

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

STARBUCKS CORPORATION, a Washington corporation,

Plaintiff,

v.

DYSON, INC., an Illinois corporation;

EXCEL DRYER, INC., a Massachusetts corporation;

NSF INTERNATIONAL, a Michigan nonprofit corporation;

UL SOLUTIONS INC., a Delaware corporation;

SGS NORTH AMERICA INC., a corporation organized under the laws of New Jersey (entity form and state of incorporation to be confirmed by filing counsel);

SMART EPD LLC, a Virginia limited liability company;

and ANNA LASSO, individually,

Defendants.

Case No. _____

COMPLAINT

JURY TRIAL DEMANDED

I. INTRODUCTION

A. 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 the 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.

B. 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 STARBUCKS VERSUS ALL PARTIES

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.

It contains several complete briefs for context, offering detailed explanations for our claims. The complaint itself stands alone.

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

C. Summary of the Case

3. This action arises from a global manufacturer's systematic misrepresentation of the hygiene, safety, environmental, and energy performance of commercial hand dryers sold to one of the world's most visible sustainability-focused retail brands—and from the negligent certifications that made those misrepresentations credible.
4. Defendant Dyson, Inc. ("Dyson") markets its Airblade hand dryers as "the most hygienic hand dryer," "the only hand dryer certified hygienic by NSF International," equipped with HEPA filtration, and environmentally superior to paper towels with "85-90% lower carbon emissions." Those representations were material to Starbucks Corporation's decision to deploy Dyson Airblades at scale across its retail locations as part of its Greener Stores sustainability initiative—a program built on waste reduction, energy efficiency, and environmental responsibility.
5. Dyson's food-service marketing goes further still: the Airblade Wash+Dry is marketed as "certified for use in food preparation environments" by HACCP International. Starbucks is a food-preparation environment. Its baristas wash their hands under health-code mandates and handle beverages and food consumed by millions of customers daily. A hygiene representation aimed at food-preparation facilities was aimed at exactly this Plaintiff — and the devices it describes amplify contamination in every test.
6. Every material representation was false.
7. The hygiene claims are false. Independent scientific research comprising 136 contamination tests establishes that commercial hand dryers — Dyson Airblade units among them — amplify bacterial and fungal contamination by median factors of 50-110× in every test. Zero tests showed reduction. The probability of this result occurring by chance is approximately 10^{-41} . Dyson's machines do not improve hygiene. They systematically degrade it.

8. The drying time claims are false. Across 462 controlled trials, zero percent of Dyson dryers achieved the manufacturer's residual moisture specification at the claimed drying time. Products marketed at 10-12 seconds require approximately 80-90 seconds to achieve the dryness threshold Dyson claims. The gap between claim and reality exceeds 600%.
9. The energy claims are false. Energy consumption equals power multiplied by time. Dyson claims 3.33 watt-hours per use based on 12-second drying. At actual drying times of 90 seconds, energy consumption is 25.0 watt-hours—750% higher than claimed.
10. The environmental claims are false. Dyson claims 85-90% lower CO₂ emissions than paper towels. At actual drying times, CO₂ emissions are 12-50 grams per use—not the 2 grams claimed. Paper towels produce 12-20 grams. The claimed environmental advantage does not exist. At best, the products are statistically equivalent. At worst, Dyson dryers produce 2-3× more CO₂ than the paper towels they replaced.
11. Starbucks built its Greener Stores program on the certified figures. Every one of them was false.

The Two Certification Chains

12. The certifications at issue travel two separate chains that share no certifier and converge on the same physics. The Dyson chain is short: NSF International wrote Protocol P335, titled “Hygienic Commercial Hand Dryers,” with Dyson’s own microbiologist on the development panel and Dyson’s internal test method incorporated into it, and NSF certifies Dyson’s Airblade under it — the certification behind “the only hand dryer certified hygienic by NSF International.”
13. The Excel chain is long: UL authored the Product Category Rule for Hand Dryers in 2016 through a committee of ten manufacturer seats — four held by Excel, chaired by Excel’s Vice President — and two UL employees; SGS conducted the 2012 testing on

which the performance figures rest; UL's Environmental Product Declaration certified the XLERATOR at 8 seconds and 3.68 watt-hours from 2017 until it expired unrenewed in 2022; and Smart EPD, formed by the UL project manager who ran the rule's development, has certified the identical figures since 2023, with its founder occupying all three verification roles ISO 14025 requires to be independent.

14. Two manufacturers. Two chains. No shared certifier. One result: certified specifications that 462 independent trials cannot reproduce and that the physics of water and skin does not permit. When two independent certification chains, sharing no personnel and no documents, both certify the impossible, the failure is not an accident of one certifier's process. It is what the certification system produces when the certified write the standards. Both chains hang on Plaintiff's own walls.
15. Starbucks eliminated paper towels. Starbucks installed Dyson Airblade hand dryers as standard equipment throughout its company-operated United States coffeehouses, where every store contains two restrooms and each restroom contains one Dyson unit. On Starbucks's reported base of approximately 10,150 company-operated United States stores, that standard deployment places on the order of 20,000 Dyson units in service—a figure precisely ascertainable from Starbucks's own construction, purchasing, and facilities records. The fleet is not exclusively Dyson: the independent research program has documented, photographed, and tested Excel XLERATOR units at twenty Starbucks locations, so that Starbucks is a direct purchaser and deployer of certified products from both manufacturer Defendants and both certification chains. The complete equipment census resides in Starbucks's own records; the twenty documented installations are the floor, not the ceiling. Starbucks made sustainability claims to customers. Starbucks promoted carbon footprint reduction as a brand value. Starbucks did this because Dyson told Starbucks it was the right thing to do for the environment.
16. The prices Starbucks paid for every certified unit — Dyson and Excel alike — included the cost of the certifications. Certifiers charge manufacturers fees for testing,

certification, and the license to display their marks and declarations; manufacturers recover those fees in the price of every certified unit sold. The certification premium therefore flowed from Starbucks, through the manufacturers as conduits, to each certifier whose mark or declaration the products carried. The consequence is set out in the Certification Chain below: the party who pays for the certification is owed the certification.

17. Starbucks did not reduce its environmental impact. Starbucks increased microbial contamination in 100% of its restrooms. Starbucks' customers dry their hands with bacterial and fungal loads 50-110 times higher than the ambient air they were breathing. Starbucks achieved no carbon benefit and may have made its footprint worse.
18. Dyson knew or should have known its claims were false. Toby Saville, a Dyson microbiologist, served on the NSF P335 Protocol Development Panel that created the "hygienic" certification Dyson markets. Dyson's own internal test method—DTM 553—was incorporated into that standard. Dyson wrote the test it would pass. In federal litigation, Saville submitted a sworn declaration claiming Airblade achieves 9.58-second mean drying times. Independent research establishes that at 10 seconds, Airblade retains 2.547 grams of residual moisture—more than 25 times the threshold Dyson's own certification requires. Saville's sworn testimony is irreconcilable with measured reality.
19. Dyson's false claims did not achieve credibility in isolation. They were enabled by a network of certification bodies—NSF International and SGS North America—who issued certifications validating performance specifications that independent testing proves physically impossible. The certifications gave Dyson's sales pitch the appearance of independent, third-party validation. The validation was negligent. The certifications were false.
20. Dyson's representations were not close calls or rounding errors. They collapse under measurement.

21. Starbucks brings this action to recover for Dyson's false representations, to halt the continued dissemination of false performance, hygiene, and environmental claims, and to obtain declaratory relief requiring correction of the negligent certifications that made the false claims credible.

THE TWO POSTURES — COMPLETE SUPPORTING BRIEF

Before the parties, the facts, or the counts, one frame should be fixed, because it governs how the certifier Defendants' work is read. This Complaint does not treat the certification mark as the wrong; the wrongs pleaded are the defective standards, testing, certifications, and declarations identified below. The mark matters because UL's own enforcement record supplies the certifier's definition of what certification means: a real examination, by the named certifier, within a defined scope, intended to be relied upon. UL has answered that question twice. It answered once as a mark owner and plaintiff — across three decades of federal complaints, consent judgments, sworn testimony to the United States Senate, and its own published field protocol. It answered again as a defendant, when the meaning pointed home. The two answers cannot both be true. This Complaint proceeds on the first one — the answer UL gave under oath, in filings federal courts so-ordered, at UL's own request.

The representational character of UL's certification mark is not this Complaint's theory. It is adjudicated — in a case UL won. In 1990, UL defended its certification-mark registrations against cancellation before the Federal Circuit and prevailed. The registrations recite that the mark is used by persons authorized by UL to certify that "representative samplings of the goods conform to the safety standards or requirements established by UL." The court held that certification marks set forth "specific representations about the manufacture and characteristics of the goods" — so that the risk of a misleading mark is "even greater" than for an ordinary trademark — and that the registrant therefore bears an "affirmative obligation" to control the mark's use: "reasonable

steps, under all the circumstances of the case, to prevent the public from being misled." *Midwest Plastic Fabricators, Inc. v. Underwriters Laboratories Inc.*, 906 F.2d 1568, 1571-73 (Fed. Cir. 1990). UL kept its registrations by proving that policing — its inspectors' authority to remove the mark from noncomplying products, and its response to a counterfeit mark, among the proof. The registrations survive today on that holding: the mark makes representations to the public, and controlling those representations is the condition of owning it. What follows from those representations for the party who paid for them is the work of the Certification Chain below; the holding fixes what the mark is.

UL has performed that obligation, in court, ever since — and its enforcement filings state what the mark means with a consistency approaching liturgy. The operative sentence has been entered as an admitted fact in consent judgments nine years apart: "Plaintiff certifies the goods of others using the UL Marks, following evaluation and testing by Plaintiff" (so ordered, N.D. Ind. 2016); "UL certifies the goods of others using UL Marks, following evaluation and testing by UL" (so ordered, E.D.N.Y. 2025). The offense, in UL's own pleading, is a mark without an examination: products that "purport to have been tested by UL . . . when in fact UL never performed any such testing" — marks UL pleads were "recklessly placed" into the market — and that "may place the health and safety of the user at risk." In 2015, UL obtained a consent decree with a liability finding against a seller of counterfeit labels alone — stickers, attached to no product — on recitals that the labels enabled purchasers "to bypass UL's rigorous processes and controls for testing and certifying products" and thereby "place[d] the health and safety of the general public at risk." The token of the examination, standing by itself, was adjudged a public danger.

The remedies UL seeks for a mark without an examination — and courts grant — are total: recall; reimbursement of customers; corrective notice to customers and regulatory bodies; destruction of inventory; physical obliteration of the marks under UL's supervision, after which the identical machines were lawfully sold unmarked; statutory damages of up to \$2,000,000 per counterfeit mark per product type; a judgment of \$1,000,000 entered jointly and severally against a company and three of its individual officers; and, in one case,

criminal referral ending in a felony conviction and the forfeiture of every marked unit. UL's President swore the definition to the United States Senate in 2018: consumers seeing the mark "know that an independent third-party has determined that the manufacturer has demonstrated compliance with safety, performance, or other standards." Its Chief Legal Officer stated it publicly in 2023: UL's marks "demonstrate that these products meet scientific safety, performance or sustainability standards." And UL published the remedy as field protocol in 2020: where a product bearing the mark was not evaluated, compliance is unknown, and the product should be removed from service and replaced. Removal from service is UL's own prescribed remedy for a mark whose examination is missing.

The record is not consents alone, and it is not paper alone. On contested summary judgment in 2017, a federal court accepted UL's sworn description of its machinery and entered judgment for willful counterfeiting as a matter of law — the meaning survived contest. *UL LLC v. The Space Chariot Inc.*, 250 F. Supp. 3d 596 (C.D. Cal. 2017). The oral record is purer still. UL's enforcement Vice President, sworn before the Senate Judiciary Committee in 2008: "if people plug something in, they expect it to be safe. And so we have to put this asset in place and protect the mark." UL's President, sworn before the Senate Finance Committee in 2018: "our only product is trust. It is the trust that consumers place in us when they see our mark." The audiences are enumerated in UL's own 2013 publication — an authorized mark is "the only means for consumers, retailers, distributors, manufacturers or jurisdictional authorities to determine" that goods were certified — and a federal judgment recites the institutional version as admitted fact: the counterfeiting paid "[b]ecause the relevant code authorities routinely look for certification marks, like the UL Marks, during their inspections." And the third term of UL's own formulation rotates with the program in view — "other standards" sworn in 2018, "sustainability standards" published by its chief legal officer in 2023, "security standards" in its 2025 filing announcement, all three at once in the same release's corporate boilerplate. The category list is open by UL's own usage; sustainability sits inside it by UL's own sentence.

When the meaning has pointed toward the certifiers, a different mark has appeared. In litigation defending against the very purchasers and users the registrations describe, certifiers have described the certificate as the certifier's judgment or opinion, the subject as disclaimed, the promise as one no relying party may enforce. Those qualifications appear nowhere else. No registration recites them. No certificate carries them. No marketing page, no press release, and no sworn statement to Congress contains them. They exist only in litigation, and only when the mark's meaning is the certifier's problem rather than its product.

Program scope does not rescue the second posture, and Plaintiff does not erase it. UL maintains distinct certification programs — electrical safety among them, environmental declaration among them — with separate standards, files, and defined subjects. This action does not concern, test, or challenge the electrical-safety certification of the XLERATOR, and it does not treat the UL mark on the housing as proof of hygiene or environmental performance. Scope identifies what was examined; meaning identifies what UL represents about that examination. UL's own docket keeps the two separate: every authorization it grants is specifically scoped — this model, this manufacturer, this category, this period — while the meaning within that scope remains constant. The certificate or declaration defines what was evaluated and against what standard; the common meaning is that the named certifier actually performed the represented evaluation and determined conformity within that stated scope. The Product Category Rule and Environmental Product Declaration challenged here are separate UL work products with their own environmental and performance scope, their own stated methodology, and their own factual terms. They stand or fall on those terms, not on the electrical-safety mark. The enforcement record matters because UL cannot describe certification as a rigorous, controlled examination when enforcing its authority and as an unenforceable opinion when the examination or certified information is challenged.

The two postures cannot coexist within the scope actually at issue. UL may defend the accuracy of any particular certification on its merits; it may not change what certification is

when the meaning points home. The claims concerning UL's Product Category Rule and Environmental Product Declaration do not depend on an electrical-safety mark carrying environmental content. They depend on UL's own environmental work products: the rule it authored, the reporting system it selected, the examination and verification those documents represent, and the factual performance figures the declaration published. So the question this record answers is narrower: when UL publishes a certification or declaration within an identified scope, does it mean what UL says certification means — that the named certifier actually applied its processes and determined conformity to the stated terms — or is the published certification merely an opinion no relying party may enforce? UL's enforcement record supplies its answer. This Complaint measures the environmental certifications at issue against that answer and against the standards and numbers the certifiers themselves chose.

This section is stated in UL's name because the record is UL's. Its force against NSF is nearly the same: NSF is a certification-mark registrant of the same class, subject to the same control requirement, making the same class of specific representations — and NSF's P335 mark is the foundation of the "only hand dryer certified hygienic" claim on which Dyson sold and Plaintiff bought. The remaining certifier Defendants meet this Complaint through the machinery it separately pleads: the declarations Smart EPD issued and Anna Lasso verified, the rule UL wrote and they applied, the testing SGS performed and Excel published, and the duty owed by every supplier of information under Restatement (Second) of Torts § 552. The two postures are the frame. The counts are the machinery.

Every quotation in this section is drawn from UL's own filings, from judgments courts entered on them, from sworn testimony, or from UL's published protocol. The sources are identified in the exhibits (The UL Enforcement Docket — Public Records) and the Table of Authorities. The Certification Chain below sets out how the representation travels from the certifier to this Plaintiff; UL's enforcement docket confirms each step of that chain in UL's own voice.

II. PARTIES

A. Plaintiff

22. Plaintiff Starbucks Corporation is a Washington corporation with its principal place of business at 2401 Utah Avenue South, Seattle, Washington 98134. Starbucks operates more than 40,000 retail locations worldwide, including more than 16,000 stores in the United States, approximately 10,150 of them company-operated. Starbucks serves approximately 10 million customers daily.

23. Starbucks has made binding public commitments to environmental sustainability, including pledges to reduce carbon emissions by 50% and waste sent to landfills by 50% by 2030. As of 2024, Starbucks has certified 9,396 stores under its "Greener Stores" program—a 50% increase from the prior year—in partnership with the World Wildlife Fund and verified by SCS Global Services. Starbucks has invested over \$225 million in sustainability initiatives including solar and battery storage projects. Since 2015, 100% of Starbucks' North American company-operated stores have been powered by renewable electricity.

24. Starbucks selected and installed Dyson Airblade hand dryers in its retail locations in reliance on Dyson's representations regarding drying performance, hygiene, and environmental impact, and in reliance on NSF's certification that Dyson products met Protocol P335 standards. Public records confirm installation of Dyson hand dryers at Starbucks locations. City of Everett, Washington Electrical Permit E1911-048, dated November 8, 2019, authorized installation of a "NEW DYSON HAND DRYER" at Starbucks Store #8740 located at 3625 Broadway, Suite A, Everett, Washington. The permit documents a contract price of \$1,500.00 with MasterCraft Electric Inc. Similar installations occurred at Starbucks locations throughout North America.

B. Defendant Dyson, Inc.

25. Defendant Dyson, Inc. is an Illinois corporation incorporated on January 31, 2002, with its principal place of business at 1330 W. Fulton Street, 5th Floor, Chicago, Illinois 60607. Dyson, Inc. is the United States subsidiary of Dyson Ltd. and is responsible for the marketing, sale, and distribution of Dyson products in the United States, including Dyson Airblade hand dryers.
26. Dyson manufactures, markets, and sells commercial hand dryers under the "Airblade" brand, including the Airblade 9kJ, Airblade V, and Airblade Tap models. Dyson markets these products to commercial purchasers including retail chains, restaurants, hospitality businesses, and healthcare facilities with specific claims regarding drying time, hygiene, energy efficiency, cost savings, and environmental impact.
27. Dyson holds NSF P335 certification for its Airblade products. Dyson prominently features this certification in its marketing materials. Dyson markets itself as "the only hand dryer certified by NSF International Protocol P335." Dyson has maintained NSF P335 certification for approximately nineteen years while independent testing demonstrates zero percent compliance with the certified specification.

C. Defendant Excel Dryer, Inc.

28. Defendant Excel Dryer, Inc. ("Excel") is a Massachusetts corporation with its principal place of business in East Longmeadow, Massachusetts. Excel manufactures, markets, and sells commercial hand dryers under the "XLERATOR" brand, including the XLERATOR and XLERATOReco models. Excel markets these products to commercial purchasers with specific claims regarding drying time, hygiene, energy efficiency, cost savings, and environmental impact.
29. Starbucks selected and installed Excel XLERATOR hand dryers in its retail locations, in addition to Dyson Airblade units, in reliance on Excel's representations and on the third-party certifications and environmental declarations that made those representations credible.

30. The XLERATOR units Starbucks installed remain in service. Although Starbucks has replaced some XLERATOR units over time, it has not replaced all of them: in a representative local sample of twenty Starbucks stores, four continued to operate installed XLERATOR hand dryers, two units per store, at the time of Plaintiff's observation. The continued presence of these units confirms that the XLERATOR deployment is ongoing and that the defective condition remains live, not historical.
31. Excel's XLERATOR products are the subject of a certified Environmental Product Declaration verified through UL Solutions and resting on performance data reported by SGS. Excel features the certified drying-time and energy-consumption figures in its marketing; independent testing demonstrates those figures are not achieved in actual use. Excel's own published technical data sheet states that the drying-time and energy figures were derived from testing performed by SGS International on the standard XLERATOR to a residual-moisture endpoint of 0.25 gram or less, pursuant to the UL Environment Product Category Rule for Hand Dryers, and it displays the UL "Tested to PCR Guidelines" mark and the Smart EPD certification mark together on the same sheet. Exhibit PPPP. The units themselves bear UL certification marks on their housings, visible to every user. Exhibit SSSS.

D. Defendant NSF International

32. Defendant NSF International ("NSF") is a Michigan nonprofit corporation with its principal place of business at 789 N. Dixboro Road, Ann Arbor, Michigan 48105.
33. NSF holds itself out as an independent, authoritative certification body for public health and safety standards. NSF is accredited by the American National Standards Institute (ANSI) and operates under ISO/IEC 17065 requirements for conformity assessment bodies. NSF's certifications are widely recognized and relied upon by commercial purchasers, regulatory authorities, and consumers.

34. NSF developed Protocol P335 for "Hygienic Commercial Hand Dryers" and certifies Dyson Airblade products under that protocol. NSF's P335 certification is the foundation of Dyson's "only hand dryer certified hygienic" marketing claim.
35. NSF generates revenue by charging manufacturers fees for product testing, certification, and the right to use NSF certification marks in marketing materials. This financial relationship creates an inherent conflict of interest: NSF has financial incentive to certify manufacturers' products—generating certification fee revenue—rather than to rigorously enforce standards, which might result in certification denials and lost revenue.
36. The P335 Protocol Development Panel included Toby Saville of Dyson. Dyson's internal test method, DTM 553, was incorporated into the protocol. NSF certified a product using a standard that the product's manufacturer helped write, using the manufacturer's own test method.
37. NSF's P335 certification requires residual moisture below 0.1 grams at the certified drying time. Independent testing establishes that Dyson products retain more than 25 times this threshold at claimed drying times. NSF continues to list Dyson as P335 certified despite independent research proving the certification specifications are not achieved.

E. Defendant SGS North America Inc.

38. Defendant SGS North America Inc. ("SGS") is a New Jersey limited liability company with its principal place of business at 400 Broadacres Drive, Suite 200, Bloomfield, New Jersey 07003. SGS is a subsidiary of SGS SA, a Swiss multinational corporation.
39. SGS provides testing, inspection, and certification services. SGS conducted performance testing of hand dryers — including Dyson products — that entered the public record in litigation between the manufacturers and that Excel cites on its own technical data sheet as third-party validation of drying-time and performance figures.

40. SGS Performance Test Report No. 2774929EFF-001 documented hand dryer testing at drying times materially longer than manufacturer marketing claims. SGS possessed data showing that marketed drying times were not achieved under test conditions. SGS continued providing testing services that manufacturers used to support false performance claims.

F. Defendant UL Solutions Inc.

41. Defendant UL Solutions Inc. ("UL") is a Delaware corporation with its principal place of business at 333 Pfingsten Road, Northbrook, Illinois 60062. UL provides testing, certification, standard-development, and environmental-declaration services. In 2016, at Excel Dryer's request, UL authored the Product Category Rule ("PCR") for hand dryers: UL chose the ISO 14025 Type III declaration system, wrote the PCR, and selected the governing LCA and EN 15804 methodology under which hand-dryer Environmental Product Declarations are made. The PCR committee held ten manufacturer seats and two UL seats; Excel Dryer held four of those seats, and Excel's Vice President and Chief Operating Officer chaired the committee.

42. UL's liability in this action rests on the PCR, not on any current verification. The PCR UL authored adopted a 0.25-gram residual-moisture endpoint for which it supplied no scientific explanation, and it contains no standard, test, or specification for the water dispersed from the device—the primary physical output of the product. UL's own Environmental Product Declaration for the XLERATOR issued under that PCR in 2017 and expired in July 2022 without renewal. UL no longer verifies the current XLERATOR declaration. But the PCR UL wrote remains in force, and the current Environmental Product Declaration for the XLERATOR—issued by Smart EPD in June 2023—states on its face that its Core PCR is the UL PCR for Hand Dryers. The current false declaration is therefore built on, and governed by, the defective rule UL authored and continues to hold. Every declaration issued under that PCR inherits its defects: the unexplained endpoint, the absent water-dispersal standard, and a drying-time framework that

independent testing establishes cannot be met in actual use. UL's authorship of that governing rule is a continuing basis for the false declarations made under it.

G. Defendant Smart EPD LLC

43. Defendant Smart EPD LLC ("Smart EPD") is a Virginia limited liability company, entity ID 11379451, with registered office at 25320 Ripleys Field Drive, Chantilly, Virginia 20152. Smart EPD was formed on April 26, 2022, under the name "EPD USA LLC," and renamed "Smart EPD LLC" by articles of amendment on July 6, 2022. Smart EPD operates as a program operator for Environmental Product Declarations, administering the framework under which the XLERATOR declaration issued and managing the process by which manufacturer data becomes a published, certified environmental declaration. Smart EPD administered and certified a published declaration resting on a drying-time figure not achieved in actual use.

H. Defendant Anna Lasso

44. Defendant Anna Lasso is an individual whose address of record with the Virginia State Corporation Commission is 25320 Ripleys Field Drive, Chantilly, Virginia 20152 — the same address as Smart EPD LLC's registered office. Lasso participated in authoring the UL Product Category Rule for Hand Dryers and is identified on the current XLERATOR Environmental Product Declaration as program operator, independent critical reviewer, and independent external verifier. Lasso thus occupied the roles of author, operator, and independent verifier of the same declaration — a concentration of functions incompatible with the independence the declaration represents.

45. The continuity between the two Excel-chain certifiers is personal as well as numerical. Thomas P. Gloria of Industrial Ecology Consultants verified the life-cycle assessment behind UL's 2017 Environmental Product Declaration and verified the life-cycle assessment behind Smart EPD's 2023 declaration — the same verifier, the same figures, a different certifier's name on the certificate.

46. Anna Lasso is named individually because she personally participated in creating the governing Product Category Rule while employed at UL and personally certifies products under it through Smart EPD; and because on those certificates she occupies simultaneously the roles of program operator, independent critical reviewer, and independent external verifier — three functions ISO 14025 requires to be independent of one another.

III. JURISDICTION AND VENUE

47. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiff and all Defendants, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Plaintiff Starbucks Corporation is a citizen of Washington. Defendant Dyson, Inc. is a citizen of Illinois. Defendant NSF International is a citizen of Michigan. Defendant SGS North America Inc. is a citizen of New Jersey. No Defendant shares citizenship with Plaintiff.

48. For the additional Defendants: Defendant Excel Dryer, Inc. is a citizen of Massachusetts. Defendant UL Solutions Inc. is a citizen of Delaware and Illinois. Defendant Smart EPD LLC is a citizen of Virginia. Defendant Smart EPD LLC's citizenship for diversity purposes is that of its members; on information and belief its sole member is a citizen of Virginia, making Smart EPD a citizen of Virginia. Defendant Anna Lasso is a citizen of Virginia. No Defendant shares citizenship with Plaintiff, and complete diversity is preserved.

49. This Court has personal jurisdiction over all Defendants. Defendant Dyson conducts substantial business in Washington, has purposefully availed itself of the privilege of conducting business in Washington, has marketed and sold its products in Washington, and has specifically sold products to Plaintiff for installation in Washington. Dyson's contacts with Washington are systematic and continuous. Defendants NSF and SGS have purposefully directed their certification and testing activities toward the national market, including Washington; their certifications and

test data are relied upon by Washington purchasers; and they knew or should have known that their certifications and testing would cause foreseeable harm to Washington consumers and businesses who relied on them. The effects of Defendants' conduct were felt in Washington, where Plaintiff made purchasing decisions, installed products, and suffered harm. Defendant Excel has marketed and sold its products in Washington, including the XLERATOR units deployed in Plaintiff's Washington facilities, and has purposefully availed itself of the Washington market. Defendants UL Solutions and Smart EPD have purposefully directed their certification activities toward the national market, including Washington: the certification marks and environmental declarations at issue appear on and accompany products marketed, sold, and installed in Washington, and those Defendants knew their certifications would be relied upon by Washington purchasers, including Plaintiff. Defendant Lasso personally performed the verification and certification acts at issue for that same national market, including Washington, with the same knowledge.

IV. FACTUAL ALLEGATIONS

A. Dyson's Products and Marketing Claims

50. Dyson manufactures and sells the Dyson Airblade line of commercial hand dryers. Dyson markets these products to commercial and institutional purchasers with specific claims regarding drying time, hygiene, energy efficiency, cost savings, and environmental impact.
51. Dyson claims its Airblade hand dryers dry hands in "10-12 seconds" (Airblade 9kJ) or "12-14 seconds" (Airblade V). This claim is false. Independent scientific testing of 462 drying cycles across multiple time intervals established that zero percent of hand dryer uses achieve the claimed dryness at the claimed times. At Dyson's claimed 10-12 second drying time, hands retain approximately 2.5 to 3.0 grams of residual moisture—25 to 30 times the 0.1 gram specification established by NSF Protocol P335 for "dry hands" and cited in Dyson's own marketing footnotes.

52. Dyson claims its Airblade hand dryers are "hygienic" and provide "hygienic hand drying." Dyson's website states: "Dyson hand dryers help to create a cleaner, more hygienic washroom." These claims are false. Independent scientific testing established that 100% of contamination tests—136 of 136 across two studies—showed that the machines amplify bacterial and fungal contamination compared to ambient air. Testing at Starbucks locations specifically showed Dyson Airblade units amplify contamination by 35 to 105 times over ambient room air, with median amplification of 70 times. The probability that this result occurred by chance is less than one in ten to the forty-first power ($p < 10^{-41}$). Dyson Airblade hand dryers do not provide hygienic hand drying; they amplify contamination.
53. Dyson claims its Airblade hand dryers feature "HEPA filtered" air that captures "99.97% of particles." This claim is misleading. Independent testing compared HEPA-filtered Dyson units to non-HEPA hand dryers and found no statistically significant difference in contamination output ($p = 0.803$). Both produce equivalent contamination amplification. HEPA filtration addresses intake air; contamination originates downstream from dispersed user hand water and biofilm accumulated inside the device from thousands of prior users. The HEPA claim is technically accurate regarding filter specification but operationally meaningless for hygiene outcomes.
54. Dyson claims its Airblade hand dryers achieve "up to 88% less CO₂" compared to paper towels and are "better for the environment." These claims are false because they are predicated on the false 10-12 second drying time. Energy consumption is power multiplied by time. If actual drying time is 70-90 seconds—as independent testing establishes—then energy consumption per use is approximately 7 to 10 times higher than Dyson's calculations assume, and the claimed environmental advantage disappears entirely. Under some calculation methodologies, hand dryers perform worse than paper towels.
55. Dyson claims its Airblade hand dryers "cost up to 99% less to run than paper towels." This claim is false for the same reason: it is predicated on the false drying time. If actual

energy consumption is 7 to 10 times higher than claimed, the cost comparison is mathematically invalid.

56. Dyson's website footnotes disclose that drying times are "determined using Dyson test method 769 based on NSF P335 to a measurement of 0.1 g residual moisture." This disclosure is significant. "Method 769" is a proprietary Dyson test protocol. It is not publicly available. Its methodology has never been disclosed. It is described only as "based on" NSF P335—not as complying with NSF P335. A proprietary test method, never disclosed, described only as "based on" the standard rather than complying with it, producing favorable results the products do not achieve under the standard's own protocol: the method is Dyson's, the description is Dyson's, and what Dyson understood in choosing both is a matter for discovery.

B. The Patrick Citation

57. Dyson's marketing materials cite Patrick et al. (1997), a peer-reviewed study published in *Epidemiology and Infection* establishing that "residual moisture determines the level of touch-contact-associated bacterial transfer." The Patrick study demonstrated that wet hands transfer up to 1,000 times more bacteria than dry hands.

58. Dyson cites this research to establish the importance of hand drying—to prove that its products address a real public health concern. Dyson then sells products that leave hands wet. At Dyson's claimed drying times of 10-12 seconds, independent testing shows residual moisture of 2.5-3.0 grams—25 to 30 times the 0.1 gram threshold Dyson's own footnotes cite. Dyson's products create precisely the condition—wet hands—that the research Dyson cites identifies as dangerous.

59. Dyson knows the science: Dyson cites it in its own marketing. Dyson's products create the condition the cited science identifies as dangerous. The citation of Patrick et al. in Dyson's marketing materials establishes what Dyson understood about the public health implications of inadequate drying.

C. Starbucks' Relationship with Dyson

60. Starbucks selected Dyson Airblade hand dryers as part of its comprehensive sustainability strategy. Starbucks' Greener Stores program, launched in partnership with the World Wildlife Fund, establishes sustainability standards across eight environmental impact areas including energy efficiency, water stewardship, and waste diversion.
61. Dyson's marketing materials specifically target sustainability-focused purchasers. Dyson claims its products "reduce waste" by eliminating paper towels, provide "energy efficiency," and deliver "up to 88% less CO₂" than alternatives. These claims align with the criteria Starbucks uses to evaluate equipment purchases under its sustainability commitments.
62. Starbucks relied on Dyson's representations when selecting hand drying equipment. Starbucks' selection of Dyson products was consistent with and in furtherance of Starbucks' public sustainability commitments, including its pledge to reduce waste sent to landfills by 50% by 2030. Starbucks relied on Dyson's representation that Airblade dryers produce "88% less CO₂" than paper towels in making equipment decisions intended to support these commitments.
63. Following installation, Starbucks displays signage at its Dyson Airblade installations. The signage includes Starbucks-branded messaging stating: "Using these energy efficient hand dryers reduces paper towel consumption," accompanied by a windmill icon symbolizing environmental responsibility. This signage was created in reliance on Dyson's energy efficiency representations. The representation is false because actual energy consumption at real drying times eliminates the claimed efficiency advantage.
64. Starbucks directs its employees to wash and dry their hands before returning to work. This directive appears on signage affixed directly to Dyson Airblade units in Starbucks restrooms. The signage states: "Employees Must Wash Hands Before Returning to Work" and depicts a six-step hand hygiene process including "Dry" as step five. Employees who comply with this directive—using the Dyson Airblade as instructed—

contaminate their freshly washed hands with 35-105 times more bacteria and fungus than ambient room air before returning to food preparation areas.

65. Starbucks serves approximately 10 million customers daily. This creates a direct exposure pathway from Dyson's false claims to the food and beverages Starbucks serves: Dyson makes false hygiene claims; Starbucks relies on those claims; Starbucks directs employees to use the products; the products deposit rather than remove contamination; and employees who handle food do so with hands the dryer failed to render hygienic. Item-specific contamination of any given product remains a matter of proof, but the pathway the false claims created is direct and foreseeable.

D. The Certification Chain

THE CERTIFICATION CHAIN — COMPLETE SUPPORTING BRIEF

This is a complete brief presenting the law on which the rest of the case is built, and it is best understood in full. 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 parties who ultimately purchase and use 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.

The chain runs from certifier to manufacturer to purchaser to user, and Starbucks occupies two of its links. Starbucks is the purchaser — the party who paid the price in which the certification premium was embedded — and Starbucks is also the user, because the certified event occurs in Starbucks's own restrooms, performed on its customers and employees, tens of thousands of times a day. The brief establishes the obligations at every link; Starbucks holds those that attach at both links it occupies.

The brief establishes two separate obligations. 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. Starbucks stands on both: on the contract as the purchaser who paid, and on the duty as both the purchaser and the user who relied.

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 the 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. The final section states where along the chain those obligations land.

The chain has four links: certifier, manufacturer, purchaser, and user. The contract obligation attaches at the purchaser's link, where the money changed hands. The duty attaches wherever reliance occurred, purchaser and user alike. Starbucks occupies both the purchaser link and the user link, and holds the obligations that attach at each.

Three propositions are tested at the end of the chain. Two are tested 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. One is tested by substitution. Replace the authentic mark with a counterfeit, and nothing downstream changes at all; the entire difference is the examination. Together the three tests establish what the mark is for, whom the certification is about, and what the mark is worth.

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 manufacturer 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 manufacturer, 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 some time 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 is not 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 certifier's obligations now run past the manufacturer: a contract toward the purchaser who will pay, and a duty toward everyone who will rely — purchaser and user alike.

10. MARK IS BOUND TO THE CERTIFICATE

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

The certifier's obligations run past the manufacturer via the certification document: contract toward the purchaser, duty toward everyone who relies.

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 certifier's obligations run past the manufacturer via the certification document, via the purely public-facing mark: contract toward the purchaser, duty toward everyone who relies — purchaser and user alike.

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 publish the complete certification document—in its sales literature, beside every display unit—but a purchaser would confront an incomprehensible technical file a reasonable user cannot parse. The mark, offered by the certifier to carry the imprimatur of its brand reputation, does the same work far 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 to the chain; the certified event is performed on the user, and at Starbucks the user is the purchaser's own customers and staff.

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

19. THE THIRD TEST

Swap the sticker.

Remove the authentic mark and apply in its place a counterfeit — an unauthorized copy, visually identical, the kind the certifier prosecutes.

Nothing downstream changes. The machine performs identically. The purchaser pays the same price and the same premium. The same mark occupies the same housing and faces the same user at the same sink. The user forms the same belief and holds his hands in the same air. Every step from placement through reliance executes without change. That is what a counterfeit is; downstream indistinguishability is the definition of the offense.

Everything the substitution removed lives upstream, and it is one thing: the examination. The standard written, the protocol fixed, the testing performed, the file created — the swap severs the mark from those steps and touches nothing else.

The third test states the mark's price. If every downstream effect is invariant under the substitution, the mark's entire value — everything the purchaser paid for and everything the user relied upon — is the upstream examination and nothing else. The certifier has already fixed this valuation in its own enforcement record: counterfeit certification labels are bought and sold as a standalone commodity because the sticker sells for the value of the testing it bypasses. A mark is worth exactly the examination behind it. That is not this memorandum's assertion; it is the economic premise of the counterfeit-label market and of every prosecution the certifier brings against it.

The test accuses no one. The marks on the machines in this record are authorized, and that is conceded. The test isolates meaning: authorization is the license to apply the mark; examination is the content of what the mark says. Where the examination behind a certified representation does not exist, the third test states what remains.

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 polices the mark that carries that product. *UL LLC v. The Space Chariot Inc.*, 250 F. Supp. 3d 596 (C.D. Cal. 2017).

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 coffee 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.

And the policing is itself a statutory condition: a certification-mark registration survives only if the registrant controls use of the mark, 15 U.S.C. § 1064(5) — a condition UL litigated and satisfied, preserving its registrations by proving precisely this apparatus. *Midwest Plastic Fabricators, Inc. v. Underwriters Laboratories Inc.*, 906 F.2d 1568 (Fed. Cir. 1990).

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. Starbucks, 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.

That silence is causally material. On the allegations pleaded here, a compliant declaration would have done one of two things: report the use-stage outputs, or mark them not declared. Either course would have told a purchaser that the environmental comparison did not report the water dispersal, microbial amplification, and surface deposition produced during ordinary operation. The declarations did neither. A purchaser therefore received an apparently complete certified comparison without the information needed to decide whether to buy, install, retain, or replace the machine. The omission did not merely leave the document incomplete; it removed the choice the declaration existed to inform.

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.

ICCS v. United States (Fed. Cir. 2020) (certification-mark forfeiture; certifications are not retroactive)

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 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.

WHERE THE OBLIGATIONS LAND

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 states where along the chain those obligations land. The contract attaches at the purchaser's link; the duty attaches at every link where reliance occurred, purchaser and user alike. Starbucks occupies both links, and holds the obligations that attach at each.

The user at the chain's end never bought a hand dryer. At Starbucks, the user bought coffee — and Starbucks, having bought the dryer and installed it, is the purchaser at whose hands that same certified event occurs.

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 coffee 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 selects and pays; the user is where the certified event occurs. At Starbucks these are the same party — the purchaser who installed the dryers and the operator of the restrooms in which they are used.

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 building and promoting its Greener Stores sustainability program, and in representing to its customers that its stores advanced waste reduction, energy efficiency, and environmental responsibility.

Plaintiff deployed the certified dryers throughout its company-operated 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.

Control is a condition of holding the mark

Independence is one condition. Control is the other, and it is statutory. A certification-mark registration survives only if the registrant controls use of the mark, 15 U.S.C. § 1064(5), and the Federal Circuit construed that condition in a case UL itself won, defending the very registrations at issue. Certification marks, the court held, set forth "specific representations about the manufacture and characteristics of the goods," so that the risk of a misleading mark is "even greater" than for an ordinary trademark; the registrant accordingly bears an "affirmative obligation" to monitor those who use the mark — "reasonable steps, under all the circumstances of the case, to prevent the public from being misled." *Midwest Plastic Fabricators, Inc. v. Underwriters Laboratories Inc.*, 906 F.2d 1568, 1571-73 (Fed. Cir. 1990). UL preserved its registrations by proving its policing: inspectors authorized to remove the mark from noncomplying products, shipment blocked until variations were resolved, a counterfeit answered with inspection of every unit. The meaning of the mark is therefore not an inference this memorandum draws. It is the adjudicated premise on which the registrations exist. A mark that represented nothing to the public would need no control, and a registrant that owed the public nothing could never have been put to that proof. The certifier that proved its control in 1990 cannot hold the registrations today while disclaiming the representations the control exists to protect.

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 the contract; a plaintiff who used one holds the duty; a plaintiff who did both holds both. Starbucks did both. Neither obligation needs proof of 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 STARBUCKS

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

Starbucks is the purchaser — the party who paid. Starbucks 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 Starbucks. Starbucks 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 Starbucks 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. Starbucks is that purchaser. The certifiers' obligations — that the standards are valid, that the testing is accurate, that the certified levels are met — ran to Starbucks 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 Starbucks paid, Starbucks's certifier claims do not depend on the absence of a contractual relationship, and Washington's independent duty doctrine does not bar them.

Ground two — duty (§ 552), in the alternative and independently. As set out in *The Mark Is a Duty*, the certifiers separately owed Starbucks 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 tens of thousands of locations. On this ground Starbucks 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. Starbucks 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.

66. UL's own published data contradicts the certifications issued under its rule. Figure 2 of the Product Category Rule shows 0.456 grams of residual moisture at 8 seconds — 82 percent above the rule's own 0.25-gram threshold at the drying time UL's Environmental Product Declaration certified for the XLERATOR. The committee that published that figure included the manufacturer whose 8-second claim it refutes. And UL's current practice confirms what its data shows: in April 2022, UL certified a competing manufacturer, Hokwang, at 30 to 35 seconds drying time — three months before Excel's 8-second UL certification expired without renewal. UL would not certify 8 seconds. Smart EPD did.

E. The 2012 SGS Report

67. SGS Performance Test Report No. 2774929EFF-001, dated September 7, 2012, was filed as Exhibit B to Excel's motion for preliminary injunction in Case 3:12-cv-30211-MAP, Document 6-2. The report is signed by Martin Dodd, Project Engineer, and reviewed by Jody Leber. The client is Excel Dryer, Inc., 357 Chestnut Street, East Longmeadow, MA 01028.

68. The report tested five hand dryer models: Excel Dryer HO-IW, World Dryer XA5-974AU, Excel Dryer XL-BW, World Dryer K972A, Dyson AB04, and Dyson A01. Samples were received between June 29 and August 13, 2012. Testing occurred August 15-24, 2012.

69. Page 4 of the report states: "Each product was tested in accordance with a revised version of NSF Protocol P335 Hygienic Commercial Hand Dryers currently being

developed and reviewed by NSF and its new technical panel for the 5 year protocol update."

70. Page 9 of Annex A states: "For the purposes of NSF Protocol P335, 'thoroughly dry' means that less than 0.1 grams of residual moisture per hand for a total of 0.2 grams or less is recovered when a user dries his or her hands on a paper towel after using the hand dryer." SGS certified results using this methodology. Independent testing, following comparable methodology, documents 2.5 to 3.0 grams—not 0.1 to 0.2 grams. The certified results cannot be independently reproduced.
71. This is linguistic sleight of hand. NSF P335 Section 3.4 defines dry hands as "less than 0.1 g residual moisture"—total, not per hand. By redefining the threshold as "0.1 grams per hand for a total of 0.2 grams," the acceptable moisture was doubled while preserving the appearance of the 0.1 gram figure.
72. Table 1 of the SGS report reveals the test results at 120V, 60Hz:
73. Excel Dryer XL-BW at 12 seconds: 0.186 grams average residual moisture.
74. Excel Dryer XL-BW at 15 seconds: 0.108 grams average residual moisture.
75. World Dryer XA5-974AU at 15 seconds: 0.916 grams average residual moisture.
76. World Dryer XA5-974AU at 30 seconds: 0.306 grams average residual moisture.
77. Dyson AB04 at 12 seconds: 0.183 grams average residual moisture.
78. Dyson AB04 at 15 seconds: 0.143 grams average residual moisture.
79. SGS certified these results: XLERATOR at 0.186 grams at 12 seconds, World Dryer at 0.916 grams at 15 seconds, Dyson Airblade at 0.183 grams at 12 seconds. These are the certified figures on which all subsequent certifications rely. Independent testing comprising 462 trials, following stated methodology, documents 2.5 to 3.0 grams at equivalent times—15 to 25 times higher than SGS certified. The certified results cannot

be independently reproduced and the failures are at one to two orders of magnitude out of compliance.

F. The Scientific Evidence

80. Independent scientific research conducted between August 2023 and December 2025 constitutes the most comprehensive assessment of commercial hand dryer performance in the published literature. The research comprises eleven studies and 931 individual tests at 226 retail and public locations in five states and Washington, D.C., examining 169 hand dryers and 94 paper-towel dispensers across 1,076 culture dishes, with complete chain-of-custody documentation comprising 1.3 terabytes across approximately 13,000 files archived with registered Digital Object Identifiers through Zenodo and the Harvard Dataverse. The research specifically includes testing conducted at Starbucks locations.

81. These are not "studies that suggest" or "evidence that indicates. These are physical facts, measured directly, replicated across hundreds of trials, and documented photographically; they do not depend on inference. Every finding described below has been replicated, validated with enhanced methodology, and archived with complete chain of custody for independent verification. The probability that the core findings occurred by chance is less than one in ten to the forty-first power.

1. Drying Time Failure

82. Testing of 462 drying trials across three manufacturers—Dyson, Excel Dryer (Xlerator), and World Dryer—demonstrated universal failure to achieve claimed drying specifications. Zero units achieved the 0.1 gram residual moisture threshold at manufacturer-claimed times. The failure rate is 100%. Blouch, R.A. Jr. (2025), Testing the Validity of Hand Dryer Drying Time Specifications, DOI: 10.5281/zenodo.15503698, Harvard Dataverse: 10.7910/DVN/WVSOVM; Blouch, R.A. Jr. (2025), Systematic Performance Failure in Commercial Hand Dryers, DOI: 10.5281/zenodo.17858443, Harvard Dataverse: 10.7910/DVN/1CEDBA.

83. At Dyson's claimed drying time of 10-12 seconds, residual moisture measured 2.5 to 3.0 grams—25 to 30 times the claimed specification. Actual time required to approach the 0.1 gram threshold was 70-90 seconds, regardless of manufacturer or engineering approach.
84. Cross-manufacturer correlation coefficients exceeded $r = 0.99$ ($p < 0.001$), establishing that the limitation is physical rather than a function of engineering choices. Different manufacturers, different motor specifications, different air delivery systems—identical drying curves. The convergence indicates that performance limitations are fundamental physical constraints, not engineering variations. Blouch, R.A. Jr. (2025), Catastrophic Time-To-Dry Failures, DOI: 10.5281/zenodo.17869567, Harvard Dataverse: 10.7910/DVN/RFDEEJ.

2. The Bimodal Mechanism

85. The physics of hand drying explains why all dispersal-type hand dryers fail. Water on hands exists in two forms: "loose water" (droplets, pooled water, surface films) and "bound water" (water held by capillary action in skin crevices, between fingers, and around nail beds).
86. Loose water disperses rapidly in 5-15 seconds under mechanical air shear. This is the dramatic visible spray—the water blown onto walls, floors, and clothing. It accounts for 70-80% of water removed but only 15-20% of total drying time. This is what manufacturers measure, what certifiers test, and what marketing demonstrates.
87. Bound water resists removal regardless of air velocity because it is mechanically trapped by skin topology and surface tension. Capillary forces hold water in the valleys between fingerprint ridges, in cuticle margins, and in the webbing between fingers. No amount of air velocity changes this physical constraint. Bound water accounts for 20-30% of water but requires 80-85% of total drying time.
88. Manufacturers measure loose water removal and call it "drying." Users need bound water removal, which requires 70-90 seconds regardless of engineering. This is why

hands remain wet at claimed drying times and why the water that does leave hands is sprayed throughout the environment rather than evaporated. The gap between manufacturer claims and physical reality is 7-10 times. Physics does not negotiate. No marketing claim, no certification, no engineering innovation changes the capillary forces that hold bound water in human skin.

3. Microbial Amplification

89. One hundred thirty-six hand-dryer contamination tests across two studies showed bacterial and fungal amplification in 136 of 136 tests—a 100% amplification rate. The probability of this result occurring by chance if dryers did not systematically amplify contamination is approximately 10^{-41} . Blouch, R.A. Jr. (2025), Transmission of Bacteria and Fungus via Dyson and Xlerator Hand Dryers, DOI: 10.5281/zenodo.15504115, Harvard Dataverse: 10.7910/DVN/12QQQZ; Blouch, R.A. Jr. (2025), Validation of Hand Dryer Microbial Amplification, DOI: 10.5281/zenodo.17859894, Harvard Dataverse: 10.7910/DVN/OEYRL8.
90. Dyson Airblade units tested at Starbucks locations showed median amplification of 70 times ambient room air (interquartile range: 32-103), with amplification ranging from 35 to 105 times baseline contamination. Hands placed in Dyson Airblades for the time required to actually dry them are exposed to bacterial and fungal loads that would not exist if the user simply stood in the restroom doing nothing.
91. HEPA filtration—the feature Dyson most prominently markets—provides no statistically significant benefit. Comparison of HEPA-filtered Dyson units against non-HEPA competitors showed $p = 0.803$. The contamination occurs downstream of the filter, in the dryer housing and air pathway where biofilm accumulates from thousands of prior users' hand flora and from the restroom environment.
92. By contrast, white paper towels tested as statistically indistinguishable from ambient air ($p = 0.24$). Paper towels absorb water and contaminants; hand dryers disperse them.

4. Water Dispersal

93. Dyson Airblade hand dryers operate at air velocities of approximately 420 miles per hour, the figure Dyson publishes for the Airblade V. At these speeds, water is mechanically stripped from hands and dispersed into the surrounding environment. Independent testing documented 7.3 grams of water on hands after washing. Approximately 90% of this water is removed by mechanical shear during the first phase of drying—not by evaporation. That water must go somewhere. Blouch, R.A. Jr. (2025), Visual Analysis of Water Dispersion Patterns, DOI: 10.5281/zenodo.15503304, Harvard Dataverse: 10.7910/DVN/O21XMM.
94. Visual documentation confirmed water dispersal onto adjacent walls, floor surfaces, user clothing, and into the air as visible mist. The water cannot be sterile—it carries the amplified microbial load documented in contamination testing. Every drying cycle sprays 7.3 grams of indeterminately clean or contaminated water throughout the restroom environment. This is not a malfunction; it is the mechanism by which these devices operate.

5. Mold Colonization

95. Examination of 127 public restrooms documented visible mold colonization in 100% of dispersal-type hand dryer installations (50 of 50 units). The contamination radiates outward from the dryer air outlet in a characteristic pattern—the "plume of filth." By contrast, white paper towel dispensers showed mold in only 13% of installations. The difference—100% versus 13%—is categorical. Blouch, R.A. Jr. (2025), The Wandering Plume of Filth, DOI: 10.5281/zenodo.17860971, Harvard Dataverse: 10.7910/DVN/PCPGRM.
96. Independent laboratory analysis (EPA Laboratory ID: VA01419) confirmed fungal species including *Aspergillus*, *Penicillium*, *Alternaria*, *Cladosporium*, and *Chaetomium*—organisms documented by the CDC and Institute of Medicine to cause

allergic reactions, hypersensitivity pneumonitis, and mycotoxin production. The dryer creates the mold. The paper towel does not.

6. False Energy and Environmental Claims

97. Dyson's claim of "88% less CO₂" compared to paper towels is calculated using 10-12 second drying times. Energy consumption is power multiplied by time. When actual drying times of 70-90 seconds are used, energy consumption increases 7-10 fold. Blouch, R.A. Jr. (2025), An Empirical Refutation of Green Energy Claims, DOI: 10.5281/zenodo.17859198, Harvard Dataverse: 10.7910/DVN/IT4NBU.
98. At claimed times, Dyson Airblade energy consumption is approximately 3-4 watt-hours per use. At actual drying times, energy consumption is 25-28 watt-hours per use. The claimed environmental advantage over paper towels disappears entirely. Under conservative calculation methodologies, hand dryers perform equivalently to paper towels. Under expansive methodologies, hand dryers perform 2-3 times worse.
99. Every environmental claim Dyson makes—carbon footprint, energy efficiency, sustainability advantage—depends on drying times that are physically impossible to achieve. The claims are not marginally overstated. They are categorically false.

G. Dyson's Knowledge

100. Dyson knew or should have known that its drying time claims were false. Dyson created Method 769 as a proprietary alternative to standard protocols; its purpose and the reasons for its adoption are matters for discovery. The method is proprietary, unpublished, and described only as "based on" NSF P335—not as complying with it. The existence of a secret test method is evidence that Dyson could not achieve its claimed specifications through legitimate means.
101. Dyson knew or should have known that its hygiene claims were false. Dyson cites Patrick et al. in its own marketing, demonstrating awareness that wet hands spread contamination. Dyson's products leave hands wet. Dyson knew the science and violated it.

102. Dyson has maintained NSF P335 certification for approximately nineteen years. During that time, Dyson's products have achieved 0% compliance with the certified specification in independent testing. Either Dyson never verified that its products met the specification it claimed, or Dyson verified that they did not and continued claiming certification anyway.

103. Prior litigation between hand dryer manufacturers produced sworn testimony establishing industry-wide awareness that drying time claims could not be achieved. In *Excel Dryer, Inc. v. Dyson, Inc.*, Case No. 3:12-cv-30211-MAP (D. Mass.), competitors accused each other under oath of false advertising regarding drying times. Both were correct. The litigation settled before discovery could expose testing methodologies to scrutiny.

H. NSF's Knowledge

104. NSF knew or should have known that its P335 certification was false. Toby Saville, a Dyson microbiologist, sat on the NSF P335 Protocol Development Panel. Saville created Dyson Test Method DTM 553, which NSF incorporated into P335 as a normative reference. NSF allowed a manufacturer's employee to help write the standard that certifies that manufacturer's products and to create the test method incorporated into that standard.

105. NSF knew or should have known that certified products do not achieve certified specifications. NSF has maintained Dyson's P335 certification for approximately nineteen years. During that time, NSF has disclosed no surveillance testing verifying ongoing compliance. The certification remained in force throughout; the surveillance and retesting records the protocol requires are uniquely within NSF's possession; discovery will establish what testing was performed and what NSF learned.

106. The *Excel v. Dyson* litigation in 2012-2013 put the industry on notice that drying time claims were contested under oath. Both manufacturers accused each other of false advertising. NSF knew or should have known from this public litigation that the

certifications it was maintaining were based on contested and potentially false performance data.

I. SGS's Knowledge

107. SGS knew or should have known that its test results would be used to support marketing claims and certifications. SGS is in the business of providing test data for exactly this purpose. SGS knew that manufacturers and certification bodies would rely on its data.

108. SGS tested at 12 and 15 seconds—not at the 10-12 second times Dyson markets to consumers, and not at the 8 seconds Excel markets. SGS knew or should have known that testing at times different from marketed claims would produce results that could not justify those marketing claims.

109. SGS knew or should have known that its laboratory results differed materially from real-world performance. The discrepancy between SGS laboratory results (0.183 grams at 12 seconds for Dyson) and independent real-world testing (2.5-3.0 grams at equivalent times) is more than an order of magnitude. Either SGS failed to validate that its laboratory conditions reflected real-world performance, or SGS knew its results were not representative and provided them anyway.

J. Plaintiff's Harm

110. Plaintiff has suffered and continues to suffer harm as a direct and proximate result of Defendants' conduct, including but not limited to:

111. a. The cost of purchasing and installing the Dyson Airblade hand dryers deployed throughout Plaintiff's company-operated United States stores—on the order of 20,000 units, and precisely ascertainable from Plaintiff's own records—based on Defendants' false representations and certifications;

112. b. The cost of removing and replacing the installed hand dryers with hygienic alternatives;

- 113. c. The cost of remediating mold contamination caused by water dispersal from the installed dryers;
- 114. d. The cost of repairing or replacing walls, floors, and fixtures damaged by water dispersal and mold;
- 115. e. Operational disruption during removal, replacement, and remediation;
- 116. f. The cost of investigating and evaluating the scope of contamination;
- 117. g. Reputational harm from sustainability claims made in reliance on Defendants' false environmental data and certifications;
- 118. h. Exposure of employees and customers to amplified microbial contamination;
- 119. i. The cost of revising sustainability reporting and disclosures;
- 120. j. The cost of removing or modifying signage created in reliance on Defendants' false claims;
- 121. k. Reliance damages from selecting equipment based on false NSF certification;
- 122. l. Reliance damages from selecting equipment based on false SGS test data underlying certification; and
- 123. m. Such other damages as will be established at trial.

K. Plaintiff's Reliance on Defendants' Representations and Certifications

- 124. Dyson. Starbucks reasonably relied on Dyson's express representations regarding drying time, hygiene, HEPA filtration, energy consumption, and environmental impact in selecting, purchasing, installing, and maintaining Dyson Airblade hand dryers across its retail locations. Dyson marketed these representations as objective, measurable facts supported by testing, certifications, and quantified performance claims. Starbucks had no practical ability to independently verify these claims at enterprise scale and was entitled to rely on Dyson's superior access to performance data.

125. Excel. Starbucks reasonably relied on Excel's express representations regarding drying time, energy consumption, operating cost, and environmental performance in selecting, purchasing, installing, and maintaining XLERATOR hand dryers. Excel presented those figures as measured and independently validated, and its published technical data sheet expressly ties the drying-time and energy figures to SGS testing, the UL Product Category Rule, and the certification and declarations issued under that framework. Starbucks relied on that third-party validation as confirmation that the published performance figures were not merely manufacturer claims.
126. NSF. Starbucks reasonably relied on NSF International's certification marks, protocols, and representations of independence and scientific rigor in evaluating the hygiene and safety claims associated with Dyson Airblade hand dryers. NSF holds itself out as an independent certifying body whose role is to validate manufacturer claims that cannot be meaningfully assessed by end users. Starbucks relied on NSF's certifications as confirmation that Dyson's claims had been independently vetted.
127. UL. Starbucks reasonably relied on UL's Product Category Rule and 2017 Environmental Product Declaration as independent third-party validation of XLERATOR drying-time, energy, and environmental performance, directly and as those certified figures were repeated through manufacturer materials. The reliance pleaded here is on UL's performance and environmental work products and the factual representations they contain — including the declared functional unit, 8.355-second drying time, and approximately 3.68 watt-hours per drying — not on the separate electrical-safety scope of the UL mark on the housing, which this action does not test or challenge. UL selected the governing reporting framework, authored the Product Category Rule, and issued the declaration; Starbucks relied on the resulting published figures as independently evaluated and verified performance.
128. Smart EPD and Lasso. Starbucks reasonably relied on the current Smart EPD declaration as the continuing third-party certification of XLERATOR performance and environmental figures in evaluating XLERATOR hand dryers and the continued use of

installed units. The declaration carries forward the same eight-second drying time and the energy and carbon figures derived from it under the UL Core PCR, and presents itself as independently operated, reviewed, and externally verified. Starbucks relied on those representations of certified performance and independence.

129. SGS. Starbucks reasonably relied on SGS as an independent testing laboratory whose test results underlie the certified performance figures for the products Starbucks purchased. SGS tested both manufacturers' products in its 2012 report, and Excel's published technical data sheet expressly identifies SGS as the source of its certified drying-time and energy figures. SGS markets itself as a neutral and technically competent evaluator whose testing results are intended to be relied upon by third parties. Starbucks relied on SGS's testing as objective validation of the certified performance claims.

130. In Aggregate. Starbucks' reliance was not isolated to any single representation or entity. Starbucks relied on the certification ecosystem as a whole — including manufacturers, testing laboratories, and certifying bodies — each of which presented itself as performing an independent role in validating product performance. Starbucks relied on the premise that this ecosystem functioned as represented.

THE ENFORCEMENT RECORD — COMPLETE SUPPORTING BRIEF

Purpose. The Certification Chain brief above establishes how a certification travels from the certifier's examination to the purchaser's payment and the user's hands. This second brief establishes what the certification mark means — in the words of the certifier that owns it, drawn from thirty-five years of its own enforcement record: federal complaints, so-ordered judgments, a grand jury indictment, sworn Senate testimony, agency letters, statutes, and published protocols. Every proposition below is the certifier's own. The Complaint does not quarrel with one of them; it applies them.

FRONT MATTER — HOW TO READ THIS DOCUMENT

The master proposition. For thirty-five years, in federal courts, before both houses of Congress, at the customs border, and in its own publications, UL has established what a certification mark means: an examination event, performed by the named certifier, on the goods that carry the mark, within a defined scope, under continuing surveillance, relied upon by everyone downstream because the mark is the only means they have of knowing. Every proposition in this memorandum is UL's own — stated in documents UL drafted, judgments UL sought, testimony UL swore, and releases UL published. This Complaint does not quarrel with a single one of them. It applies them.

The sources. Every quotation herein is drawn from the public record: federal dockets, so-ordered judgments, a grand jury indictment, official Senate hearing prints, published agency letters, municipal statutes, and UL's own website and publications. Forty documents from UL's enforcement record were evaluated completely in preparing this memorandum, together with the authorities and chain architecture set out in the Certification Chain brief above. Nothing herein rests on characterization; where a document is described, the document is quoted.

The two records. UL's public life runs on two parallel tracks. On the first, UL enforces its marks against the world — and in enforcing, it must tell courts, Congress, and customs exactly what the mark means, at full strength, without qualification. On the second track stand the certifications at issue in this case. This memorandum walks the first track end to end, because the first track is the authoritative dictionary for the second: the certifier's own, built at its own request, in its own words, over thirty-five years.

How the movements connect. Movements One through Nine each state one proposition of the certifier's law and prove it from the enforcement record. Movement Ten shows that the meaning is unitary — stated whole, never divided by program. The Count Map then regroups every instrument by the count of this Complaint it supports, so the answer to any motion aimed at a single count is one line away.

MOVEMENT ZERO — THE STORY THE RECORD TELLS

For thirty-five years, UL has taught American courts what a certification mark means. It has been a remarkably consistent curriculum.

A certification mark asserts that an examination event occurred — dated, specific, and real; UL's own filings against a licensee put a company through customs forfeiture over twenty days of daylight between the mark and the testing behind it. The event must be the certifier's own — a 2025 judgment preserves the defendants' insistence that other laboratories had certified their products, and holds them liable a million dollars anyway. The representation is scoped — by model, by facility, by category, by time — and it does not bleed: a Chicago sign company was UL's client for electric signs and still counterfeited when it marked a category it never held. The mark speaks to the whole product: a federal grand jury charged a Missouri importer on the meaning that a label declares "the lamp as a whole was certified," and when a Canadian manufacturer wrote to UL's investigator confessing that its team "mistakenly believed the inclusion of a UL certified accessory required us to display the UL mark," UL prosecuted that mistake to a \$2.2 million consent judgment. The duty to verify is real, and it belongs to the reader: a national distributor never checked UL's public database, never compared, never called, and a federal judge entered a judgment reciting — twice in one paragraph — that it asserted ignorance but conducted no due diligence. Surveillance is constitutive: UL's decrees impose unannounced inspections as remedies, and its judgments recite follow-up services as what authorization is. Reliance is not merely reasonable but structural: UL's 2013 release calls an authorized mark "the only means" five audiences have to determine certification; a federal judgment records that code authorities routinely look for the marks during inspections; the Consumer Product Safety Commission converted UL's voluntary standards into the statutory hazard benchmark; and in 2023 New York City wrote UL's name into its administrative code and made the mark's display a legal condition of sale. And when certification cannot be shown to stand behind a mark, UL's own published protocol states the remedy: remove from service and replace — fire doors already installed in buildings included.

Every one of those propositions was established at UL's request, in UL's drafting, over UL's signature blocks. UL's own white paper describes the company's ongoing work as, among other things, "correcting false and misleading claims about UL certification." That is the whole of what this Complaint asks any Defendant to do.

MOVEMENT ONE — THE MARK ASSERTS AN EXAMINATION EVENT, DATED AND REAL

Midwest Plastic Fabricators, Inc. v. Underwriters Laboratories Inc., 906 F.2d 1568 (Fed. Cir. 1990). UL defended its certification-mark registrations and won by proving what its machinery does: products are tested before listing; follow-up service agreements bind manufacturers to continued compliance; inspectors visit factories; a variation from requirements blocks shipment until resolved; inspectors are authorized to remove the mark from noncomplying products. In 1987 alone, approximately 500 UL inspectors conducted approximately 438,000 inspections in approximately 38,900 factories. The court held that a certification-mark registration carries an affirmative obligation to the public — "reasonable steps, under all the circumstances of the case, to prevent the public from being misled" — because a certification mark "sets forth specific representations about the manufacture and characteristics of the goods," and the risk of misleading the public "may be even greater" than for an ordinary trademark. This is the foundation: the machinery is real, the representation is specific, and the obligation runs to the public.

ICCS v. United States (Fed. Cir. 2020) and the customs record. A licensee shipped goods bearing genuine-format UL marks before the certification's effective date. The Federal Circuit sustained forfeiture: the marks "falsely communicated" that UL "had already given its safety certification" when that certification "had not, in fact, happened," and "UL certifications are not retroactive." Twenty days of daylight between the mark and the examination made the mark counterfeit — with the certifier's identity genuine, the format genuine, and the product later certified. The mark asserts an event in time. If the event has not occurred, the mark is false, whoever applies it and whatever happens afterward.

United States v. GuildMaster, Inc., No. 12-03108-01-CR-S-RED (W.D. Mo., indictment Dec. 12, 2012). A federal grand jury recited the machinery as the predicate of nine felony counts: UL "certified representative samples of products that were in compliance with UL's safety requirements, and conducted follow-up inspections of those products and their manufacturers"; labels were "produced by UL or its licensees"; and "[a]s a certification mark, the UL Mark on a product was a manufacturer's representation and advertisement to the public that the product met UL's safety requirements." The meaning-architecture, adopted by the United States, to charge a crime.

Links. The examination-event proposition is the spine of every movement that follows. It is the representation the negligent-misrepresentation counts (XII–XV) apply to the certificates, the substance of the public offer Count XI pleads, and the assertion whose travel the Certification Chain brief above traces; Movement Nine states UL's own remedy when the event cannot be verified.

MOVEMENT TWO — THE EVENT MUST BE THE NAMED CERTIFIER'S

UL LLC v. Fly-E Group, Inc., No. 1:25-cv-01405-LDH-RML (E.D.N.Y.), Consent Judgment ¶6 (June 6, 2025). The admitted facts preserve the defense: "Defendants maintain that the Accused Products were certified by labs unaffiliated with UL." The judgment then imposes \$1,000,000 in liability, jointly and severally, including three individual officers. Certification by someone else does not license this certifier's mark. The mark speaks of the named certifier's examination specifically.

The AFG cease-and-desist practice. UL's demand letters state certification status from UL's own records — "according to our findings" — because the certifier's file is where the truth of the certifier's mark lives. The mark points to a record; the record belongs to the certifier named.

GuildMaster ¶10 — the genuine-label diversion. As customs seizures mounted, the importer switched to genuine UL labels that had been issued "to another company for its exclusive use." Five hundred sixty-seven lamps bearing real labels on the wrong maker's

products were seized as part of the charged conduct. Authorization is per-manufacturer. A genuine label on the wrong product is still a false statement, because the mark's truth is relational: this label, this manufacturer, this product, this examination.

Links. Names the verifier element in Counts XII–XV and XVIII: data generated by one party, or a report from another era, does not stand behind the certificate a named verifier signed. Pairs with Movement Three's scoping.

MOVEMENT THREE — THE REPRESENTATION IS SCOPED: MODEL, FACILITY, CATEGORY, TIME

Model (ICCS). The certification attached to specified goods from its effective date — not to the same goods twenty days earlier.

Category (UL LLC v. B&B Signs, No. 1:15-cv-10804 (N.D. Ill.)). The complaint pleads that B&B "was never a client of UL for changing message signs and therefore never had authorization" for that category — even during the years it was a paying UL client for electric signs. The consent judgment (Sept. 15, 2016) recites that the 2002 contract authorized "certain UL Marks" on "certain signs." Authorization is category-scoped even inside an authorized relationship.

Time (every instrument). Certifications carry validity periods; terminated clients (B&B, terminated 2007; GuildMaster, terminated 2007) who continue the marks are prosecuted as counterfeiters. Authorization ends, and the mark's truth ends with it.

Links. The scoping propositions are the certifier's own precision principle, and Counts XII–XV and XVII plead with the same precision: which mark, which program, which governing document, which validity period. Movement Ten shows that scoping of the representation is entirely different from partitioning of the meaning — UL scopes every authorization and partitions no meaning.

MOVEMENT FOUR — SURVEILLANCE IS CONSTITUTIVE OF THE REPRESENTATION

UL LLC v. A.F.G. Distribution, Inc. (N.D. Ill. 2019), Complaint ¶34. The mark on a product is the manufacturer's representation that the product complies "and [is] subject to UL's Follow-Up Services." The representation includes the surveillance.

B&B Consent Judgment ¶4 (so-ordered). The authorizing contract made the marks "subject to UL's follow-up and inspection services (including unannounced inspections)." What authorization is, recited in a judgment.

UL LLC v. Rider Best (C.D. Cal. 2015), consent decree. The surveillance regime imposed as a remedy: unannounced inspections, no-notice audits, possession rights. When UL fixes a mark problem, the fix is inspection.

UL press release, Feb. 7, 2013. "But UL's work does not end after the initial samples are tested. Every manufacturer authorized to apply the UL safety certification mark to products is also subject to UL's Follow-Up Services — which entails visits to the physical manufacturing facility."

Links. The measure of care in Counts XVI, XVII, and XVIII. A certificate nobody watches is, by the certifier's own architecture, not a certificate. Midwest's 438,000 inspections (Movement One) are this movement at enterprise scale.

MOVEMENT FIVE — THE MARK IS THE ONLY MEANS: RELIANCE IS STRUCTURAL, AND REGULATORS RELY BY LAW

UL press release, Feb. 7, 2013. "An authorized UL safety certification mark on a product is the only means for consumers, retailers, distributors, manufacturers or jurisdictional authorities to determine that sample of the goods have been certified by UL as compliant with relevant safety standards." Five audiences. One channel. The certifier's own epistemics: there is no other way to know.

Sworn to the Senate, twice, a decade apart. In 2008, UL's Vice President of Anti-Counterfeiting Operations testified to the Senate Judiciary Committee that "consumers, retailers, regulators, manufacturers and distributors look to the UL Mark to determine if

products comply with relevant safety standards or regulatory requirements" — and, in colloquy, that "if people plug something in, they expect it to be safe. And so we have to put this asset in place and protect the mark." The Chairman's own description: UL spent "an enormous amount of time . . . to get into consumers' minds that this is a seal of approval." In 2018, UL's President testified to the Senate Finance Committee that "our only product is trust. It is the trust that consumers place in us when they see our mark."

So-ordered: the regulators look. B&B Consent Judgment ¶15 recites as admitted fact that the defendants counterfeited "[b]ecause the relevant code authorities routinely look for certification marks, like the UL Marks, during their inspections of sign installations." Government inspectors' routine reliance, in a federal judgment — as the counterfeiter's motive.

The regulators adopt. The Consumer Product Safety Commission's letter of December 19, 2022 declares that micromobility products not meeting the relevant UL standards "could present a substantial product hazard under Section 15(a) of the CPSA, 15 U.S.C. § 2064(a)," and that "[c]ompliance with the standards should be demonstrated by certification from an accredited testing laboratory." A federal regulator converting voluntary standards into the statutory benchmark, and naming certification as the proof.

The legislature mandates. New York City Local Law 39 of 2023 forbids the sale, lease, or rental of powered mobility devices unless "certified by an accredited testing laboratory for compliance with Underwriters Laboratories (UL) standard" 2849, 2272, or 2271 — and requires that "the logo, wordmark, or name of such accredited testing laboratory is displayed" on the packaging or directly on the device. The certifier's name is in the municipal code; the mark's display is a legal duty of sale.

The government relies operationally. The Government Accountability Office's report GAO-18-216 (Jan. 2018) conducted undercover purchases for the Senate and had the rights holders authenticate them — UL determined authenticity for the government's own auditors. UL has furnished "rapid mark verification services" to Customs and Border Protection since the early 1990s and has processed approximately 25,000 authentication

requests. The modern enhanced UL mark is engineered for the lookup: it "utilizes a unique identifier for easier access to information at www.ul.com/database" and "describes the attributes that UL has certified about a product."

Links. This movement is the justifiable-reliance and materiality architecture of Counts XII–XV, the basis-of-the-bargain architecture of the express-warranty counts (II and VI), and the capacity-to-deceive and public-interest architecture of Count IX. Reliance on a certification is not one option among several; by the certifier's design, sworn statements, published epistemics, and now by statute, it is the system working as intended.

MOVEMENT SIX — THE MARK SPEAKS TO THE WHOLE PRODUCT

UL LLC v. Swagway LLC, No. 3:16-cv-00075 (N.D. Ind.), Consent Judgment (Apr. 15, 2016). The injunction reaches acts calculated to cause purchasers to believe a product has been "tested, inspected, or certified by Plaintiff, or guaranteed by Plaintiff," and the surrender order reaches every label and advertisement suggesting the product "as a whole is certified or approved." The certifier polices the difference between a certified component and a certified machine — and polices it at the machine.

UL LLC v. The Space Chariot Inc., No. 2:16-cv-08172-CAS (C.D. Cal. 2017). On contested summary judgment, the court (*italics the court's own*) fixed liability on the universal statement — advertising that "ALL" hoverboards were UL certified — where the certification was partial. Partial truth plus a universal quantifier is liability. The court entered final judgment against the corporation and, after contested summary judgment on July 7, 2017, against both individual officers personally: \$1,000,000 jointly and severally, prejudgment interest, costs, and a permanent injunction, for "willful, deliberate, and unjustifiable counterfeiting." Dkt. 112 (Oct. 20, 2017).

GuildMaster ¶16. The grand jury's charge: the label "was the manufacturer's representation and advertisement to the public that the lamp as a whole was certified by UL." The whole-product proposition, in an indictment.

The confession specimen. In the Arizer litigation (N.D. Ill., No. 1:20-cv-05308), the manufacturer's written response to UL's investigator explained: "UL certified power adapters are included with our Solo products and our team responsible for the packaging updates mistakenly believed the inclusion of a UL certified accessory required us to display the UL mark on our product packaging." The component-to-whole inference, stated by the party that drew it — and prosecuted by UL to a \$2.2 million consent judgment. The inference that a certified part licenses a certified-whole representation is, in the certifier's own enforcement practice, the definition of the offense.

Links. The grammar of the express-warranty counts (II and VI) and the WPLA misrepresentation counts (I and V), as applied to any claim that certification of a component, a subset, or a single attribute supports a whole-product representation. Four instrument classes carry the proposition: a demand, a decree, an indictment, and the violator's own confession.

MOVEMENT SEVEN — EFFECT OVER INTENT, AND THE READER'S DUTY TO VERIFY

Effect over intent. ICCS involved an innocent licensee; forfeiture followed anyway. UL's release of March 2, 2023 states the principle in UL's own words: counterfeiting arises whether by intent to mislead or by copying — "In either case, the effect is the same: customers are misled into believing the product has been UL certified when it has not." The wrong is the false message, however produced. This is the certifier's own frame, and it is negligence-compatible by design.

The duty to check the record. UL's complaint against Greenlane pleads (original italics UL's): the distributor "had **never** verified whether **any** of its suppliers had actually been authorized," though it "could have reviewed information available in UL's online public database, or could have simply called UL." It "could have easily avoided selling millions of dollars of goods bearing counterfeit UL marks by checking UL's publicly-available online database and comparing the information found there to the information provided by the manufacturers"; instead it "attempt[ed] to shift blame to its suppliers" when it "should have known better . . . than to simply accept the markings on its products as genuine." The

district court denied a motion to strike these paragraphs. And the consent judgment (Ellis, J., Jan. 26, 2023) converts the core to so-ordered admitted fact, twice in one paragraph: Greenlane "asserted that it did not know" — "but Greenlane also did not conduct any due diligence to verify whether the UL Marks . . . were genuine." One million dollars of the \$2.2 million judgment ran against Greenlane, jointly and severally. Fully paid.

The judgment's own definition, matured. The 2023 judgment's ¶4: "Following successful evaluation and testing by UL, UL certifies the goods of others by authorizing use of the UL Marks to demonstrate certification to the marketplace." The mark exists to communicate the certification. So-ordered.

Links. Count IX's capacity-to-deceive standard, stated in the certifier's own frame: the wrong is the false message, however produced. And in the enforcement record, the party who accepts a mark without checking the record behind it is charged with willful disregard; the duty the certifier assigns to strangers reading marks in a warehouse is, a fortiori, the floor for the certifier Defendants who authored the record itself.

MOVEMENT EIGHT — NOTICE CHANGES EVERYTHING: PERSISTENCE AGGRAVATES

The AFG chronology. Seizure notices, a cease-and-desist, continued sales — pleaded as escalation.

The Fly-E escalation. UL's 2025 complaint pleads two removal promises made and broken, after which the defendants increased usage to at least 29 counterfeit marks across at least 18 products — and extended the false statements into an investor report ("Provide UL certificates for both e-bike models and batteries") and a press release ("All of our lineup of e-bikes feature UL-certified lithium batteries for safety"). The complaint pleads the defendants' own cessation assurances false, on test-purchase and customs receipts.

The certifier's own severity taxonomy. UL's written responses to the Senate Judiciary Committee (2008) asked that federal authorities "prioritize those cases where the counterfeited products put at risk the life and safety of the consumer — including

counterfeit UL Marks, pharmaceutical products, and other life safety goods." Its Vice President's closing words to the Chairman: "I think the clang of the jail door is really a deterrent." In 2018, its President agreed with Senator Wyden, on the record, that penalties treated as "the cost of doing business" warrant strengthening. The certifier's own position is that persistence after notice, in matters touching life and safety, belongs at the top of the enforcement pyramid.

Links. The continuing-conduct architecture of the Complaint's post-notice allegations and of the declaratory count: certifications that stand, republish, and renew after written notice occupy the exact position the certifier's own enforcement practice treats as aggravated.

MOVEMENT NINE — THE REMEDY: WHERE CERTIFICATION CANNOT BE VERIFIED, REMOVE — INSTALLED INCLUDED

UL Release 20PN-24 (Sept. 30, 2020). UL's published protocol for products bearing marks whose certification cannot be verified: the products "have not been evaluated by UL . . . and it is unknown if they comply with any safety requirements," and "UL recommends that these products be removed from service and be replaced" with certified products. The subjects of the Release were fire doors and door frames already installed in buildings. Installation was no obstacle to the remedy.

The stickers-alone decree. UL LLC v. Butson, No. 4:15-cv-00170-O (N.D. Tex.), Consent Decree (Dkt. 31, June 22, 2015): a defendant sold counterfeit UL labels themselves — stickers, attached to no product, through the domain ulapprovedlabels.com. The so-ordered recitals: the labels enabled purchasers "to bypass UL's rigorous processes and controls for testing and certifying products," and the conduct "places the health and safety of the general public at risk." Stickers alone, \$150,000. With no product in the case, the entire wrong is the false assertion of examination. The decree also recites that "UL strictly controls the use of the UL Marks through, among other things, its Authorized Label Supplier Program" — even the paper the mark is printed on runs through a controlled chain of custody.

The litigated injunction. The Space Chariot final judgment (Dkt. 112) entered the same injunction grammar after full contest that UL's consent decrees carry by agreement — the belief clause, the passing-off clause, the aiding-and-abetting clause, spoliation terms including electronic records. The decree grammar is not settlement boilerplate; it is the adjudicated remedy shape for violations of this mark's meaning.

Links. The prayer's removal-and-replacement item, and Count XIX's injunctive architecture, are drafted in the remedy grammar the certifier itself has sought and obtained for thirty-five years — removal from service, installed products included, is UL's own published recommendation in exactly the circumstance this Complaint pleads.

MOVEMENT TEN — THE MEANING IS CONSTANT; THE SCOPE IS DEFINED

The absence, counted. Across the forty enforcement-record documents evaluated — registrations, complaints, decrees, an indictment, sworn testimony, agency letters, statutes, releases, protocols, white papers — not one changes the core meaning of certification by program, file, or standard. The definitions are stated in the same grammar: evaluation, testing, determination, compliance. That does not collapse distinct programs into one universal warranty. The subject of the certification changes; the meaning of certification within that subject does not. Electrical safety remains electrical safety. Environmental performance remains environmental performance. In each, the representation is that the named certifier actually performed the examination or verification represented and determined conformity within the scope the governing document defines.

The affirmative record. UL's President swore to the Senate in 2018 that the mark tells consumers an independent third party has determined compliance "with safety, performance, or other standards." In March 2023, UL Solutions' executive vice president and chief legal officer resolved the third term in public: "UL Marks appear on billions of products globally to demonstrate that these products meet scientific safety, performance or sustainability standards." In March 2025, UL's release announcing the Fly-E suit stated the mark signifies certification to "thorough scientific safety, performance or security

standards" — while the same release's corporate boilerplate names "safety, security and sustainability" together. The formula's third term rotates with the program in view. The family meaning is open-textured by the certifier's own usage, and sustainability sits inside it by the chief legal officer's sentence, published while the certifications at issue in this case stood.

The consequence. The environmental work products at issue need no help from the electrical-safety mark to become representations. The Product Category Rule and Environmental Product Declaration identify their own scope, methodology, figures, program operator, and verification machinery. The enforcement record supplies the common grammar of certification — real examination, named certifier, defined scope, controlled authorization, and downstream reliance — while ISO 14025, EN 15804, the Product Category Rule, and the declarations themselves supply the substantive terms of the environmental undertaking. The enforcement record is therefore a dictionary, not an expansion device: it fixes what certification means; it does not enlarge what was certified. The environmental documents stand or fall within their own scope, on their own stated terms.

THE COUNT MAP — WHERE THE ENFORCEMENT RECORD DEPLOYS

Counts I and V — Washington Product Liability Act (Dyson; Excel). Movement Six's whole-product grammar reaches any defense that a certified component or attribute answers for the machine; Movement One supplies the certification context in which the design-defect and inadequate-warning analyses proceed.

Counts II and VI — breach of express warranty. Movements One and Six: the certification statements are affirmations of fact about the whole machine, made part of the basis of the bargain — and the certifier's own enforcement practice (the as-a-whole surrender; the prosecuted component confession) states the same grammar from the other side. Movement Five supplies the basis-of-the-bargain reliance.

Counts III, IV, VII, VIII — implied warranties. Movement Five: the certified attributes define the ordinary purpose, and the particular purpose the purchaser communicated by specifying certified machines.

Count IX — Washington Consumer Protection Act. Movement Seven is the certifier's own statement of the capacity-to-deceive standard (“the effect is the same”); Movement Five supplies the public-interest and causation architecture — structural reliance engineered for entire audiences, jurisdictional authorities included.

Count X — unjust enrichment. The premium is real and separately priced: the certifier's own docket includes a decree against counterfeit labels sold alone — the mark's communication, purchasable by itself — and the certification fee is recovered in the per-unit price. Retention of the premium for certifications whose examinations cannot be shown is enrichment without justice.

Count XI — breach of contract. Movement One supplies the offer's substance (the examination event); Movement Five names the offerees in the offeror's own enumeration — “consumers, retailers, distributors, manufacturers or jurisdictional authorities”; the so-ordered judgment grammar supplies the offer's direction (“to demonstrate certification to the marketplace”); the stickers-alone decree prices the consideration; and the enforcement program itself — funded in the millions, staffed for three decades, sworn to Congress — is the standing demonstration of the promisor's seriousness.

Counts XII–XV — negligent misrepresentation (NSF; UL Solutions; Smart EPD; SGS). Movements One, Two, and Three supply the representation's content, its named-certifier specificity, and its defined scope; Movement Five supplies justifiable reliance; Movement Ten supplies the common meaning of certification while preserving the distinct scope of each program and declaration.

Count XVI — negligent undertaking. Movement Four: surveillance is constitutive of the undertaking, in the certifier's own architecture; the user is the person the undertaking protects, in the certifier's own pleading.

Count XVII — negligent standard creation. Movements Three and Four: scoped authorization and constitutive surveillance are what certification is; a standard whose test cannot produce its certified figures fails its author's own architecture.

Count XVIII — EPD verification negligence. Movements Two and Four: named-verifier specificity and continuing surveillance, applied to the verification roles ISO 14025 requires to be independent.

Count XIX — declaratory and injunctive relief. Movement Nine: the remedy architecture — removal from service and replacement, installed products included — is the certifier's own, published as field protocol and sought in court for thirty-five years. The declarations requested ask for nothing the enforcement record does not already demand of everyone else.

CLOSING

The certifier that owns the mark has stated, repeatedly and formally — in federal court, under oath to both houses of Congress, at the customs border, and in its own published protocols — that certification means evaluation and testing performed by the named certifier; that the person it protects is the downstream user and purchaser; that authorization is scoped; that persistence after notice aggravates; and that a product whose certification cannot be verified should be removed from service, installed or not. This Complaint does not use that record to turn an electrical-safety mark into an environmental warranty. It uses UL's own enforcement record to fix the grammar of certification, then measures each certification and declaration within its actual scope against the standards, procedures, and factual terms its issuer chose. The Product Category Rule and Environmental Product Declaration therefore stand on their own. The record supplies the meaning of the institutional act; the documents supply its scope. Plaintiff asks the certifiers to answer for their own work on those terms.

V. COUNTS

COUNT I: PRODUCT LIABILITY UNDER THE WASHINGTON PRODUCT LIABILITY ACT — DESIGN DEFECT AND INADEQUATE WARNINGS (RCW 7.72)

(Against Defendant Dyson)

131. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
132. This Count is brought under the Washington Product Liability Act, RCW 7.72, which supplies a single statutory cause of action for product-caused harm and subsumes the common-law theories of negligence, strict liability, design defect, and failure to warn. RCW 7.72.010(4); RCW 7.72.030. The harm claimed under this Count is the physical damage the products caused to property other than the products themselves — the recurring water deposition, contamination, and mold colonization on the walls, floors, fixtures, and finishes of Plaintiff's restrooms — together with the costs of remediation and increased maintenance that damage imposed. The economic losses arising from the purchases themselves are pleaded under the warranty Counts below, as Washington's definition of harm directs. RCW 7.72.010(6).
133. Dyson designed, manufactured, and sold Dyson Airblade hand dryers that were not reasonably safe as designed. The defect is the design itself, not a manufacturing flaw: the products fail to perform their intended function — drying hands hygienically — and instead amplify contamination, disperse water throughout the environment, and cause mold growth. Every unit operates exactly as designed; the design is the problem.
134. The risks of the Airblade's design outweigh any benefits. The design—high-velocity air dispersal at approximately 420 miles per hour, the figure Dyson publishes for the Airblade V—causes the product to spray contaminated water throughout the restroom, amplify microbial contamination by 35 to 105 times over ambient air at the tested locations, leave hands wet at claimed drying times, and cause mold colonization on adjacent surfaces.

135. The product is not reasonably safe as designed under either test Washington law supplies. RCW 7.72.030(1)(a); RCW 7.72.030(3). An ordinary purchaser expects a device certified and marketed as hygienic to dry hands in the represented time without spraying contaminated water onto the user and the room; the product defeats that expectation in every use. And the harm was preventable at trivial burden: a safer, feasible, and universally available means of accomplishing the identical function existed — white paper towels, which tested statistically indistinguishable from ambient air ($p = 0.24$) and dry hands in 20-30 seconds through absorption rather than dispersal, with the water disposed in the trash rather than deposited on the room.
136. The products were also not reasonably safe because adequate warnings were not provided. RCW 7.72.030(1)(b). Dyson knew or should have known that its products fail to dry hands at claimed times, amplify microbial contamination, disperse water throughout the restroom environment, and cause mold colonization; each hazard was discoverable through ordinary testing of the kind independent research later performed. Dyson not only failed to warn of these hazards but affirmatively represented the opposite. And after the products were sold, when the hazards were or should have been known, Dyson issued no post-sale warning. RCW 7.72.030(1)(c).
137. The defective condition existed at the time the products left Dyson's control and was a direct and proximate cause of the property harm described above. As a direct and proximate result, Plaintiff has suffered damages in an amount to be determined at trial.

COUNT II: BREACH OF EXPRESS WARRANTY

(Against Defendant Dyson)

138. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
139. Dyson made express warranties to Plaintiff regarding its products, including representations that Dyson Airblade hand dryers: dry hands in "10-12 seconds"; are

"hygienic" and help create "a cleaner, more hygienic washroom"; feature "HEPA filtered" air capturing "99.97% of particles"; achieve "up to 88% less CO₂" compared to paper towels; and "cost up to 99% less to run than paper towels."

140. These representations constituted express warranties that became part of the basis of the bargain between Plaintiff and Dyson.

141. Plaintiff relied on these express warranties when selecting and purchasing Dyson Airblade hand dryers for installation in its retail facilities.

142. Dyson breached these express warranties. The products do not dry hands in 10-12 seconds; they require 70-90 seconds. The products are not hygienic; they amplify contamination by 35-105 times. HEPA filtration provides no statistically significant hygiene benefit ($p = 0.803$). The energy, cost, and environmental claims are false because they are predicated on impossible drying times.

143. As a direct and proximate result of Dyson's breach of express warranty, Plaintiff has suffered damages in an amount to be determined at trial.

COUNT III: BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Against Defendant Dyson)

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

145. Dyson is a merchant with respect to hand dryers.

146. Dyson impliedly warranted that its Dyson Airblade hand dryers were merchantable and fit for the ordinary purpose for which such goods are used—namely, drying hands hygienically.

147. Dyson Airblade hand dryers are not merchantable or fit for their ordinary purpose. They fail to dry hands at claimed times and amplify microbial contamination. A hand

dryer that leaves hands wet and increases contamination is not fit for the ordinary purpose of hygienic hand drying.

148. Dyson breached the implied warranty of merchantability.

149. As a direct and proximate result of Dyson's breach of the implied warranty of merchantability, Plaintiff has suffered damages in an amount to be determined at trial.

COUNT IV: BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE

(Against Defendant Dyson)

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

151. At the time of sale, Dyson knew or had reason to know the particular purpose for which Plaintiff required hand dryers: hygienic hand drying in food service facilities where employees handle food and beverages consumed by millions of daily customers, and where environmental sustainability is a material corporate commitment.

152. Dyson knew that Plaintiff was relying on Dyson's skill and judgment to furnish suitable products. Dyson's marketing materials specifically target sustainability-focused purchasers with environmental claims.

153. Plaintiff relied on Dyson's skill and judgment in selecting Dyson Airblade hand dryers.

154. Dyson Airblade hand dryers are not fit for the particular purpose of hygienic hand drying in food service facilities with sustainability commitments. Products that amplify contamination by 35-105 times are unsuitable for food service. Environmental claims predicated on false data are unsuitable for sustainability-focused purchasers.

155. Dyson breached the implied warranty of fitness for particular purpose.

156. As a direct and proximate result of Dyson's breach of the implied warranty of fitness for particular purpose, Plaintiff has suffered damages in an amount to be determined at trial.

**COUNT V: PRODUCT LIABILITY UNDER THE WASHINGTON PRODUCT LIABILITY ACT —
DESIGN DEFECT AND INADEQUATE WARNINGS (RCW 7.72)**

(Against Defendant Excel Dryer, Inc.)

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

158. This Count is brought under the Washington Product Liability Act, RCW 7.72, which supplies a single statutory cause of action for product-caused harm and subsumes the common-law theories of negligence, strict liability, design defect, and failure to warn. RCW 7.72.010(4); RCW 7.72.030. The harm claimed under this Count is the physical damage the products caused to property other than the products themselves — the recurring water deposition, contamination, and mold colonization on the walls, floors, fixtures, and finishes of Plaintiff's restrooms — together with the costs of remediation and increased maintenance that damage imposed. The economic losses arising from the purchases themselves are pleaded under the warranty Counts below, as Washington's definition of harm directs. RCW 7.72.010(6).

159. Excel designed, manufactured, and sold XLERATOR hand dryers that were not reasonably safe as designed. The defect is the design itself, not a manufacturing flaw: the products fail to perform their intended function — drying hands hygienically — and instead amplify contamination, disperse water throughout the environment, and cause mold growth. Every unit operates exactly as designed; the design is the problem.

160. The risks of the XLERATOR's design outweigh any benefits. The design—high-velocity air dispersal at an outlet air velocity Excel specifies as 12,000 to 20,000 linear feet per minute (approximately 136 to 227 miles per hour), a flow rate of 39 to 64 cubic feet per minute, and a motor speed up to 24,000 revolutions per minute—causes the

product to spray contaminated water throughout the restroom, amplify microbial contamination, leave hands wet at claimed drying times, and cause mold colonization on adjacent surfaces. The residual-moisture endpoint to which the XLERATOR was certified—0.25 gram or less, as stated on Excel’s own data sheet—is the threshold independent testing establishes the product does not achieve at its represented drying time. Exhibit PPPP.

161. The product is not reasonably safe as designed under either test Washington law supplies. RCW 7.72.030(1)(a); RCW 7.72.030(3). An ordinary purchaser expects a device certified and marketed as hygienic to dry hands in the represented time without spraying contaminated water onto the user and the room; the product defeats that expectation in every use. And the harm was preventable at trivial burden: a safer, feasible, and universally available means of accomplishing the identical function existed — white paper towels, which tested statistically indistinguishable from ambient air ($p = 0.24$) and dry hands in 20-30 seconds through absorption rather than dispersal, with the water disposed in the trash rather than deposited on the room.
162. The products were also not reasonably safe because adequate warnings were not provided. RCW 7.72.030(1)(b). Excel knew or should have known that its products fail to dry hands at claimed times, amplify microbial contamination, disperse water throughout the restroom environment, and cause mold colonization; each hazard was discoverable through ordinary testing of the kind independent research later performed. Excel not only failed to warn of these hazards but affirmatively represented the opposite. And after the products were sold, when the hazards were or should have been known, Excel issued no post-sale warning. RCW 7.72.030(1)(c).
163. The defective condition existed at the time the products left Excel’s control and was a direct and proximate cause of the property harm described above. As a direct and proximate result, Plaintiff has suffered damages in an amount to be determined at trial.

COUNT VI: BREACH OF EXPRESS WARRANTY

(Against Defendant Excel Dryer, Inc.)

164. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
165. Excel made express warranties to Plaintiff regarding its products, including representations that XLERATOR hand dryers dry hands in approximately 8 seconds, are hygienic, and achieve substantial energy savings and reduced environmental impact compared to paper towels. Excel further warranted the XLERATOR in writing to be free from defects for a period of seven years, and published the certified drying-time and energy figures—derived from SGS testing to the 0.25-gram endpoint under the UL Product Category Rule—as the basis for its performance and environmental representations. Exhibit PPPP.
166. These representations constituted express warranties that became part of the basis of the bargain between Plaintiff and Excel. The certifier-side grammar is identical and adverse to any narrower reading: in UL's own enforcement practice, certification of a component never supports a certified-whole representation — UL's decrees compel surrender of materials suggesting a product “as a whole is certified,” and UL prosecuted a manufacturer's written belief that a certified accessory justified a product-level mark to a \$2.2 million judgment.
167. Plaintiff relied on these express warranties when selecting and purchasing XLERATOR hand dryers for installation in its retail facilities.
168. Excel breached these express warranties. The products do not dry hands in the claimed time; independent testing across 462 drying trials establishes that currently manufactured downdraft Dispersal-Type dryers of this class do not dry hands to any claimed or certified residual-moisture threshold in the claimed time, requiring 60 to 90 seconds. The products are not hygienic; they amplify contamination. The energy, cost, and environmental claims are false because they are predicated on drying times that are not achieved.

169. As a direct and proximate result of Excel's breach of express warranty, Plaintiff has suffered damages in an amount to be determined at trial.

COUNT VII: BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Against Defendant Excel Dryer, Inc.)

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

171. Excel is a merchant with respect to hand dryers.

172. Excel impliedly warranted that its XLERATOR hand dryers were merchantable and fit for the ordinary purpose for which such goods are used—namely, drying hands hygienically.

173. XLERATOR hand dryers are not merchantable or fit for their ordinary purpose. They fail to dry hands at claimed times and amplify microbial contamination. A hand dryer that leaves hands wet and increases contamination is not fit for the ordinary purpose of hygienic hand drying.

174. Excel breached the implied warranty of merchantability.

175. As a direct and proximate result of Excel's breach of the implied warranty of merchantability, Plaintiff has suffered damages in an amount to be determined at trial.

COUNT VIII: BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE

(Against Defendant Excel Dryer, Inc.)

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

177. At the time of sale, Excel knew or had reason to know the particular purpose for which Plaintiff required hand dryers: hygienic hand drying in food service facilities where employees handle food and beverages consumed by millions of daily

customers, and where environmental sustainability is a material corporate commitment.

178. Excel knew that Plaintiff was relying on Excel's skill and judgment to furnish suitable products. Excel's marketing materials specifically target sustainability-focused purchasers with environmental claims.

179. Plaintiff relied on Excel's skill and judgment in selecting XLERATOR hand dryers.

180. XLERATOR hand dryers are not fit for the particular purpose of hygienic hand drying in food service facilities with sustainability commitments. Products that amplify contamination are unsuitable for food service. Environmental claims predicated on false data are unsuitable for sustainability-focused purchasers.

181. Excel breached the implied warranty of fitness for particular purpose.

182. As a direct and proximate result of Excel's breach of the implied warranty of fitness for particular purpose, Plaintiff has suffered damages in an amount to be determined at trial.

COUNT IX: VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT

(Against All Defendants)

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

184. The Washington Consumer Protection Act, RCW 19.86.020, prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." The standard is capacity to deceive, and the certifier Defendants have stated that standard themselves: a false certification message is the wrong "whether by intent to mislead or by copying — [i]n either case, the effect is the same: customers are misled into believing the product has been UL certified when it has not." The wrong is the false message, however produced — UL's own published frame, and this count's.

185. Each Defendant engaged in trade or commerce within the meaning of the Act.
186. Dyson engaged in unfair and deceptive acts and practices by: making false representations regarding the drying time, hygiene, energy efficiency, cost savings, and environmental impact of its products; concealing that its products amplify microbial contamination; concealing that its products disperse water throughout the restroom environment; concealing that its products cause mold colonization; and creating a secret proprietary test method to generate favorable results it could not achieve through standard protocols.
187. NSF engaged in unfair and deceptive acts and practices by: certifying that Dyson products meet P335 specifications when they do not; maintaining certification for nineteen years without disclosed surveillance testing to verify compliance; and allowing its certification mark to be used to market products that achieve zero percent compliance with certified specifications.
188. SGS engaged in unfair and deceptive acts and practices by: providing test data that does not reflect real-world product performance; testing at times different from marketed claims; and enabling false marketing claims through apparently independent validation that was not representative of actual performance.
189. Excel engaged in unfair and deceptive acts and practices by: making false representations regarding the drying time, hygiene, energy efficiency, cost savings, and environmental impact of its XLERATOR products; marketing certified drying-time and energy figures that are not achieved in actual use; and concealing that its products amplify microbial contamination, disperse water throughout the restroom environment, and cause mold colonization.
190. UL engaged in unfair and deceptive acts and practices by: authoring a Product Category Rule for hand dryers that adopted an unexplained residual-moisture endpoint, contained no standard for water dispersal, and was developed by a committee dominated by manufacturers, including four seats and the chair held by

Excel; and by allowing that defective rule to remain the governing framework under which false environmental declarations for the XLERATOR continue to issue.

191. Smart EPD engaged in unfair and deceptive acts and practices by: issuing and maintaining a current Environmental Product Declaration for the XLERATOR that rests on a drying-time figure not achieved in actual use, and on the energy and carbon figures derived from that figure; and by holding out that declaration as the product of independent operation, review, and verification when the same individual occupied all three roles.
192. Anna Lasso engaged in unfair and deceptive acts and practices by: participating in authoring the UL Product Category Rule and then serving as program operator, independent critical reviewer, and independent external verifier of the XLERATOR declaration issued under it, while representing that declaration as independently operated, reviewed, and verified.
193. Defendants' unfair and deceptive acts impact the public interest. Defendants' products and certifications affect commercial facilities throughout Washington serving millions of consumers. Defendants' false representations affect purchasing decisions by commercial entities and usage decisions by individual consumers.
194. Plaintiff suffered injury to its business or property as a direct result of Defendants' unfair and deceptive acts.
195. Defendants' unfair and deceptive acts were committed willfully and with knowledge of their falsity, or in reckless disregard of it. The manufacturers marketed drying-time and environmental figures their own testing did not support; the certifier Defendants certified, and continued to certify, representations that a Dyson employee's participation in standard-setting, a nineteen-year maintenance of certification without disclosed surveillance testing, a manufacturer-dominated rule-drafting committee, the concentration of nominally independent verification roles in a single person, and prior sworn litigation between the manufacturers each placed them on notice were false.

This knowing and willful character supports the enhanced statutory damages the Act authorizes.

196. Pursuant to RCW 19.86.090, Plaintiff is entitled to actual damages, treble damages, costs, and reasonable attorneys' fees.

COUNT X: UNJUST ENRICHMENT

(Against All Defendants)

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

198. Plaintiff conferred a benefit upon Dyson by purchasing the Dyson Airblade hand dryers deployed as standard equipment throughout its company-operated United States stores, on the order of 20,000 units. Plaintiff conferred a benefit upon Excel by purchasing XLERATOR hand dryers. Plaintiff conferred a benefit upon NSF through the certification fees and market value created by Plaintiff's reliance on NSF certification. Plaintiff conferred a benefit upon SGS through the testing fees and market value created by Plaintiff's reliance on SGS-validated performance claims. Plaintiff conferred a benefit upon UL, Smart EPD, and Anna Lasso through the market value and purchasing reliance created by the environmental declarations issued under the UL Product Category Rule and the Smart EPD certification.

199. Each Defendant received and retained this benefit. The benefit is not notional; it is separately priced in the certifiers' own enforcement economics. UL obtained a federal consent decree against counterfeit UL labels sold alone — stickers, attached to no product, marketed through a dedicated domain — on so-ordered recitals that the labels enabled purchasers to bypass UL's testing and certification processes. The mark's communication is a product with a market price; Defendants collected that price through the certification premium in the per-unit cost of every certified machine.

200. Each Defendant's retention of this benefit is unjust because the benefit was conferred based on Defendants' false representations, certifications, standards, and declarations regarding product performance. Plaintiff paid for products that would dry hands hygienically and support sustainability commitments; Defendants delivered products that amplify contamination and whose environmental claims are false.

201. It would be unjust for Defendants to retain these benefits.

202. Plaintiff is entitled to restitution and disgorgement of Defendants' unjust enrichment.

THE CERTIFIER COUNTS

203. The following counts are brought against the certifier Defendants on the two grounds set out in the Application of the Certification Chain above, each pleaded in its own right and in the alternative. The first is the contract ground — the certifiers' obligations extended to Starbucks as the purchasing party who paid the certification premium — pleaded as breach of contract in Count XI. The second is the § 552 ground — the certifiers' duty as suppliers of information for the guidance of others, which requires no privity — pleaded in the negligent-misrepresentation and related counts that follow. Washington recognizes negligent misrepresentation as stated in Restatement (Second) of Torts § 552, and Washington's independent duty doctrine does not bar these claims: the duty to avoid supplying false information that induces reliance in a business transaction arises independently of contract. Washington law is directly to this effect: the duty to avoid a misrepresentation that induces reliance in a business transaction arises independently of any contract, and the independent duty doctrine therefore does not bar a negligent-misrepresentation claim seeking economic loss. *Donatelli v. D.R. Strong Consulting Engineers, Inc.*, 179 Wn.2d 84, 312 P.3d 598 (2013). The certification premium is not a remote loss; it is carried in the per-unit price Plaintiff paid. See *Brand Marketing Group LLC v. Intertek Testing Services, N.A.*, 801 F.3d 347 (3d Cir. 2015) (applying § 552 to a testing laboratory and recognizing the pass-

through of certification cost to the relying purchaser); *Warren Technology, Inc. v. UL LLC*, 962 F.3d 1324 (11th Cir. 2020).

COUNT XI: BREACH OF CONTRACT

(Against Defendants NSF International, UL Solutions Inc., and Smart EPD LLC)

204. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein. This Count pleads the contract ground set out in The Mark Is a Contract and in the Application of the Certification Chain above; it is pleaded together with, and in the alternative to, the tort counts that follow, and Plaintiff need prevail on only one.

205. Each of these Defendants extended a public offer. Each created a certification mark or certified declaration, specified its form, licensed and charged for the right to display it, policed its unauthorized use, and directed it outward — on product housings, data sheets, and published declarations — at the purchasing public. A posted public offer, accepted by performance, is a binding contract; the mark was built to produce the purchase without a signature, and it did.

206. The terms are definite, because they are the certifiers' own published quantities: NSF Protocol P335 requires 0.1 gram of residual moisture within one operating cycle or fifteen seconds (§ 4.3.3) and 95 percent effectiveness across not fewer than twenty replications (§ 6.3); the UL Product Category Rule fixes a functional unit of 100,000 completed dryings to 0.25 gram of residual moisture or less; and the Environmental Product Declarations certified under that rule state 8.355 seconds and approximately 3.68 watt-hours per drying — figures carried forward into the current Smart EPD declaration. Each is a number, in a published document, attached to a named product.

207. Starbucks accepted by purchasing the certified products and supplied consideration by paying a price that included the certification premium — the certification fee recovered in the per-unit price of the goods and collected by the certifiers through that channel. See *Brand Marketing Group LLC v. Intertek Testing*

Services, N.A., 801 F.3d 347 (3d Cir. 2015) (certification cost "passed through . . . as part of the per-unit price").

208. The elements of this offer are stated in the certifiers' own enforcement voice. The offer's direction: UL's judgment grammar, so ordered in 2023, recites that UL authorizes its marks "to demonstrate certification to the marketplace" — the market at large, in the offeror's own words. The offerees: enumerated by UL in 2013 — "consumers, retailers, distributors, manufacturers or jurisdictional authorities" — a list in which the purchaser-retailer is named. The consideration: separately priced in UL's own docket, which includes a consent decree against counterfeit UL labels sold alone — stickers, attached to no product — because the mark's communication has standalone purchasable value; the certification premium in the per-unit price is that value, collected lawfully. The promise's family: UL's own sought-and-entered injunction grammar enjoins acts causing purchasers to believe a product was "tested, inspected, or certified by Plaintiff, or guaranteed by Plaintiff" — the certifier's own decree placing guarantee-belief inside the mark's protected meaning. And the promisor's seriousness: sworn to the Senate — an enforcement operation funded at millions of dollars annually, staffed for three decades, zero tolerance — the standing deposit that demonstrates the promise is meant.

209. The certified terms were not met. Across 462 controlled drying trials, zero units achieved any certified residual-moisture threshold at any certified or represented drying time; mean residual moisture measured 2.83 grams against certified thresholds of 0.1 to 0.25 grams; and products certified and marketed as hygienic amplified microbial contamination in 136 of 136 tests. Each certifier Defendant breached the terms its own documents state.

210. As a direct and proximate result of these breaches, Plaintiff has suffered damages, including the certification premium embedded in the price of every certified unit purchased and the further damages set forth in this Complaint, in an amount to be determined at trial.

COUNT XII: NEGLIGENT MISREPRESENTATION

(Against Defendant NSF International)

211. Plaintiff incorporates all preceding paragraphs, and brings this Count on the § 552 ground set out above, in the alternative to the contract ground pleaded in Count XI.

212. NSF supplied false information of material fact for the guidance of commercial purchasers by developing Protocol P335 for "Hygienic Commercial Hand Dryers" and by certifying Dyson Airblade products as conforming to it, when independent testing establishes zero-percent compliance with the certified residual-moisture specification at the certified drying time.

213. NSF supplied this information in the course of its business and in transactions in which it had a pecuniary interest, generating revenue from certification fees and the licensing of its certification mark.

214. NSF failed to exercise reasonable care in obtaining or communicating the information, including by incorporating the manufacturer's own test method into the protocol, seating a Dyson employee on the Protocol Development Panel, and maintaining the certification for approximately nineteen years without disclosed surveillance testing.

215. Plaintiff justifiably relied on NSF's P335 certification in selecting and purchasing Dyson Airblade hand dryers.

216. NSF's negligent misrepresentation was a direct and proximate cause of Plaintiff's damages.

COUNT XIII: NEGLIGENT MISREPRESENTATION

(Against Defendant UL Solutions Inc.)

217. Plaintiff incorporates all preceding paragraphs, and brings this Count on the § 552 ground set out above, in the alternative to the contract ground pleaded in Count XI.

218. UL supplied false information in the form of factual certification representations: the 2017 Environmental Product Declaration issued under UL's program states 8.355 seconds and approximately 3.68 watt-hours per drying as measured, verified performance — figures Plaintiff's testing establishes are not reproducible on any unit at any time. The negligent design of the governing rule itself — the unexplained endpoint and the missing water-dispersal standard — is pleaded separately in Count XVII.

219. UL supplied this information in the course of its business and in a transaction in which it had a pecuniary interest.

220. UL failed to exercise reasonable care in creating the standard, including by permitting the manufacturers it regulates to dominate the drafting committee — ten manufacturer seats to two UL seats, with Excel holding four seats and chairing the committee — and by adopting an endpoint for which it supplied no scientific basis.

221. Plaintiff justifiably relied on the certifications and environmental declarations issued under the UL Product Category Rule in evaluating and purchasing XLERATOR hand dryers.

222. UL's negligent misrepresentation was a direct and proximate cause of Plaintiff's damages.

COUNT XIV: NEGLIGENT MISREPRESENTATION

(Against Defendants Smart EPD LLC and Anna Lasso)

223. Plaintiff incorporates all preceding paragraphs, and brings this Count on the § 552 ground set out above, in the alternative to the contract ground pleaded in Count XI.

224. Smart EPD and Anna Lasso supplied false information of material fact for the guidance of commercial purchasers by issuing Environmental Product Declaration No. SmartEPD-2023-002-0006-01 for the XLERATOR, certifying an eight-second drying time and the energy and carbon figures derived from it, when independent testing establishes that drying time is not achieved in actual use.

225. Smart EPD and Anna Lasso supplied this information in the course of their business and in transactions in which they had a pecuniary interest.

226. Smart EPD and Anna Lasso failed to exercise reasonable care in issuing the declaration, including by adopting the same unachievable drying-time figure carried forward from the expired UL declaration, and by representing the declaration as independently operated, reviewed, and verified when the same individual, Anna Lasso, occupied all three roles.

227. Plaintiff justifiably relied on the Smart EPD declaration in evaluating XLERATOR hand dryers.

228. Smart EPD's and Anna Lasso's negligent misrepresentation was a direct and proximate cause of Plaintiff's damages.

COUNT XV: NEGLIGENT MISREPRESENTATION

(Against Defendant SGS North America Inc.)

229. Plaintiff incorporates all preceding paragraphs, and brings this Count on the § 552 ground set out above.

230. SGS supplied false information of material fact for the guidance of commercial purchasers by issuing Performance Test Report No. SGS supplied false information: its report states measured results — 0.186 grams at 12 seconds and 0.108 grams at 15 seconds — that Plaintiff's 462-trial, multi-state, replicated testing program establishes did not occur as reported and cannot be reproduced on any downdraft unit; equivalent testing produces residual moisture more than ten times greater. Either Plaintiff's science is right or SGS's science is right; both cannot be true, and this Complaint stands on Plaintiff's. The test durations SGS used — 12 and 15 seconds rather than the 8 seconds later marketed — are supporting context defining what the report could and could not validate. Excel's own technical data sheet identifies SGS International as the entity that performed the drying-time and energy testing on the standard XLERATOR to

the 0.25-gram residual-moisture endpoint under the UL Product Category Rule. Exhibit PPPP.

231. SGS supplied this information in the course of its business and in a transaction in which it had a pecuniary interest.

232. SGS failed to exercise reasonable care in conducting and reporting the testing, including by testing at times different from the marketed claims and by supplying data it knew or should have known would be used to support performance representations the data did not establish.

233. Plaintiff justifiably relied on SGS testing data, cited and incorporated into manufacturer marketing and the XLERATOR declaration, in evaluating hand dryers.

234. SGS's negligent misrepresentation was a direct and proximate cause of Plaintiff's damages.

COUNT XVI: NEGLIGENT UNDERTAKING (RESTATEMENT § 324A)

(Against Defendants NSF International, UL Solutions Inc., SGS North America Inc., Smart EPD LLC, and Anna Lasso)

235. Plaintiff incorporates all preceding paragraphs.

236. Under Restatement (Second) of Torts § 324A, one who undertakes, gratuitously or for consideration, to render services to another which it should recognize as necessary for the protection of a third person is subject to liability to the third person for failure to exercise reasonable care, where its failure increases the risk of harm or the third person relies on the undertaking. Washington recognizes § 324A.

237. The certifier Defendants each voluntarily undertook to render certification, testing, standard-development, or verification services that they should have recognized as necessary for the protection of commercial purchasers and the public who would rely on the resulting certifications.

238. The certifier Defendants knew or should have known that Plaintiff and other commercial purchasers would rely on their certifications, standards, test reports, and declarations in making purchasing decisions.

239. The certifier Defendants failed to exercise reasonable care in performing their undertakings, and their failure both increased the risk of the harms their standards existed to prevent and was relied upon by Plaintiff to its detriment.

240. The certifier Defendants' negligent undertaking was a direct and proximate cause of Plaintiff's damages.

This Count addresses physical harm to Plaintiff's things: the walls, floors, fixtures, and finishes that the certified machines, in ordinary operation, subject to recurring water deposition, contamination, and mold colonization — the physical property damage pleaded in Counts I and V — harm the certifier Defendants' undertakings existed to prevent. It addresses additionally the increased risk of physical harm the failed undertakings create for the persons who use the certified products in Plaintiff's facilities — the exposure that corroborates why the undertaking was protective — a risk for which Plaintiff, as operator, bears responsibility and cost. Plaintiff's economic recovery for the certifications themselves is pleaded under the negligent-misrepresentation and consumer-protection Counts; this Count is pleaded in addition and in the alternative, to the extent the evidence establishes physical harm or the risk thereof within the scope of Section 324A.

COUNT XVII: NEGLIGENT STANDARD CREATION

(Against Defendant UL Solutions Inc.)

241. Plaintiff incorporates all preceding paragraphs.

242. UL voluntarily undertook to create the governing standard for hand-dryer environmental and performance declarations through the Product Category Rule for Hand Dryers.

243. UL knew or should have known that commercial purchasers, including Plaintiff, would rely on products with declarations issued under that standard.

244. UL failed to exercise reasonable care in creating the standard, including by permitting manufacturer domination of the drafting committee, adopting an unexplained residual-moisture endpoint, and omitting any standard for the water dispersed from the device — the primary physical output of the product.

245. The Product Category Rule UL authored remains in force and is the declared Core PCR of the current XLERATOR Environmental Product Declaration; each declaration issued under it inherits its defects.

246. UL's negligent standard creation was a direct and proximate cause of Plaintiff's damages.

COUNT XVIII: EPD VERIFICATION NEGLIGENCE

(Against Defendants Smart EPD LLC and Anna Lasso)

247. Plaintiff incorporates all preceding paragraphs.

248. Smart EPD and Anna Lasso voluntarily undertook to operate, review, and verify the Environmental Product Declaration for the XLERATOR hand dryer.

249. Smart EPD and Anna Lasso failed to exercise reasonable care in performing that verification, including by certifying an eight-second drying time without independent testing capable of establishing it, by adopting the figure carried forward from the expired UL declaration, and by representing an independence of operation, review, and verification that did not exist because a single individual occupied all three roles.

250. The current XLERATOR declaration issued by Smart EPD is the operative declaration on which purchasers now rely.

251. Smart EPD's and Anna Lasso's negligent verification was a direct and proximate cause of Plaintiff's damages.

COUNT XIX: DECLARATORY AND INJUNCTIVE RELIEF

(Against All Defendants)

252. Plaintiff incorporates all preceding paragraphs.

253. An actual, justiciable controversy exists between Plaintiff and Defendants regarding the truth of the certified drying-time, hygiene, energy, and environmental representations for the products, and regarding whether the governing standards, certifications, and declarations reflect actual product performance.

254. Plaintiff is entitled to a declaration that: the products do not dry hands at the represented or certified times; the products amplify microbial contamination and disperse water in ordinary operation; the NSF P335 certification of Dyson products does not reflect actual product performance; the UL Product Category Rule is defective and the environmental declarations issued under it do not reflect actual performance; the Smart EPD declaration for the XLERATOR does not reflect actual product performance; and the SGS test data does not reflect real-world product performance.

255. Plaintiff is further entitled to injunctive relief requiring the Defendants to cease the false representations, to correct the public record of certification, and to take the corrective measures within their control, as the Court deems just.

VI. DAMAGES

256. Plaintiff's damages follow from the total failure of the products' essential purpose. A commercial hand dryer is purchased to do one thing: dry hands hygienically. The products Defendants sold, certified, and declared do not do that thing. At the drying times represented and certified, they leave hands wet; to dry hands at all they require sixty to ninety seconds, several times the represented time; and in operation they disperse contaminated water throughout the restroom, amplify airborne microbial contamination, and cause mold colonization on adjacent surfaces. A product that leaves hands wet, sprays contaminated water on its user, and degrades the room it

occupies is not a hand dryer that underperforms. It is a product that fails, entirely, the purpose for which it was sold.

257. Where a product wholly fails its essential purpose, Plaintiff pleads the following categories of loss in the alternative and as proven, without electing among remedies at the pleading stage: The measure of the loss is the buyer's full expenditure to acquire the failed product, together with the cost of removing it and the cost of replacing it with a method that performs the intended function. Plaintiff purchased and installed the Dyson Airblade hand dryers deployed as standard equipment throughout its company-operated United States stores—on the order of 20,000 units, two to a store, and precisely ascertainable from Plaintiff's own records—together with Excel XLERATOR units also installed across its locations, many of which remain in service and have not been replaced; each unit must now be removed and replaced with an effective hand-drying method — the white paper towels that Plaintiff's own evidence establishes achieve hygienic drying without contamination, dispersal, or mold. Plaintiff is entitled to be made whole for that entire expenditure.

258. The failure is aggravated by the particular purposes for which Plaintiff bought these products. Plaintiff selected them as hygienic and as environmentally superior — the two representations most material to Plaintiff's business and public commitments. The products are neither. They are unhygienic in operation, and their environmental and energy claims are false because those claims are calculated on drying times that are not achieved. Plaintiff was induced to install, throughout the premises it holds open to millions of daily customers, in the name of the sustainability commitments it most publicly stands for, a fleet of machines that deliver the opposite of what was represented on the two dimensions that mattered most.

259. As a direct and proximate result of Defendants' conduct as alleged herein, Plaintiff has suffered and continues to suffer damages, including but not limited to: (a) the full purchase price of the Dyson Airblade hand dryers deployed throughout Plaintiff's company-operated United States stores (on the order of 20,000 units, precisely

ascertainable from Plaintiff's records) and the Excel XLERATOR hand dryers Plaintiff purchased; (b) installation costs for the hand dryers; (c) costs of removal of the installed hand dryers; (d) costs of replacement hand-drying equipment or systems, including effective paper-towel systems; (e) costs of mold remediation; (f) costs of repairing or replacing damaged walls, floors, and fixtures; (g) costs of environmental testing and investigation; (h) operational disruption costs; (i) reputational damages arising from sustainability and hygiene claims based on false data and certifications; (j) costs of revising environmental disclosures and reporting; (k) reliance damages from false certification, standards, and declarations; (l) costs of investigating certification, standard, and declaration accuracy; (m) consequential damages; (n) treble damages as permitted under the Washington Consumer Protection Act, RCW 19.86.090; (o) pre-judgment and post-judgment interest as permitted by law; (p) reasonable attorneys' fees and costs as permitted by law; and (q) such other and further relief as the Court deems just and proper.

VII. JURY DEMAND

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

VIII. PRAYER FOR RELIEF

261. WHEREFORE, Plaintiff Starbucks Corporation respectfully requests that this Court enter judgment in its favor and against Defendants Dyson, Inc., Excel Dryer, Inc., NSF International, UL Solutions Inc., SGS North America Inc., Smart EPD LLC, and Anna Lasso, jointly and severally as their conduct warrants, and award Plaintiff:

262. a. Compensatory damages measured by the total failure of the products' essential purpose, including the full purchase and installation price of the hand dryers, the cost of their removal, and the cost of their replacement with an effective hand-drying method, in an amount to be determined at trial; — removal and replacement being the remedy UL itself publishes for products whose certification cannot be verified, installed products included (UL Release 20PN-24)

263. b. Consequential damages, including reputational and disclosure-related damages, in an amount to be determined at trial;
264. c. Treble damages as permitted under the Washington Consumer Protection Act, RCW 19.86.090;
265. d. Restitution and disgorgement of Defendants' unjust enrichment;
266. e. Declaratory relief as set forth in the declaratory count, including a declaration that the certified drying-time, hygiene, energy, and environmental representations for the products are false and that the governing standards, certifications, and declarations do not reflect actual product performance;
267. f. Injunctive relief as set forth in the declaratory and injunctive count;
268. g. Pre-judgment and post-judgment interest as permitted by law;
269. h. Reasonable attorneys' fees and costs as permitted by law; and
270. i. Such other and further relief as the Court deems just and proper.

Dated: _____

Respectfully submitted,

Attorney for Plaintiff

Starbucks Corporation

NOTE TO COUNSEL — THE INTERLOCKING RELATIONSHIPS AND THE SCOPE OF DISCOVERY

This note is addressed to counsel evaluating this complaint.

It is not reasonable to believe that across all the players making false claims over 25 years identified in this complaint there was no collusion and/or fraud. We have no proof of collusion or fraud and the pleaded counts assert no claim of fraud or collusion, relying on false and negligent claims as the anchors for the arguments. The entire structure of the complaint is built to identify the players and the acts who were involved and aim litigation directly at the target sources in which discovery will reveal the truth. A smart defendant's counsel will understand its purpose upon viewing, which was also our intent.

Maintaining false dry time claims orders of magnitude shorter than actual drying times involved hundreds of people over decades. The obvious intention was to allow claims of energy savings over paper towels and green marketing is now central manufacturers' claims and the certifiers stamps. We have no evidence for that but we suspect the evidence is there. The other issues, hygiene, water spray, mold and the rest must have similar document trails to be found during litigation.

The facts pleaded above describe a small and interlocking world. The complaint alleges, as independently sourced fact, each of the following: a Dyson microbiologist, Toby Saville, sat on the NSF Protocol Development Panel that wrote the very standard against which Dyson's products are certified, and Dyson's own internal test method was incorporated into that standard; for 9 years Saville was the Dyson corporate enforcer, tasked with fighting all outside attempts to show the dryer's failures. He is the Anna Lasso of the NSF/Dyson part of the story but he is a citizen of the UK and we left him off the defendant's list to avoid international complications. Starbucks has the resources to include him. The UL Product Category Rule committee seated ten manufacturer representatives to two UL representatives, with Excel Dryer holding four seats and Excel's own executive chairing the committee that wrote the rule governing Excel's declarations; Anna Lasso, née Nicholson,

participated in authoring the UL Product Category Rule in 2015/16s and then became the program operator, independent critical reviewer, and independent external verifier of the XLERATOR declaration issued under that same rule — three nominally independent roles occupied by one person; the eight-second drying-time figure and the energy figures derived from it passed unchanged from UL's expired declaration into the current Smart EPD declaration; and in the 2012–2013 litigation between the two leading manufacturers, each accused the other, under oath, of false advertising of the very drying-time claims at issue here.

These facts are pleaded individually and are independently actionable. Assembled, they describe a pattern. The complaint documents that pattern in its record, including the personnel and committee connections and the chronology tracing the movement from UL to Smart EPD. The complaint does not characterize these relationships as a conspiracy, because the internal communications, agreements, and coordination that would establish coordination as a matter of proof are, by their nature, within the Defendants' exclusive possession.

That is the significance for discovery. Every count in this complaint — negligent misrepresentation, negligent standard creation, EPD verification negligence, negligent undertaking, and the consumer-protection claims — requires inquiry into how these standards were written, who participated, what each participant knew, and why nominally independent bodies produced identical figures. The proof of each pleaded count lies in the same records that would establish whether the interlocking relationships documented here reflect coordination in fact. The counts, as pleaded, open those records.

The relationships documented above, if borne out by the evidence they would necessarily generate, may support additional theories not pleaded here — including claims under the civil provisions of the Racketeer Influenced and Corrupt Organizations Act and its state analogues, and claims for civil conspiracy — which require pleading and proof of coordination to a particularity that the presently available public record does not yet supply. Counsel is in a position to assess, and through discovery to develop, whether the

documented pattern reflects coordinated conduct. This complaint is drafted so that the discovery necessary to its pleaded counts is also the discovery necessary to that assessment.

One asset deserves plain statement. UL maintains a public enforcement record — three decades of counterfeit-mark prosecutions, consent judgments, a criminal referral, sworn Senate testimony, and a published field protocol — in which UL states, in its own filings and in judgments courts have so-ordered, what its certification mark means: an independent third party performed an examination; a mark without the examination endangers the public; the remedy for a mark whose examination is missing is removal from service. That record is public, it is organized, and it is woven through this Complaint at the points where it does its work; the section titled The Two Postures states its consequence. The definitional battle the certifier counts would otherwise require has already been fought, repeatedly, by the certifier — on the other side of it.

APPENDIX A

EXHIBIT LIST – Exhibits available upon request

The exhibits below constitute the evidentiary record supporting this Complaint. Exhibit lettering follows the master exhibit index maintained across the related matters. Not every exhibit listed need be attached to this pleading; the complete record is identified here and is available for production.

Journal Preprints — The Performance Failure

[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

[EXHIBIT-FFF] Performance Failures in Commercial Hand Dryers: An Historical Synthesis and Sequential Summary Review of an Eleven-Study Research Program; Journal Preprint 11 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

[EXHIBIT-T] Comprehensive Functioning Hand Dryer Output Air Studies

Lab Testing

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

Plaintiff's Purchase, Deployment, and Exposure

[EXHIBIT-V] *[Reconceived for Starbucks as Plaintiff — Starbucks's own procurement and deployment record (the Dyson units deployed as standard equipment (on the order of 20,000) and the Excel XLERATOR units, prices paid, and installation). Ron/Starbucks to supply underlying records.]*

[EXHIBIT-V-1] City of Everett Electrical Permit No. E1911-048 and comparable installation permits evidencing installation of the certified hand dryers in Plaintiff's premises

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 Type III Environmental Standards Principles and Procedures

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

[EXHIBIT-Za] ISO 14040 Environmental Management — Life Cycle Assessment — Principles and Framework

[EXHIBIT-Zb] ISO 14001 Environmental Management Systems — Requirements with Guidance for Use

[EXHIBIT-LLLL] ISO 14067 energy-only LCA synopsis (2013) — scope limited to climate change

[EXHIBIT-MMMM] ISO 14067 (2018) — Greenhouse gases — Carbon Footprint of Products, complete

[EXHIBIT-LLL] Comprehensive analysis of the UL PCR and EPD against the ISO 14025 standards series

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; July 25, 2017

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

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

[EXHIBIT-HH] XLERATOR LEED v4.1 Document

[EXHIBIT-II] Dyson LEED May 2014 Document

[EXHIBIT-OOO] Smart EPD ISO 14025 standards attribution in the Xlerator EPD #1

[EXHIBIT-PPP] Smart EPD ISO 14025 standards attribution in the Xlerator EPD #2

[EXHIBIT-OOOO] Certified public record for Smart EPD LLC, Virginia State Corporation Commission — articles of organization and amendments

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

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

[EXHIBIT-RR] Dyson's Memorandum of Law in Opposition to Excel's Motion for Preliminary Injunction

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

[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

Public-Facing Marks (Reliance)

[EXHIBIT-QQQ] UL mission statement, consumer-facing safety and integrity content screenshot 6/20/26

[EXHIBIT-RRR] NSF statement, consumer-facing health and standards content screenshot 6/20/26

[EXHIBIT-SSS] NSF stamp on a Dyson AB14 in a restroom, May 2026

[EXHIBIT-SSSS] UL certification marks on installed Excel XLERATOR hand dryers in commercial restrooms — photographs

[EXHIBIT-TTT] UL 22 billion public-facing marks website screenshot 6/20/26

[EXHIBIT-VVV] Current Dyson NSF certification listing, section 1.5.A

[EXHIBIT-PPPP] Excel Dryer technical data sheet, detail — the UL Product Category Rule mark, the Smart EPD certification mark, and attribution

[EXHIBIT-QQQQ] Excel Dryer technical data sheet, complete, dated May 2026 — including the certification block and quantity recommendations

The UL Enforcement Docket — Public Records

[EXHIBIT-RRRR] UL LLC v. Fly-E Group, Inc., No. 1:25-cv-01405 (E.D.N.Y.), Complaint (Dkt. 1) — UL's pleaded definition of the mark and of the counterfeit offense; recall, reimbursement, corrective-notice, and statutory-damages prayer

[EXHIBIT-RRRR-1] UL LLC v. Fly-E Group, Inc., Consent Judgment and Permanent Injunction (Dkt. 27, so ordered June 6, 2025) — admitted-fact recital of the mark's meaning; \$1,000,000 joint and several including three individual officers

[EXHIBIT-TTTT] UL LLC v. Swagway, LLC, No. 3:16-cv-75 (N.D. Ind.), Consent Judgment (so ordered April 18, 2016) — identical admitted-fact recital nine years earlier; mark-obliteration procedure under UL supervision

[EXHIBIT-UUUU] UL LLC v. Butson, No. 4:15-cv-00170-O (N.D. Tex.), Consent Decree and Permanent Injunction (June 22, 2015) — liability finding; counterfeit labels alone; the bypass recital

[EXHIBIT-VVVV] Testimony of Terrence Brady, UL, Senate Committee on Finance (March 6, 2018), with written responses (April 20, 2018) — sworn definition of the mark; UL's counterfeit test-purchase methodology

[EXHIBIT-XXXX] UL Release 20PN-24 (2020) — field protocol: product bearing the mark not evaluated → compliance unknown → remove from service and replace

[EXHIBIT-XXXX] UL public anti-counterfeiting statement (2013) — the mark as "true representation of the safety testing and certification" in which manufacturers have invested

[EXHIBIT-YYYY] UL announcement of the Arizer stipulated judgments (March 2, 2023) — Chief Legal Officer's statement: marks "demonstrate that these products meet scientific safety, performance or sustainability standards"

Corroborating Life-Cycle Assessments and Patent Record

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

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

[EXHIBIT-WWW] Complete Quantis LCA for Xlerator dryer, 2009

[EXHIBIT-JJJJ] Initial Xlerator Dryer Patent, provisional 1999, issued 2006, Sol Aisenberg — independent corroboration of the bimodal mechanism

[EXHIBIT-KKKK] AI Xlerator Dryer Patent Analysis with novel table data

[EXHIBIT-IIII] Excel Dryer claims the first rapidly drying hand dryer in 2002 — advertisement screenshot

Testing-Count Validation and Financials

[EXHIBIT-GGGG] Summary document, Testing Counts — validating testing numbers across multiple data sets 6/30/26

[EXHIBIT-HHHH] Comprehensive document, Testing Counts — validating testing numbers across multiple data sets 6/30/26

[EXHIBIT-ZZZZ] UL annual revenue and other financials, Stock Analysis website, 6/12/26

[EXHIBIT-AAAA] UL quarterly filing for Q1 2026 with current financials

[EXHIBIT-BBBB] NSF Annual Report 2025 with corporate employee verification and consumer-facing claims

[EXHIBIT-CCCC] NSF Form 990 financial reporting, 11/14/25

Additional exhibits within the master index (including the demand-response correspondence log, Exhibit KKK, and supplemental analyses) are available and may be produced as relevant. The filing party should confirm which exhibits to attach versus reference, and reconcile Exhibit V and the deployment exhibits to Starbucks's own procurement records.

APPENDIX B

TABLE OF AUTHORITIES

The authorities below are cited in the foregoing Complaint, including in the embedded Certification Chain brief and the embedded Enforcement Record brief. Persuasive authorities are so identified; controlling authority for the Washington claims is set out under Cases.

CASES

Bilt-Rite Contractors, Inc. v. The Architectural Studio, 866 A.2d 270 (Pa. 2005)

Brand Marketing Group LLC v. Intertek Testing Services, N.A., 801 F.3d 347 (3d Cir. 2015)

Donatelli v. D.R. Strong Consulting Engineers, Inc., 179 Wn.2d 84, 312 P.3d 598 (2013)

Hanberry v. Hearst Corp., 276 Cal. App. 2d 680 (1969)

Midwest Plastic Fabricators, Inc. v. Underwriters Laboratories Inc., 906 F.2d 1568 (Fed. Cir. 1990)

Toman v. Underwriters Laboratories, Inc., 532 F. Supp. 1017 (D. Mass. 1982)

Warren Technology, Inc. v. UL LLC, 962 F.3d 1324 (11th Cir. 2020)

STATUTES

Wash. Rev. Code § 19.86.020 (Washington Consumer Protection Act)

Wash. Rev. Code § 19.86.090 (Washington Consumer Protection Act — remedies)

15 U.S.C. § 1064(5) (Lanham Act — cancellation of certification-mark registrations; the control requirement)

28 U.S.C. § 1332 (diversity jurisdiction)

REGULATIONS

29 C.F.R. § 1910.7 (Nationally Recognized Testing Laboratory)

SECONDARY AUTHORITIES

Restatement (Second) of Torts § 552 (Information Negligently Supplied for the Guidance of Others)

Restatement (Second) of Torts § 324A (Liability to Third Person for Negligent Performance of Undertaking)

Restatement (Second) of Contracts (formation)

STANDARDS AND PROTOCOLS

ISO 14025 (Environmental labels and declarations — Type III)

EN 15804 (Environmental product declarations — core rules)

NSF Protocol P335 (Hygienic Commercial Hand Dryers)

ENFORCEMENT-RECORD INSTRUMENTS (cited by docket in the embedded Enforcement Record brief)

UL LLC v. Fly-E Group, Inc., No. 1:25-cv-01405-LDH-RML (E.D.N.Y.), Complaint (Mar. 2025) and Consent Judgment (June 6, 2025)

UL LLC v. B&B Signs, No. 1:15-cv-10804 (N.D. Ill.), Complaint and Consent Judgment (Sept. 15, 2016)

UL LLC v. Butson, No. 4:15-cv-00170-O (N.D. Tex.), Consent Decree (June 22, 2015)

UL LLC v. Swagway LLC, No. 3:16-cv-00075 (N.D. Ind.), Complaint and Consent Judgment (Apr. 15, 2016)

UL LLC v. A.F.G. Distribution, Inc. (N.D. Ill. 2019), Complaint

UL LLC v. Arizer et al., No. 1:20-cv-05308 (N.D. Ill.), Consent Judgments (Jan. 2023)

United States v. GuildMaster, Inc., No. 12-03108-01-CR-S-RED (W.D. Mo.), Indictment (Dec. 12, 2012)

GOVERNMENT AND PUBLISHED DOCUMENTS

U.S. Government Accountability Office, GAO-18-216, Intellectual Property: Agencies Can Improve Efforts to Address Risks Posed by Changing Counterfeits Market (Jan. 2018)

U.S. Consumer Product Safety Commission, letter of Dec. 19, 2022 (micromobility; 15 U.S.C. § 2064(a))

New York City Local Law 39 of 2023 (powered mobility devices; certification and display requirements)

Protecting Consumers by Protecting Intellectual Property: Hearing Before the S. Comm. on the Judiciary (June 17, 2008) (testimony and responses of Brian Monks, UL)

Protecting E-Commerce Consumers from Counterfeits: Hearing Before the S. Comm. on Finance (Mar. 6, 2018) (testimony and responses of Terrence Brady, UL)

UL Release 20PN-24 (Sept. 30, 2020); UL press releases of Feb. 7, 2013, Mar. 2, 2023, and Mar. 13, 2025

Note on Controlling Authority

Donatelli v. D.R. Strong Consulting Engineers, Inc., 179 Wn.2d 84 (2013), states the controlling Washington rule that the duty to avoid a negligent misrepresentation inducing reliance arises independently of contract, so that the independent duty doctrine does not bar a claim for economic loss. The remaining case authorities — including *Brand Marketing Group v. Intertek* (3d Cir.), *Warren Technology v. UL* (11th Cir.), *Toman v. Underwriters Laboratories* (D. Mass.), *Hanberry v. Hearst* (Cal.), and *Bilt-Rite v. Architectural Studio* (Pa.) — are cited as persuasive authority applying Restatement (Second) of Torts § 552 and related principles to testing and certification bodies. *Midwest Plastic Fabricators v. Underwriters Laboratories* (Fed. Cir.) is cited for the Federal Circuit’s construction of the certification-mark control requirement — for what a certification mark is and represents as a matter of federal registration law — and not as authority on tort duty, a subject its footnote 2 expressly reserves. A filing party should confirm and supplement Washington authority for each claim before filing.