any standard for the water the products disperse. UL's negligent standard creation was a direct and proximate cause of Plaintiff's damages.

FOURTEENTH CAUSE OF ACTION

EPD Verification Negligence

(Against Defendants Smart EPD LLC and Anna Lasso)

150. Plaintiff incorporates by reference all preceding paragraphs. Smart EPD and Anna Lasso voluntarily undertook to verify Environmental Product Declarations for hand dryers and failed to exercise reasonable care by certifying 8-second figures without independent testing, by relying on manufacturer-supplied averages, by certifying the same specifications UL had declined to renew, and by concentrating all three ISO 14025 verification roles in one person. Their negligent verification was a direct and proximate cause of Plaintiff's damages.

FIFTEENTH CAUSE OF ACTION

Unjust Enrichment

(Against All Defendants)

151. Plaintiff incorporates by reference all preceding paragraphs. Plaintiff conferred benefits on Defendants by purchasing certified products at prices that included the manufacturers' premium for certified performance and the certifiers' fees passed through in the price. Defendants accepted and retained those benefits.

Retention of the benefits is unjust because the certified performance was never delivered. Plaintiff is entitled to restitution.

SIXTEENTH CAUSE OF ACTION

Declaratory and Injunctive Relief

(Against All Defendants)

152. Plaintiff incorporates by reference all preceding paragraphs. An actual controversy exists between Plaintiff and Defendants regarding the accuracy of Defendants' certifications and representations. Plaintiff seeks a declaration that the certified drying-time, energy, and hygiene specifications are false and that the Smart EPD certifications violate ISO 14025 independence requirements, and injunctive relief requiring Defendants to withdraw or correct the false certifications, to cease marketing products with the false performance claims, and to cease certifying products without independent verification. Plaintiff has no adequate remedy at law; the certifications remain active and continue to cause harm.

VI. DAMAGES

153. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damages including but not limited to:

- (j) The purchase price of hand dryer units that do not perform as warranted;
- (k) Installation costs for defective products;
- (l) Excess electricity costs resulting from actual drying times of 70 to 90 seconds versus claimed times of 8 to 14 seconds—an increase of 600% to 900%;
- (m) The cost of repairing or replacing walls, floors, and fixtures damaged by water dispersal and mold colonization—property distinct from the hand dryers themselves—including drywall replacement, repainting, tile repair, grout

replacement, and fixture replacement in restrooms where mold growth has compromised building materials;

(n) Costs of mold remediation in affected facilities;

(o) Costs of removing defective equipment and installing alternative hand drying solutions;

(p) Loss of the benefit of the bargain—the difference between the value of products as warranted and the value of products as delivered;

(q) Such other damages as may be proven at trial.

154. Plaintiff is further entitled to restitution and disgorgement of profits under California Business and Professions Code §§ 17200 and 17500.

155. Plaintiff is further entitled to injunctive relief ordering Defendants to cease making false and misleading representations regarding their products' performance.

VII. JURY DEMAND

156. Plaintiff demands a trial by jury on all issues so triable.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Gap Inc. respectfully prays for judgment against all Defendants as follows:

157. For compensatory damages in an amount to be proven at trial;

158. For restitution and disgorgement of Defendants' profits attributable to their unlawful conduct;

159. For injunctive relief ordering Defendants to cease making false and misleading representations regarding product performance;
160. For declaratory relief as specified in the Sixteenth Cause of Action; For pre-judgment and post-judgment interest as allowed by law;
161. For costs of suit incurred herein;
162. For attorneys' fees as allowed by law; and
163. For such other and further relief as the Court deems just and proper.

Dated: _____

Respectfully submitted,

Attorney for Plaintiff Gap Inc.

[Attorney Name]

[State Bar No.]

[Firm Name]

[Address]

[Phone]

[Email]

NOTE TO COUNSEL — FORUM, ROSTER, AND THE SCOPE OF DISCOVERY

This note is addressed to counsel evaluating this complaint.

Forum. This complaint is drafted for the Superior Court of California, County of San Francisco, and not for federal court, deliberately: Plaintiff and Defendant UL Solutions are both incorporated in Delaware, so complete diversity under 28 U.S.C. § 1332 cannot exist while UL remains a defendant — and UL, as author of the governing Product Category Rule, must remain a defendant. Counsel may consider seeking complex designation under California Rules of Court, rule 3.400. Counsel should independently verify each defendant's state of incorporation before filing; the caption follows the master roster in the related matters.

The two chains and the fleet. Dyson's certification chain is NSF alone; Excel's chain is UL, SGS, Smart EPD, and Anna Lasso. Plaintiff's Old Navy locations predominantly deploy the Dyson Airblade V; Excel XLERATOR units are documented at at least one location. Counsel should develop Plaintiff's procurement and facilities records to establish the full extent of the Excel fleet; the Excel-chain Causes of Action are pleaded on the certified representations and the documented installation, and their damages scale with the fleet the records establish.

Adverse authority, distinguishable. *Dekens v. Underwriters Laboratories* (Cal. Ct. App. 2003) limited a certifier's duty by the scope of its undertaking. It is distinguishable on its own terms: the certifiers here did not disclaim the subject of the harm — each defined it. NSF titled its protocol “Hygienic Commercial Hand Dryers”; UL's rule states the function of the product it governs; the declarations certify drying time and energy figures by number. The scope of the undertaking is the subject of the claims.

The interlocking relationships. The facts pleaded describe a small and interlocking world: a manufacturer's executive chairing the committee that wrote the rule governing his own product's declarations; the rule's project manager becoming, within months, the program operator, independent critical reviewer, and independent external verifier of the declaration issued under it;

an eight-second figure passing unchanged from an expired certificate into a new one; and a 2012 litigation in which the two manufacturer Defendants accused each other, under oath, of falsely advertising the very drying-time claims at issue. These facts are pleaded individually and are independently actionable. No fraud or collusion is pleaded, because the internal communications that would establish coordination as a matter of proof are within the Defendants' exclusive possession. Every pleaded Cause of Action requires inquiry into how these standards were written, who participated, and what each participant knew. The counts, as pleaded, open those records. The relationships documented here, if borne out by the evidence they would necessarily generate, may support additional theories not pleaded, which counsel is in a position to assess and through discovery to develop.

TABLE OF AUTHORITIES

CONTROLLING (California): *Hanberry v. Hearst Corp.*, 276 Cal. App. 2d 680 (1969); *FNS Mortgage Service Corp. v. Pacific General Group, Inc.*, 24 Cal. App. 4th 1564 (1994); *Bily v. Arthur Young & Co.*, 3 Cal. 4th 370 (1992) (§ 552 framework); *Greenman v. Yuba Power Products, Inc.*, 59 Cal. 2d 57 (1963); *Barker v. Lull Engineering Co.*, 20 Cal. 3d 413 (1978) (both design-defect tests); Cal. Bus. & Prof. Code §§ 17200, 17500; Cal. Com. Code §§ 2313, 2314, 2315; Code Civ. Proc. §§ 395, 395.5.

PERSUASIVE: *Brand Marketing Group LLC v. Intertek Testing Services, N.A.*, 801 F.3d 347 (3d Cir. 2015); *Warren Technology, Inc. v. UL LLC*, 962 F.3d 1324 (11th Cir. 2020); *Toman v. Underwriters Laboratories, Inc.*, 532 F. Supp. 1017 (D. Mass. 1982); *Hempstead v. General Fire Extinguisher Corp.*, 269 F. Supp. 109 (D. Del. 1967); *Idaho Potato Commission v. M & M Produce Farm & Sales*, 335 F.3d 130 (2d Cir. 2003); *The T.J. Hooper*, 60 F.2d 737 (2d Cir. 1932). ADVERSE, DISTINGUISHED: *Dekens v. Underwriters Laboratories* (Cal. Ct. App. 2003) (scope of undertaking — see Note to Counsel). SECONDARY: Restatement (Second) of Torts §§ 552, 324A; Restatement (Second) of Contracts §§ 4, 19. STANDARDS: ISO 14025; NSF Protocol P335; UL PCR for Hand Dryers (2016).

Note on authority: the California decisions above state controlling law; the remaining authorities are persuasive applications of § 552 and related principles to testing and certification bodies. A filing party should confirm and supplement California authority for each Cause of Action —

including the contract-formation equivalents for the certification-chain analysis, whose stated authorities are Pennsylvania — before filing.

EXHIBITS

Journal Preprints

[EXHIBIT-A] Transmission of Bacteria and Fungus via Dyson and Xlerator Hand Dryers, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.15504115; Journal Preprint 1 of 11

[EXHIBIT-B] Testing the Validity of Hand Dryer Drying Time Specifications, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.15503698; Journal Preprint 2 of 11

[EXHIBIT-C] Visual Analysis of Water Dispersion Patterns, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.15503304; Journal Preprint 3 of 11

[EXHIBIT-D] Bacterial and Fungal Contamination Assessment of Paper Towel Types, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.15504144; Journal Preprint 4 of 11

[EXHIBIT-E] Systematic Performance Failure in Commercial Hand Dryers, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.17858443; Journal Preprint 5 of 11

[EXHIBIT-F] Baseline Water Mass on Freshly Washed Hands, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.17858834; Journal Preprint 6 of 11

[EXHIBIT-G] An Empirical Refutation of Green Energy Claims, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.17859198; Journal Preprint 7 of 11

[EXHIBIT-H] Catastrophic Time-To-Dry Failures via Bi-Modal Mechanism, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.17869567; Journal Preprint 8 of 11

[EXHIBIT-I] Validation of Hand Dryer Microbial Amplification, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.17859894; Journal Preprint 9 of 11

[EXHIBIT-J] The Wandering Plume of Filth, Blouch, R. A. Jr. (2025); DOI: 10.5281/zenodo.17860971; Journal Preprint 10 of 11

Complete List of Testing Data Files

[EXHIBIT-K] Complete Data File Index, Blouch 2025

Dryer Time Test Results Graphs

[EXHIBIT L] Comprehensive All-Trials Time-To-Dry Hand Dryer Data Graph

Petri Dish Images

[EXHIBIT-M] 136 Ambient Room Air Petri Dish Images Sampled In Front of Machines, Blouch, R. A. Jr. (2025)

[EXHIBIT-N] 60 Hand Dryer Output Air Jet Petri Dish Sample Images, Blouch, R. A. Jr. (2025)

[EXHIBIT-O] 28 Brown Paper Towel Petri Dish Sample Images, Blouch, R. A. Jr. (2025)

[EXHIBIT-P] 47 White Paper Towel Petri Dish Sample Images, Blouch, R. A. Jr. (2025)

Plume of Filth Images

[EXHIBIT-Q] Hand Dryer Plume of Filth Images

[EXHIBIT-R] Hand Dryer Mold Images with Corroborating Petri Dish Test Images

Comprehensive summary articles

[EXHIBIT-S] Comprehensive Hand Washing and Hand Drying Efficacy Studies, 59, AI, (December 2025)

[EXHIBIT-T] Comprehensive Functioning Hand Dryer Output Air Studies, 18, AI, (December 2025)

Lab Testing

[EXHIBIT-U] Hayes Microbial Consulting Report (EPA Laboratory ID: VA01419)

Evidence of Plaintiff Exposure

[EXHIBIT-V] [Reconceived for Gap as Plaintiff — Gap's own procurement and facilities records: the Airblade V deployment across Old Navy locations, documented Excel installations, prices paid, and installation records. Plaintiff to supply underlying records.]

Standards documents

[EXHIBIT-W] UL PCR for Hand Dryers (July 13, 2016)

[EXHIBIT-X] NSF Protocol P335: Hygienic Commercial Hand Dryers (April 2007)

[EXHIBIT-Y] ISO 14025 Environmental Standards Principles and Procedures

[EXHIBIT-Z] ISO 14044 Life Cycle Assessment Requirements and Guidelines

Certifications

[EXHIBIT-AA] Smart EPD Certificate SmartEPD-2023-002-0006-01 (XLERATOR)

[EXHIBIT-BB] SGS Performance Test Report No. 2774929EFF-001 (Sept. 7, 2012)

[EXHIBIT-CC] UL Environment EPD No. 4787137936.102.1 — XLERATOR Hand Dryer certification; July 25, 2017

[EXHIBIT-DD] UL Environment EPD No. 4787616201.106.1 — Hokwang 2200 Hand Dryer certification; April 1 2022

[EXHIBIT-EE] TrueNorth Collective LCA (May 2023): Comparative Life Cycle Assessment of Hand Drying Systems: Excel Hand Dryers and Paper Towel Systems

[EXHIBIT-FF] Excel XLERATOR and ThinAir technical data sheets — claims and certification marks

[EXHIBIT-GG] NSF P335 Dyson Certified Live Listing

[EXHIBIT-HH] Dyson “Handwashing guide” — WHO/CDC-adapted document with Dyson Step 10

[EXHIBIT-II] Personnel and Committee Connections Master Document

[EXHIBIT-JJ] Standards Chronology — NSF P335 (2007) through Smart EPD (2023)

[EXHIBIT-KK] Excel v. Dyson Original Complaint, Case 3:12-cv-30211-MAP (D. Mass.), PACER

[EXHIBIT-LL] Denis Gagnon Affidavit and Second Declaration, Excel v. Dyson, PACER

[EXHIBIT-MM] Dyson's Answer, Counterclaims, and Opposition Memorandum, Excel v. Dyson, PACER

[EXHIBIT-NN] Excel White Paper: “An Ultrafast, Comfortable Hand Dryer” (Aisenberg & Freedman)

[EXHIBIT-FF] MIT Materials Systems Laboratory Lifecycle Assessment — Document 6-1, September 2011.

[EXHIBIT-GG] NSF P335 Dyson Certified Live Listing 251231

[EXHIBIT-HH] XLERATOR LEED v4.1 Document

[EXHIBIT-II] DYSON LEED May 2014 Document

Collusion Network Structures

[EXHIBIT-JJ] Personnel and Committee Connections Master Reference Document

[EXHIBIT-KK] Standards and Certification Chronology UL to Smart EPD, Lasso, Blouch 2025

Defendant Source Documents

[EXHIBIT-LL] Anna Lasso, The First Sustainable Hand Dryer, Excel UK Website December 2025

Journalistic Industry Analysis and History

[EXHIBIT-MM] Hand dryers v paper towels, The Guardian_files, The Guardian, 25 April, 2019

Excel V Dyson Court Documents — Case_3:12-cv-30211-MAP_(D._Mass.)

[EXHIBIT-NN] Excel V Dyson Original Complaint, PACER

[EXHIBIT-OO] Denis Gagnon Affidavit Excel V Dyson, PACER

[EXHIBIT-PP] Toby Saville Affidavit Excel V Dyson, PACER

[EXHIBIT-PP-A] Toby Saville Claimed Dry Times Versus Ron Blouch Data, a Detailed Comparison

[EXHIBIT-QQ] Dyson's Answer, Statement of Defenses, and Counterclaims — Document filed February 22, 2013.

[EXHIBIT-RR] Defendant Dyson, Inc.'s Memorandum of Law in Opposition to Plaintiff Excel Dryer, Inc.'s Motion for Preliminary Injunction

[EXHIBIT-SS] Excel Reply to Dyson Opposition — Document 32, Filed February 4, 2013; includes Second Declaration of Denis Gagnon (Document 32-1)

[EXHIBIT-TT] MIT-QUANTIS Letter in response to dry time testing conflicts, 17 October 2012

[EXHIBIT-UU] Excel White Paper: “An Ultrafast, Comfortable Hand Dryer”

ITC Complaint

[EXHIBIT-VV] ITC COMPLAINT; Excel Dryer V Multiple Respondents, China; DN 3159; June 24, 2016

False Claims Summary Documents

[EXHIBIT-WW] False Advertising Claims Analysis Dyson

[EXHIBIT-XX] False Advertising Claims Analysis Excel

[EXHIBIT-YY] False Claims Analysis NSF with UL Supplemental Analysis

[EXHIBIT-ZZ] False Claims Supporting Screenshots and Document Images

Global Dryer Statistical Estimates

[EXHIBIT-AAA] US Dryer Use Estimates Annual and Per Use with microbe estimates, Blouch 2025

[EXHIBIT-BBB] US Dryer Use Estimates Annual and Per Use with energy estimates, Blouch 2025

[EXHIBIT-CCC] US Dryer Use Estimates Annual and Per Use with LEED estimates, Blouch 2025

Hokwang Dryer Product Sheets, UL

[EXHIBIT-DDD] Hokwang 2200W product sheet with UL certification, December 2025

[EXHIBIT-EEE] Hokwang high speed EcoHygiene product sheet without UL certification, December 2025

Journal Preprint

[EXHIBIT-FFF] Performance Failures in Commercial Hand Dryers: An Historical Synthesis and Sequential Summary Review of an Eleven-Study Research Program, Blouch, R. A. Jr. (2026); DOI: 10.5281/zenodo.18322481; Journal Preprint 11 of 11

[EXHIBIT-GGG] Dyson False Advertising Claims, Blouch 2025

[EXHIBIT-HHH] Excel False Advertising Claims, Blouch 2025

[EXHIBIT-III] NSF False advertising Claims, Blouch 2025

[EXHIBIT-JJJ] Screenshot False Advertising Claims Supporting Material

[EXHIBIT-KKK] Grand Central Terminal Excel Case Study

[EXHIBIT-LLL] US Green Building Council Excel Case Study

[EXHIBIT-MMM] Northwestern University Hospitals Excel Case Study

[EXHIBIT-NNN] Seabury Excel Case Study

[EXHIBIT-OOO] USDA Excel Case Study

[EXHIBIT-PPP] Dyson Energy Saving Signs

[EXHIBIT-QQQ] Excel Energy Savings Signs

[EXHIBIT-RRR] Gia AIRMID study

[EXHIBIT-SSS] Xlerator Hygiene Technical Data Sheet

[EXHIBIT-TTT] Unified Certifiers Civil Complaint, Blouch 2026