

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

TARGET CORPORATION, a Minnesota corporation,

Plaintiff,

v. Case No. _____

EXCEL DRYER, INC., a Massachusetts corporation; UL SOLUTIONS INC., a Delaware corporation; SMART EPD LLC, a Virginia limited liability company; ANNA LASSO, an individual; and SGS NORTH AMERICA INC., a New Jersey limited liability company,

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Target Corporation ("Target" or "Plaintiff"), by and through its attorneys, brings this Complaint against Defendants Excel Dryer, Inc. ("Excel"), UL Solutions Inc. ("UL"), Smart EPD LLC ("SmartEPD"), Anna Lasso, and SGS North America Inc. ("SGS"), and alleges as follows:

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 them 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 TARGET 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.

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. The Stakes

3. Target Corporation is one of the largest retailers in the United States, operating approximately 2,000 stores across North America. Every Target store contains public restrooms. Approximately 8,000 XLERATOR hand dryers manufactured by Defendant Excel are installed across Plaintiff's retail locations—four units per store, two in men's restrooms, two in women's restrooms. Every use of these devices exposes customers and employees to conditions that Defendants' own standards define as unsafe.
4. Plaintiff is one of the largest retailers in the United States, serving hundreds of millions of customer visits annually with over 400,000 employees. Target has built its brand on providing a clean, safe, welcoming shopping

environment. Defendants' false certifications induced Plaintiff to install equipment that degrades rather than maintains restroom hygiene.

D. The Product Excel Sold

5. Defendant Excel marketed its XLERATOR hand dryer with specific claims: "Dries hands completely in 8 seconds." "A hygienic hand drying solution." "80% less energy than conventional hand dryers." "95% cost savings when compared to paper towels." "Up to 88% reduction in carbon footprint vs. paper towels." These claims were supported by certifications from Defendants UL Solutions, Smart EPD, and SGS. Every claim is false.
6. Excel claims 8-second drying. Independent testing of 462 drying cycles established that zero percent achieve the NSF P335 specification of 0.1 grams residual moisture at 8 seconds. At 8 seconds, residual moisture measures 2.5 to 3.0 grams—2,500 to 3,000 percent above the 0.1-gram specification. The actual time required to approach threshold dryness is 70 to 90 seconds. The claim is false by 775% to 1,025%.
7. Excel claims "hygienic" hand drying. Independent testing of 136 hand dryers established that 100% amplify bacterial and fungal contamination compared to ambient air. The median amplification factor is 49.6 to 110 times room air contamination levels. Products certified as "hygienic" make hands and the surrounding environment measurably less hygienic than doing nothing at all.
8. Excel claims energy savings. Because Excel's energy calculations are predicated on the false 8-second drying time, they are mathematically invalid. Energy consumption equals power multiplied by time. At actual drying times of 70-90 seconds, XLERATOR energy consumption is 7 to 10 times higher than claimed. The 85-90% environmental advantage over paper towels disappears entirely. At actual drying times, hand dryers produce CO₂ emissions equivalent to or exceeding paper towels.

9. Excel claims HEPA filtration provides protection. Independent testing established that HEPA-filtered and non-HEPA-filtered hand dryers show statistically identical microbial amplification ($p = 0.803$). The filter addresses intake air while ignoring the primary contamination pathway: bacteria and fungi multiply in the warm, moist environment downstream of the filter and are amplified in the output air that strikes users' hands.
10. Excel's own data confirms these findings. The UL Product Category Rules for Hand Dryers, published July 2016, contains Figure 2 showing that at 8 seconds, residual moisture is 0.456 grams—82% above UL's own 0.25 gram threshold and 356% above NSF P335's 0.1 gram threshold. Excel held four of ten manufacturer seats on the committee that created this standard. Excel's own committee's own data proves Excel's own claims are false.
11. Denis Gagnon, Excel's President and CEO, testified under oath in federal court proceedings that XLERATOR drying time was 12 seconds—not the 8 seconds Excel markets today. Excel's own executive contradicted, under penalty of perjury, the company's current marketing claims.

E. The Reliance

12. Excel markets to major retailers as a key customer segment. Excel's website states: "Go into the restrooms of many of the world's top retailers and you will find our hand dryers keeping things clean and green" and "Our high-speed, energy-efficient hand dryers help retailers all over the world." Plaintiff's installation is part of Excel's strategy to establish market presence in high-traffic retail environments.
13. Plaintiff made a national purchasing decision based on Defendants' representations and certifications. Excel represented that XLERATOR provided superior hygiene, faster drying, lower energy consumption, and significant cost savings compared to paper towels. These representations

were supported by certifications from nationally recognized testing laboratories and certification bodies. Plaintiff relied on those certifications.

14. Plaintiff's reliance was reasonable. When a manufacturer makes specific performance claims supported by certifications from UL Solutions, SGS International, and EPD program operators claiming ISO 14025 compliance, a sophisticated commercial purchaser is entitled to trust those claims. When a manufacturer touts a national installation client in press releases distributed to the business community, that manufacturer assumes responsibility for the accuracy of its claims to that client.

F. The Enablers

15. Excel's false claims did not achieve credibility in isolation. They were enabled by a network of certification bodies that lent their institutional authority to representations they never verified. The certifications that induced Plaintiff's purchasing decision were products of a standards process in which the sellers wrote the standards and verification collapsed into a single person.
16. Defendant UL Solutions created the Product Category Rules for Hand Dryers in July 2016. The committee that created this standard consisted of 10 manufacturer representatives and 2 UL employees. Zero public health officials. Zero consumer representatives. Zero independent researchers. Zero representatives of commercial purchasers like Plaintiff. The committee was chaired by William Gagnon, Excel's Vice President of Marketing and Sales. Excel held 4 of the 10 manufacturer seats.
17. The UL PCR established a 0.25 gram residual moisture threshold—2.5 times weaker than NSF P335's 0.1 gram threshold. This weaker standard was adopted after NSF rejected Excel's proposal to change NSF P335 from 0.1

grams to 0.2 grams. When Excel could not weaken one standard, it helped create a weaker one and then staffed the committee that wrote it.

18. From 2017 to 2022, UL Environment certified Excel's XLERATOR at 8-second drying time and 3.68 Wh energy consumption—specifications that UL's own Figure 2 data showed were physically impossible. UL certified claims its own published data contradicted.
19. Defendant Anna Lasso worked at UL Environment from 2016 to 2022 as Product Manager of EPDs and PCR Project Manager. In this role, she worked directly with William Gagnon as he chaired the PCR committee. Her published article documents: "The PCR development process was initiated by William Gagnon, Excel Dryer's vice president of marketing and sales. William was asked to serve as chairman of the PCR committee, working closely with me and other leading manufacturers."
20. In April 2022—the same month Hokwang received a UL EPD certifying 30-35 second drying time—Anna Lasso formed EPD USA LLC, later renamed Smart EPD LLC. In July 2022, Excel's UL certification expired and was not renewed. In June 2023, Anna Lasso's company certified Excel at the identical specifications UL had allowed to lapse: 8-second drying time, 3.68 Wh energy consumption. UL would not renew the certification. Anna Lasso would.
21. On the SmartEPD certificate, Anna Lasso appears in three roles: Program Operator, Independent Critical Reviewer, and Independent External Verifier. ISO 14025 requires these functions to be independent. One person occupies all three roles on certificates she issues for products manufactured by companies she worked "closely" with while employed at UL.
22. Defendant SGS tested Excel's products in 2012 using "a revised version of NSF Protocol P335"—a standard NSF had rejected. SGS tested at 12 and 15

seconds, not the 8 seconds Excel markets. SGS reported 0.186 grams residual moisture at 12 seconds; independent testing documents 2.5 to 3.0 grams at the same interval—1,350% to 1,600% higher than SGS results. The foundational test data for every subsequent certification was produced under a rejected standard at times longer than those marketed.

23. The certification network functioned as designed: manufacturers controlled the standards, certifiers validated the claims, and purchasers like Plaintiff relied on the apparent independence of the process. The independence was illusory. The certifications were worthless. Plaintiff's national purchasing decision—affecting 2,000 stores and approximately 8,000 hand dryers—was induced by false representations that reinforced one another at every level of the certification system.

G. The Continuing Harm

24. The harm to Plaintiff is ongoing. SmartEPD Certificate No. SmartEPD-2023-002-0006-01 remains active through June 23, 2028. Excel continues to market false drying time, hygiene, and environmental claims. Excel continues to sell products through Target's retail channels. Every day that Defendants' certifications remain in force, Plaintiff suffers new injury.
25. Plaintiff's approximately 8,000 installed XLERATOR units spray water onto walls and floors with every use. Independent testing documented visible mold colonization in 100% of dispersal-type hand dryer installations (50 of 50 locations). The walls and floors adjacent to Plaintiff's hand dryers bear the cumulative evidence of years of water dispersal—contamination that requires remediation, surfaces that require replacement, property damage distinct from the dryers themselves.
26. Plaintiff continues to suffer economic harm. Energy consumption at actual drying times is 7 to 10 times higher than represented. Across 8,000 units

operating continuously in high-traffic retail locations, the excess energy cost is substantial. Plaintiff paid premium prices for products certified to deliver savings that do not exist.

27. The defect is the design itself. No repair, no maintenance, no user technique can make these products perform as certified. The physics does not negotiate. The only remedy is removal and replacement with equipment that actually dries hands hygienically—equipment as simple as the white paper towels Plaintiff already sells, the paper towels Plaintiff rejected because Defendants' false certifications made hand dryers appear superior. II.

PARTIES

II. PARTIES

A. Plaintiff

28. Plaintiff Target Corporation is a Minnesota corporation with its principal place of business at 1000 Nicollet Mall, Minneapolis, Minnesota 55403. Target operates approximately 2,000 retail stores across all 50 states and the District of Columbia. Target has purchased and installed XLERATOR hand dryers manufactured by Defendant Excel in restrooms at its retail locations throughout the United States, including in Massachusetts.

B. Defendant Excel Dryer, Inc.

29. Defendant Excel Dryer, Inc. is a Massachusetts corporation with its principal place of business at 357 Chestnut Street, East Longmeadow, Massachusetts 01028. Excel manufactures, markets, distributes, and sells commercial hand dryers under the XLERATOR brand name. Excel markets its products to commercial purchasers including retailers, with specific claims regarding drying time, hygiene, energy efficiency, and environmental benefits.

C. Defendant UL Solutions Inc.

30. Defendant UL Solutions Inc. is a Delaware corporation with its principal place of business at 333 Pfingsten Road, Northbrook, Illinois 60062. UL created the Product Category Rules for Hand Dryers published on July 13, 2016. The PCR establishes a 0.25 gram residual moisture threshold—2.5 times weaker than NSF P335's 0.1 gram threshold. The UL PCR committee consisted of 10 manufacturer seats and 2 UL representatives. Excel Dryer held 4 of 10 manufacturer seats through William Gagnon, Denis Gagnon, Tom Koetsch, and Peter Panaratos. William Gagnon, Excel's VP and COO, chaired the committee. From 2017 to 2022, UL Environment issued Environmental Product Declaration No. 4787137936.102.1 certifying Excel's XLERATOR Hand Dryer at 8-second drying times and 3.68 Wh energy consumption—specifications that UL's own PCR Figure 2 data showed were physically impossible.

D. Defendant Smart EPD LLC

31. Defendant Smart EPD LLC is a Virginia limited liability company, entity ID 11379451. Smart EPD LLC was formed on April 26, 2022, under the name "EPD USA LLC." On July 6, 2022, articles of amendment changed the company name to "Smart EPD LLC." Anna Lasso is listed as registered agent. Smart EPD's registered office address is 25320 Ripleys Field Dr, Chantilly, VA 20152—a single-family residence. The mailing address listed on Smart EPD certificates is a UPS Store commercial mail facility. Smart EPD certifies Environmental Product Declarations for hand dryer manufacturers using UL PCR methodology—the same methodology that Anna Lasso helped develop while employed at UL Environment.

E. Defendant Anna Lasso

32. Defendant Anna Lasso is an individual residing in Virginia. From 2016 to 2022, Anna Lasso was employed by UL Environment as Product Manager of EPDs and PCR Project Manager. In this role, she worked directly with William Gagnon as he chaired the UL PCR committee that created the Product Category Rules for Hand Dryers. Her published article documents: "The PCR development process was initiated by William Gagnon, Excel Dryer's vice president of marketing and sales. William was asked to serve as chairman of the PCR committee, working closely with me and other leading manufacturers." On April 26, 2022, while employed at UL Environment, Anna Lasso filed articles of organization for "EPD USA LLC." On SmartEPD certificates, Anna Lasso appears in three roles: Program Operator, Independent Critical Reviewer, and Independent External Verifier. ISO 14025 requires these functions to be independent. Anna Lasso occupies all three roles on certificates she issues.

F. Defendant SGS North America Inc.

33. Defendant SGS North America Inc. is a New Jersey limited liability company with its principal place of business at 400 Broadacres Drive, Suite 200, Bloomfield, New Jersey 07003. SGS Performance Test Report No. 2774929EFF-001, dated September 7, 2012, tested hand dryer products at 12 and 15 seconds—not the 8 seconds Excel claims in marketing. The report states testing was conducted under "a revised version of NSF Protocol P335 currently being developed." NSF had rejected this revision. SGS test data forms the basis for all subsequent certifications.

III. JURISDICTION AND VENUE

34. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 (diversity jurisdiction). Plaintiff is a citizen of Minnesota. Defendant Excel is a citizen of Massachusetts. Defendant UL is a citizen of Delaware and Illinois. Defendant SmartEPD is a citizen of Virginia. Defendant Anna Lasso is a citizen of Virginia. Defendant SGS is a citizen of New Jersey, its state of organization and principal place of business. Complete diversity exists. The amount in controversy exceeds \$75,000, exclusive of interest and costs.
35. This Court has personal jurisdiction over all Defendants. Defendant Excel is incorporated in Massachusetts. This action arises from each certifier Defendant's deliberate and continuing certification relationship with a Massachusetts manufacturer: UL contracted with Excel and issued the Environmental Product Declaration for Excel's Massachusetts-made products; SGS tested Excel's products and issued the report on which subsequent certifications rest; Anna Lasso worked directly with Excel's Massachusetts executives during the development of the governing rule; and Smart EPD certifies, and collects fees for certifying, the products Excel manufactures in this District. Each certifier Defendant purposefully directed its certification services at a Massachusetts manufacturer, and the claims arise from those very services.
36. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) because Defendant Excel resides in this District, and pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this District.

IV. FACTUAL ALLEGATIONS

A. The Products

37. Defendant Excel manufactures, markets, and sells commercial hand dryers under the XLERATOR brand name. The XLERATOR product line includes multiple models, including the XLERATOR Standard (XL-SB, XL-BW, XL-W), XLERATOR ECO (XL-SB-ECO), and XLERATORsync. All models share the same fundamental design: high-velocity air jets directed at wet hands to remove water through mechanical shear and evaporation.
38. Defendant markets XLERATOR hand dryers as "hygienic" drying solutions that dry hands in 8 seconds, consume 1.7 watt-hours of energy per use, reduce carbon footprint by up to 88% compared to paper towels, and provide 95% cost savings versus paper towels.
39. Defendant offers optional Electrostatic HEPA (eHEPA) filtration, which Defendant claims "removes 99.999% of viruses and 99.97% of potentially present bacteria at 0.3 microns from the airstream."
40. Defendant's products are certified by third-party entities including SGS International and Smart EPD. Defendant prominently displays these certifications in marketing materials as evidence of independent verification of its performance claims.

B. Excel's Relationship with Plaintiff

41. Plaintiff operates approximately 2,000 retail stores across North America. Each store contains public restrooms equipped with hand dryers. Plaintiff installed approximately four XLERATOR hand dryers per store—two in men's restrooms, two in women's restrooms—for a total of approximately 8,000 XLERATOR units across Plaintiff's retail locations.

42. Excel, through its marketing materials, certifications, and the representations of its distribution partners, made specific claims to commercial purchasers including Plaintiff: that XLERATOR hand dryers dry hands in 8 seconds, provide hygienic hand drying, use 80% less energy than conventional dryers, provide 95% cost savings compared to paper towels, and reduce carbon footprint by up to 88% compared to paper towels. These representations were supported by certifications from UL Solutions, Smart EPD, and SGS International. Plaintiff relied on these representations and certifications in making its national purchasing decision.
43. The prices Plaintiff paid 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 Plaintiff, through Excel as conduit, to each certifier whose mark or declaration the products carried. The consequence is set out in the Certification Chain at Section G below: the party who pays for the certification is owed the certification.
44. Plaintiff's reliance was reasonable. When a manufacturer makes specific performance claims supported by Environmental Product Declarations claiming ISO 14025 compliance, certifications from OSHA-recognized Nationally Recognized Testing Laboratories, and test reports from internationally accredited testing facilities, a sophisticated commercial purchaser is entitled to trust those claims. The entire purpose of third-party certification is to provide purchasers with reliable, independently verified performance data.
45. Plaintiff occupies a unique position among Excel's commercial purchasers. Target sells paper towels. Target sells paper towel dispensers. Target made a corporate decision to install hand dryers in its own facilities instead of its

own products because Defendants' certifications represented that hand dryers were superior—more hygienic, more energy efficient, more environmentally responsible. Plaintiff was induced by false certifications to reject its own merchandise in favor of a competitor's product.

46. Plaintiff did not consent to having its brand used to market products that amplify contamination rather than reduce it, that leave hands wet rather than dry them, that consume 7-10 times more energy than claimed, and that spray contaminated water onto walls and floors with every use. Excel's use of Plaintiff's name in marketing materials was based on performance claims that were false when made and remain false today.

C. Defendant Excel's Express Marketing Claims

47. Defendant makes the following express claims in its marketing materials, technical data sheets, website, and certification documents, all of which Plaintiff relied upon in making purchasing decisions:
48. Drying Time: "8 Second Dry Time" and "The XLERATOR dries hands completely in 8 seconds."
49. Energy Consumption: "Energy Per Use: 1.7 Wh" based on the claimed 8-second operational cycle.
50. Cost Savings: "95% Cost Savings vs. Paper Towels" and "Saves Time, Money and the Environment."
51. Environmental Claims: "Up to 88% Reduction of Carbon Footprint vs. Paper Towels" and "All XLERATOR Hand Dryer Models Are EPD Certified."
52. Hygiene Claims: "A Hygienic Hand Drying Solution" and "HEPA Filtration System proven to remove 99.999% of virus from the airstream."

53. Performance Claims: "Over a Decade of Proven Performance" and "Less Than 1% Failure Rate."
54. Each of these claims is false, misleading, or materially incomplete, as established by the independent scientific research described below.

D. The Science: Independent Research Establishing Systematic Failure

55. These are not "studies that suggest" or "evidence that indicates." These are physical facts established to scientific certainty. Between August 2023 and December 2025, an eleven-study independent research program documented systematic failure across every claimed performance dimension. The complete methodology, raw data (1.3 terabytes), and analysis are published with Digital Object Identifiers on Zenodo and Harvard Dataverse, making the research fully reproducible and independently verifiable.
56. The research documents systematic failure across every performance dimension examined. Six universal findings emerge from the data:

Finding 1: Drying Time Failure (0% Compliance)

57. Independent testing of n=409 drying cycles across Defendant's XLERATOR products and comparable devices established that zero units achieved manufacturer-specified dryness thresholds at claimed drying times—a 0% compliance rate. At 8 seconds (Excel's claimed time), residual moisture averaged 2.5-3.0 grams versus the 0.1 gram NSF P335 threshold or the 0.25 gram UL PCR threshold. This represents 2,500-3,000% excess moisture at claimed times. DOI: 10.5281/zenodo.15503698.
58. Actual drying time to achieve manufacturer thresholds: 70-90 seconds versus the claimed 8 seconds—a discrepancy of 775% to 1,025%. Cross-technology correlation coefficients exceeded $r = 0.999$ across all pairwise

comparisons ($p < 0.001$), establishing that the failure pattern is universal to the technology, not specific to any manufacturer. DOI: 10.5281/zenodo.17869567.

59. Defendant's own data confirms this failure. UL PCR Figure 2, published in the Product Category Rules that Defendant helped write through four committee representatives, shows that at 8 seconds, average residual moisture is 0.456 grams—82% over the 0.25 gram threshold that Defendant's committee established. Defendant's own standard proves Defendant's own claims are false.

Finding 2: Microbial Amplification (100% of Units, 49.6-110× Ambient)

60. Independent microbial testing across 136 hand dryer samples established that 100% of units amplified bacterial and fungal contamination compared to ambient room air—136 of 136 tests showed amplification with statistical significance of $p < 10^{-41}$. This is not a tendency. It is a universal physical property of the devices. DOI: 10.5281/zenodo.15504115 and DOI: 10.5281/zenodo.17859894.
61. Median amplification was 49.6× ambient levels using LB agar (conservative estimate) and 110× ambient levels using broad-spectrum TSA media. Mean contamination output was 88-200 colony-forming units per plate versus 2-4 CFU for ambient air controls.
62. HEPA filtration provided zero measurable hygiene benefit. Comparison between HEPA-filtered dryers (Dyson) and non-HEPA dryers (Defendant's XLERATOR) showed $p = 0.803$ —no statistically significant difference in contamination output. The contamination occurs downstream of the filter, in the airstream after filtration.

Finding 3: Water Dispersal (7.3 Grams Per Use Into Environment)

63. Baseline water mass on freshly washed hands averages 6.85 grams (95% CI: 6.70-7.00g). High-speed videography at 1,000 frames per second documented that hand dryers operating at 400-640 km/h air velocity mechanically strip water from hands and disperse it onto walls, floors, users' clothing, users' faces, and into the air as aerosol. Approximately 90% of water removal occurs through mechanical shear (spray), not evaporation. DOI: 10.5281/zenodo.15503304.
64. Defendant's documentation contains zero statements addressing where water goes after air jets strike it. The absence of any standard, measurement, or specification for water dispersal—in a product whose sole function is removing water from hands—is not an oversight. It is the central design failure that enables all other failures.
65. At 150 million daily U.S. hand dryer uses with 7.30 grams of water per use, dispersal-type hand dryers spray approximately 4.6 million cups of water into public restrooms daily—1.7 billion cups annually. That water carries whatever contamination was present on users' hands plus whatever contamination the dryer amplified.

Finding 4: Mold Colonization (100% of Installations)

66. Visual audit of 127 public restrooms across six states established that dispersal-type hand dryers (including Defendant's XLERATOR) showed visible wall mold in 100% of installations—50 of 50 dispersal-type dryer locations exhibited mold colonization patterns radiating from the dryer air outlet. DOI: 10.5281/zenodo.17860971.
67. Independent EPA-certified laboratory analysis (Hayes Microbial Consulting, EPA Laboratory ID: VA01419) confirmed fungal presence in 70% of plume samples. Species identified include *Aspergillus*, *Penicillium*, *Alternaria*,

Cladosporium, and Chaetomium—genera associated with respiratory sensitization, allergic reactions, and opportunistic infections in immunocompromised individuals.

68. Comparison: White paper towel dispensers showed 12.8% mold rates—a 7.8× difference ($\chi^2 = 72.0$, $p < 0.001$). The mold colonization is not incidental. It is the cumulative record of dispersal-type dryers spraying contaminated water onto walls continuously over time.

Finding 5: Energy and Environmental Claim Invalidity

69. Every energy and environmental claim made by Defendant rests on a single assumption: that hands reach specified dryness thresholds in 8 seconds. That assumption is false. Actual drying requires 70-90 seconds. When actual operational times are used, all energy and environmental calculations become invalid. DOI: 10.5281/zenodo.17859198.
70. Defendant claims 1.7 Wh energy per use and approximately 2-4g CO₂ per drying cycle. At empirically verified drying times, actual consumption is 17-25 Wh and 12-18g CO₂ per use—600-900% higher for energy and 300-800% higher for CO₂. The claimed 85-90% environmental advantage over paper towels disappears entirely; at actual drying times, hand dryers produce equivalent or higher CO₂ emissions than paper towels.
71. The EPD certification process itself violated basic principles of independent verification. Anna Lasso is listed as: (1) EPD Program Operator of Smart EPD, (2) Independent Critical Reviewer of the underlying LCA, and (3) Independent External Verifier of the EPD—three roles that ISO 14025 requires to be independent of one another. One person reviewing her own work is not independent verification. It is the absence of verification.

Finding 6: Paper Towel Superiority

72. White paper towels eliminate all five problems identified in this complaint. White paper towels are frequently sterile (55.6% showed zero colonies), tested as statistically indistinguishable from ambient room air, absorb water into disposable material rather than dispersing it into the environment, create no aerosol or wall contamination, and dry hands in 20-30 seconds to threshold dryness through absorption rather than evaporation.

E. Unbinding Mixed Law

73. Certifiers do not manufacture hand dryers, and this case does not sue them for the manufacturer's product — that question is settled, and Plaintiff does not disturb it. Certifiers manufacture certifications: the standards, the test methods, the protocols, and the marks. Those products are the certifiers' own, and the question is whether those products are false. How a certification travels from the certifier's desk to the purchaser's decision — and what obligations travel with it — is set out step by step, in memorandum detail, in the Certification Chain at Section G below. That Chain is the analytical spine of this Complaint. When a certified product fails due to manufacturing defects, the manufacturer bears liability.
74. Plaintiff invokes a different doctrine: certifiers bear independent liability for the certifications they issue. This is not derivative of manufacturer conduct. It is primary liability for the certifier's own product—the certification itself.
75. Defendants authored the standards. Defendants designed the test methods. Defendants controlled the protocols. Defendants issued the certifications. Every element was within Defendants' exclusive control. The question is not whether the products are defective. The question is whether the certifications are false.

76. Defendants certified specifications. Independent research tested those specifications. 462 residual moisture trials. Zero compliance at certified times. Residual moisture of 2.5 to 3.0 grams when specifications require 0.1 to 0.25 grams. This is not marginal underperformance. This is 1,000 to 3,000 percent over specification.
77. Every certified specification is proven false. The independent research data is fully public. Plaintiff's methodology is fully documented. Defendants' underlying test data is not.
78. Independent research has established a prima facie case that Defendants' certified specifications are false. The burden now shifts to Defendants to present evidence that their certifications are accurate.

F. The Science Is The Product

79. 150 years of universal scientific consensus that wet hands spread disease is the reason hand dryers exist. Washing hands exists to reduce microorganism count. Drying hands exists to reduce microorganism transmission. Patrick et al. established that wet hands transfer 500-1000× more bacteria than dry hands. Defendants cite this research in their own materials.
80. This is foundational to the products. Defendants certified and subsequently built an entire industry on this science. Every marketing claim assumes it. Every certification standard incorporates it. Every purchase decision relies on it.
81. Semmelweis established the importance of hand hygiene in 1847. Patrick et al. established that wet hands transfer up to 1,000 times more bacteria than dry hands in 1997. Defendants cite this research. Defendants then certify products that leave hands wet and amplify contamination.

G. The Certification Chain

THE CERTIFICATION CHAIN — COMPLETE SUPPORTING BRIEF

This is a complete 22 page brief presenting novel law upon which the rest of the case is built and is best understood in full. There is a chain of liability from certifier to the user and we have built it out completely, in detail. Litigation teams will decide if it applies but we present it for your consideration. It sets out how a certification — which begins as a private transaction between a manufacturer and a certifier — becomes a representation that is both binding on and relied upon by the party who ultimately purchases the certified product. It is presented complete, rather than summarized, because the chain does not reduce to a summary without losing the force that makes it persuasive: each step is an act a party performed, in the order performed, and the conclusion follows only from the whole.

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

Second, the brief establishes two separate obligations, and both are available to Target. The first is a contract obligation, which runs from the certifier to the party who paid. The second is a duty — negligent misrepresentation under Restatement (Second) of Torts § 552 — which runs to everyone who relied, purchaser and user alike, and which has never required privity. Because Target is the purchaser, it

stands on both grounds. A reader satisfied of these two propositions may proceed directly to the Target application and the counts that follow; the brief is provided in full for the reader who wishes to see the whole demonstration.

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

PURPOSE OF THIS MEMORANDUM

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

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

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

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

earlier — at the third link, where the money changed hands — and holds both obligations.

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

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

THE PROPOSITION

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

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

Two certifiers did exactly that. NSF Protocol P335 is titled Hygienic Commercial Hand Dryers. Section 6.4 states that "the operational intent of a hygienic commercial hand dryer is to prevent the hand dryer from using air contaminated with microbes to dry a user's hands," and derives a threshold on the order of one

culturable organism per operating cycle. Broad-spectrum testing at the output of certified machines recorded a median of two hundred. UL's Product Category Rule for Hand Dryers states the function of the product it governs: hand dryers are electric devices used to provide a hygienic method to dry hands in public washrooms.

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

The event and its nine elements

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

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

harm. And the four elements that were measured were certified wrong by an order of magnitude.

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

The two tracks

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

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

THE CHAIN

1. ORIGIN

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

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

2. RESPONSIBILITY STANDARDS

Certifier promises valid standards and accurate testing.

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

3. RESPONSIBILITY PRODUCT

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

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

4. DOCUMENT

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

The certificate binds manufacturer to certifier by agreement and contract.

5. THE DOCUMENT CONFERS STATUS

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

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

Two machines perform the same function. One is certified, the other is not. The certifier did not test the machine to see what it does, the certifier stated, "it must do

this” then tested it to verify that it complies. It is the action that transforms the device, adding value for all parties.

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

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

6. TRANSACTION COMPLETE

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

The manufacturer holds the document, the transaction is complete.

7. THE INVENTION OF THE MARK

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

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

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

8. THE OFFER OF THE MARK

Certifier offers manufacturer a certifier branded sticker for the device.

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

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

9. ACCEPTANCE OF THE MARK

Manufacturer accepts.

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

10. MARK IS BOUND TO THE CERTIFICATE

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

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

11. THE MARK TRANSMITS STATUS

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

12. BINDING THE CERTIFICATE TO THE CONSUMER

The sticker's purpose is purely public-facing, representative of the held certification made by the certifier and manufacturer jointly to the consumer. The manufacturer already has the certification.

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

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

13. CONTRACT

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

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

14. DEPLOYMENT

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

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

Users dry their hands on machines purchased by others. Plaintiff is the party who purchased them.

The value of the sticker is now transferred from the certifier to the user via the purchaser. Without users there is no product, no market and there are no certifiers. The manufacturer implies quality and increases income via the promises made by the certifier, paid for by the purchaser, paid for by the user.

15. BINDING BY DUTY

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

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

16. RELIANCE

Users assume certification for public facing products in public buildings.

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

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

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

17. THE TEST

Remove the sticker.

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

Everything downstream disappears.

The absence of the sticker impacts only the purchaser and the user. A purchaser no longer believes the product is superior to any competing product, offering no increased value. A manufacturer could post the complete certification document on every public document and representative dryer in a sales room exposed to purchasers, not a footnote to an incomprehensible document a reasonable user cannot understand, but the mark, the sticker, offered by the certifier to the manufacturer to provide the imprimatur of its brand reputation does it so much more efficiently. A user, absent the sticker, no longer has the expectation of quality, safety, and validity no matter what the product is. There are millions of uncertified products competing in the marketplace including hundreds of hand dryers. A dryer with no mark is not the same as a dryer with a mark.

Reliance collapses.

18. THE SECOND TEST

Remove the user

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

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

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

THE MARK IS A CONTRACT

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

1. The certifier's product

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

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

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

2. The mark is an offer

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

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

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

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

3. The terms are definite

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

The terms are published quantities. Among other things, UL's Product Category Rule fixes the functional unit at 100,000 completed dryings to 0.25 grams residual moisture. UL's Environmental Product Declaration states 8.355 seconds and 3.68

watt-hours per drying. NSF Protocol P335 §4.3.3 requires 0.1 gram within one operating cycle or fifteen seconds, and §6.3 requires 95% effectiveness across a minimum of twenty replications.

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

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 retailers, building owners, and property managers who install commercial hand dryers — purchased marked devices and installed them in restrooms they open to the public.

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

10. What Plaintiff claims

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

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

11. The terms, stated by the certifiers

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

Against those terms: 462 drying trials on downdraft dispersal units recorded zero compliance at any manufacturer-claimed time, with mean residual moisture of 2.83 grams — more than twenty-eight times the strictest certified threshold. A

specification stated to a thousandth of a second is a definite term. So is a threshold stated to a hundredth of a gram.

12. What the certifiers did with the mark

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

THE MARK IS A DUTY

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

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

1. The obligation

One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information. Restatement (Second) of Torts §552.

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

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

2. Privity is not required

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

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

3. The relying party need not be identified

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

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

Illustration 9 applies it. A city engages an engineering firm to prepare a subsurface report, notifying the firm the report will be furnished to bidders. Without knowing the identity of any bidder, the firm negligently prepares an inaccurate report. A general

contractor bids in reliance. A subcontractor — who contracts with the general contractor rather than the city, and who never receives the report — contracts to perform part of the work. The firm “is subject to liability to C and to D.”

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

4. No physical injury is required

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

5. The duty runs to every party the mark reached

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

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

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

6. What the certifier undertook

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

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

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

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

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

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

Neither certifier disclaimed hygiene. Each defined it.

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

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

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

UL defined the functional unit as the drying of 100,000 hand dryings to a residual-moisture endpoint — a completed physical event performed on human hands, in a room, one hundred thousand times. The outputs of that event — the water dispersed, the microbial load amplified in the output air, the deposition on surrounding surfaces — occur inside the boundary UL drew. They are not external merely because they occur locally. Safety is a label, not a system boundary.

UL's own declaration removed the subject from its comparison. Under the heading Application, the XLERATOR declaration states that "the purpose of this product is to dry hands," that "it is possible that the system has secondary functions, such as hygiene," and that "for purposes of the present study it is assumed that any other

functions are equivalent among different systems and that the systems can be evenly compared on the basis of the hand-drying function alone." The comparative results the declaration reports therefore rest on an assumption that hygienic performance does not differ between systems. Independent testing measured that difference directly. Either UL meant the assumption, and a rule defining a hygienic function while establishing no evaluation of it has omitted assessment of the function it declared; or UL did not mean it, and the mandatory functional definition purchasers are entitled to rely upon is inaccurate.

The place a reader would look for those outputs was covered over. EN 15804, which UL selected as its reporting framework, divides the use stage into modules, and Module B1 covers the emissions connected to the normal use of the product — what the device releases into the room during operation. UL's Product Category Rule states in a footnote that it "deviates from this approach by using B1 for reporting operational energy use." The footnote recites what B1 is for, recites that operational energy belongs in B6, and announces that the rule will do otherwise. The section where a reader would be guided to question device emissions was thereby occupied by a figure already reported elsewhere.

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

EN 15804 supplied two compliant courses and UL took neither. A declarant may report the module, or mark it "ND" — not declared — and either course leaves the

certifier on record as to the room emissions. UL declared neither. Target, and every purchaser who read the declaration to compare hand drying against paper towels, received a document that appeared complete and was silent, by construction, on the outputs of the very event it was built to measure.

8. Reliance on a certification is justifiable

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

Justifiable reliance does not require independent verification. Where an insurer argued that reliance was unjustified because the plaintiffs “could have simply read the policy to discover the actual coverage the policy afforded,” the evidence was held sufficient to present a jury question notwithstanding. *Rempel v. Nationwide Ins. Co.*, 471 Pa. 404, 370 A.2d 366 (1977), as recited in *Bilt-Rite*, 866 A.2d 270.

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

9. Reasonable care

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

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

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

10. Custom is no defense

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

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

11. The rule, in full

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

The Third Circuit applied it to a testing and certification laboratory, affirming a verdict of \$6,045,000 including \$5,000,000 in punitive damages. *Brand Marketing Group LLC v. Intertek Testing Services, N.A., Inc.*, 801 F.3d 347 (3d Cir. 2015). The

laboratory needed to know only that somebody other than the party commissioning the test would rely on it. *Id.* at 360. The Restatement states the rule twice, and Illustration 9 imposes liability in favour of a subcontractor two steps removed, never identified, who never received the document.

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

12. The undertaking, and how old the rule is

One who undertakes to render services to another which he should recognise as necessary for the protection of a third person is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care. Restatement (Second) of Torts §324A. The essential provisions of that section "have been the law in Pennsylvania for many years." *Cantwell v. Allegheny County*, 506 Pa. 35, 483 A.2d 1350 (1984). Pennsylvania applied it to a party undertaking safety-related evaluation in *Farabaugh v. Pennsylvania Turnpike Commission*, 590 Pa. 46, 911 A.2d 1264 (2006). This is not a novel theory. It is a rule Pennsylvania has applied for four decades.

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

supply them. It named safety and carved it out. It did not name hygiene, and could not have — hygiene is the subject the document is titled after.

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

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

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

OBLIGATIONS TO THE USER

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

The user never bought a hand dryer. The user bought household goods.

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 retailer does not install a hygienic hand dryer because the retailer has hands. The retailer installs it because the retailer's customers do. The certified quality the retailer purchased can only be delivered to a third party — the person standing at the sink. A certification of hygienic hand drying has no value to a purchaser who will

never use the device. Its entire value to the purchaser is its effect on the people the purchaser serves.

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

3. How the certification reached Plaintiff

Plaintiff is a sophisticated commercial purchaser. In selecting and deploying commercial hand dryers at scale across its retail locations, Plaintiff relied on the UL and Smart EPD certification marks and declarations, on SGS's test reports, and on the manufacturer's representations built upon them, as independent, third-party validation that the products performed as claimed. Plaintiff relied on those certifications specifically in its procurement for facilities serving hundreds of millions of guest visits annually, and in maintaining for its customers the clean, safe, welcoming environment its brand promises.

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

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

4. What §552 requires

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

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

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

5. The transaction the information was intended to influence

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

The certifications identify that transaction in their own terms.

NSF Protocol P335 is titled “Hygienic Commercial Hand Dryers.” Section 1.1 states that it “establishes minimum requirements for health and sanitation characteristics.” Section 3.4 defines dry hands as “[a]dult human hands with less than 0.1 g residual moisture.” Section 4.3.3 requires that “[t]he unit must dry the user's hands to a satisfactory level.” Section 4.3.2 requires that surfaces contacting the emitted air “be designed or treated to inhibit the growth of bacteria and mold.” Section 6.4 states that “[t]he operational intent of a hygienic commercial hand dryer is to prevent the hand dryer from using air contaminated with microbes to dry a user's hands.”

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

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

6. Plaintiff entered that transaction and paid for it

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

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

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

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

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

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

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

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

8. Where the harm lands

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

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

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

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

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

Independence is a condition of holding the mark

The obligation the mark carries is not only a duty of care. It is a condition of the mark itself. In *Idaho Potato Commission v. M & M Produce Farm & Sales*, 335 F.3d 130 (2d Cir. 2003), the Second Circuit vacated an order barring a licensee from seeking cancellation of a certification mark, holding that a no-challenge provision in the licensing agreement was unenforceable because it violated the public policy embodied in the Lanham Act, and remanded for consideration on the merits of allegations that the mark owner had discriminatorily refused to certify, imposed standards beyond those the mark was registered to certify, and lacked the

independence necessary for certification mark owners. The Eleventh Circuit cited that case in *Warren Technology, Inc. v. UL LLC*, 962 F.3d 1324, 1329 (11th Cir. 2020), when naming what a nationally recognized testing laboratory may be answerable for. Independence is not a courtesy the certifier extends. It is a condition of holding the mark, and a licensee cannot be made to contract away the right to say so.

The science behind the figures

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

WHAT THIS MEMORANDUM ESTABLISHES

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

Two obligations arise from that sequence and they arise independently. Where money changed hands there is a contract, and it belongs to the party who paid. Everywhere the mark reached there is a duty, and it belongs to everyone who relied.

The user is not at the end of that chain as an afterthought. He is the reason every earlier link exists: no user, no product, no market, no certification, no certifier.

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

APPLICATION OF THE CERTIFICATION CHAIN TO TARGET

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

Target is the purchaser — the party who paid. Target 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 Target. Target 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 Target 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. Target is that purchaser. The certifiers' obligations — that the standards are valid, that the testing is accurate, that the certified levels are met — ran to Target 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 Target paid, Target's certifier claims do not depend on the absence of a contractual relationship,

and Massachusetts law does not bar them: Massachusetts adopted Restatement (Second) of Torts § 552 in *Nycal Corp. v. KPMG Peat Marwick LLP*, 426 Mass. 491 (1998), and negligent-misrepresentation claims for pecuniary loss proceed against information suppliers without privity.

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

H. The Standard Is Indivisible

82. A drying standard for a product whose sole purpose is reducing microbe transmission is a hygiene standard. These two things cannot be separated.

Hands must leave the device as clean or cleaner than they entered. Leaving them wetter is not just ineffective—it is actively harmful.

83. You cannot write a testing standard for a product that exists solely for the purpose of reducing microbe transmission without fully owning the entire microbe transmission properties of the entire product system cycle.
84. Defendants certified drying time. They clearly state what happens when drying fails—wet hands spread contamination.
85. Defendants have created no standard to measure the microbial content of the output jets of functioning dryers in situ. This failure provides for output air that amplifies ambient restroom air contamination by 50-110× in a device whose job is to reduce hand contamination.
86. Defendants certified "hygienic" hand dryers. These dryers colonize the walls around them with mold in 100% of installations.
87. Defendants created standards addressing one part of the product cycle while ignoring the rest. NSF P335 Section 6.2 requires HEPA filtration to prevent contaminated air intake—while ignoring that contamination occurs downstream of the filter in the output air stream.
88. It is not reasonable to believe these omissions are oversights. They fit a consistent pattern: measured where products pass, unmeasured where they fail. Defendants wrote standards that address what manufacturers wanted addressed and ignore what manufacturers wanted ignored.
89. That is not a standard written to protect the user. It is a standard written by the seller. Defendants wrote the standards. Defendants certified the products. Defendants own the outcomes.

I. Scientific Consensus Compels Judicial Action

90. Courts began addressing tobacco-related harms when the science became unequivocal. Decades of industry denial collapsed under the weight of unanimous research. Judicial intervention followed scientific consensus.
91. Hand hygiene science presents a far stronger case than even the best second hand smoke science: The science establishing that hand drying prevents disease transmission has never been disputed. Research by Patrick et al. (1997) demonstrating that wet hands transfer 500-1000× more bacteria than dry hands is cited by manufacturers as the basis for their products' existence.
92. The science establishing that hand dryers amplify contamination has accumulated for 36 years across 18 peer-reviewed studies. Every study done on hand dryers in functioning restrooms shows the same result: amplification. Not reduction. Amplification.
93. Plaintiff declares that the weight of prior science combined with Plaintiff's empirical research establishes a prima facie case that Defendants' certified specifications are false. The burden shifts to Defendants.
94. The science justified the product's invention. The science now condemns its failure.

J. The Liability Position

95. Defendants established residual moisture thresholds as safety standards. NSF set 0.1 grams. UL set 0.25 grams. These thresholds exist because Defendants determined that exceeding them was harmful.
96. If exceeding those thresholds causes harm, then Defendants certified products that exceed the thresholds by 1,000 to 3,000 percent, and every

use of every certified product exposes users to conditions Defendants themselves defined as unsafe.

97. If exceeding these thresholds does not cause harm, then Defendants' standards are arbitrary and meaningless, and Defendants collected certification fees and enabled premium pricing for compliance with standards that protect nothing.

Both positions establish liability.

98. If Defendants argue their standards were unachievable, they confirm that the thresholds define meaningful harm—harm their certified products inflicted with every use. If Defendants argue their standards were achievable, they must explain how products achieving zero percent compliance in 462 independent trials would achieve 95% compliance in certification tests.
99. This is not a case about products that marginally underperform specifications. This is a case about a certification ecosystem that was restructured—through manufacturer-controlled committees, a weakened threshold, and verification migrating to the standard's own project manager—to permit claims that physics cannot support.

K. Defendants' Cited Claims Analysis

Purpose

100. Defendant Anna Lasso as committee chair and verifier of the TrueNorth Collective Life Cycle Assessment states on page 1: "Hand dryers are electrical devices used to provide a hygienic method to dry hands in public washrooms."
101. Defendant UL states on page 9 of its Product Category Rules: "The function of a hand dryer is to dry hands after washing in a public restroom."

102. Defendant NSF International in its Protocol P335, section 1.2 states:
"Commercial hand dryers are commonly used in public or commercial hand washing stations to dry hands after washing."
103. Defendant SGS International states in Annex A of its Performance Test Report: "The purpose of this test is to ensure that the hand dryer is able to thoroughly dry hands."
104. The purpose of drying hands is to reduce the transmissibility of disease spreading organisms after washing hands to clean them. Hand washing and drying are supported by 150 years of unequivocal science cited by Defendants as the basis for their products' existence.

Drying Time

105. Defendant Anna Lasso states in the SmartEPD Environmental Product Declaration: "The XLERATOR dries hands completely in 8 seconds."
106. Defendant SGS International states in its Performance Test: "The purpose of this test is to ensure that the hand dryer is able to thoroughly dry hands during one 15-sec. (± 1 sec.) operating cycle." SGS tested at 12 and 15 seconds—not 8 seconds.
107. Defendant NSF International in its P335, Section 4.3.3 states: "The unit must dry the user's hands to a satisfactory level (0.1 gram of residual moisture) within a period of one normal operating cycle (≤ 15 seconds)."
108. Defendant UL Solutions provides Figure 2 in its PCR showing residual moisture at various times. At 8 seconds, the data shows 0.456 grams—82% over the 0.25 gram threshold.
109. The time-to-dry of a hand dryer determines several important factors in how the product works, or does not work. Long dry times decrease compliance with users leaving the room with wet hands. Long dry times increase

contamination exposure. Long dry times increase energy consumption. Long dry times invalidate all environmental claims.

Hygiene

- 110. Anna Lasso states in the Smart EPD Excel EPD: "The XLERATOR Hand Dryer is a touchless, hygienic way to dry hands." She states in the TrueNorth LCA that "hygiene is part of the protocol for commercial hand dryers" while simultaneously stating "hygiene is not considered in this study."
- 111. UL makes a single statement in the entire PCR regarding hygiene: "Hand dryers are electric devices used to provide a hygienic method to dry hands in public washrooms."
- 112. NSF states in the P335: "Additionally, if a hand dryer insufficiently dries the user's hands, the residual moisture remaining on the user's hands could facilitate transmission of transient microorganisms to other surfaces contacted by the user."
- 113. SGS entirely fails to mention hygiene anywhere in its test report.
- 114. Hand dryers are the direct result of 150 years of continuous science proving that washed and dried hands decrease death and disease. The scientific purpose is the product purpose. All claims of beneficial hand dryer use either explicitly or implicitly include hygiene as part of their fundamental reason for being.

Water Dispersal

- 115. Defendant Anna Lasso fails to mention in the 51 pages of the Smart EPD Xlerator Certificate and the TrueNorth Collective LCA a single word about the dispersal of water into the room after the dryer air jets hit it.
- 116. In the 37 pages of its Product Category Rules, Defendant UL Solutions says nothing about the water that leaves hands after the dryer air-jets strike it. In

- Appendix 2, instructions for testing residual water on hands, UL acknowledges that dryers "blow off large water droplets" but provides no standard, test, measurement, or specification for where those droplets go.
117. NSF International created specifications for water in capture-type hand dryers but does not mention anywhere in the 11 pages of its Protocol P335 what occurs, or should occur, to the water after the air jets hit wet hands. NSF only states: "Liquid containment shall be monitored during all testing." Dispersal dryers do not contain liquid. They spray it everywhere.
 118. SGS International fails to mention anything about the destination of water struck by the air jets in its Performance Test Report.
 119. In a product whose single purpose is to remove water from wet hands, it is impossible to believe that the several certifying bodies writing the design, build, and performance standards all failed to include a single word about what happens to that water. The omission tracks the failure: every specification the products can meet is measured, and the one hazard every unit produces is not. What the omission was designed to accomplish is a matter for discovery.

Plume of Filth

120. Anna Lasso provides no standard in the 51 pages of the SmartEPD certificate and TrueNorth LCA for addressing the persistent mold growth found under 100% of public restroom hand dryers, failing to acknowledge the problem exists.
121. UL provides no standard in the 37 pages of its PCR for addressing the persistent mold growth found under 100% of public restroom hand dryers, failing to acknowledge the problem exists.

122. NSF provides no standard in the 11 pages of P335 for addressing the persistent mold growth found under 100% of public restroom hand dryers, failing to acknowledge the problem exists.
123. SGS provides no testing protocol for addressing the persistent mold growth found under 100% of public restroom hand dryers, failing to acknowledge the problem exists.
124. Plaintiff documented visible mold colonization in 100% of approximately 200 tested installations. No defendant mentions the problem, much less providing any standard for preventing, measuring, or addressing it. The mold is the physical proof that the dryers spray water continuously, permanently contaminating every wall and floor they are installed near.

Energy and Environmental Claims

125. Anna Lasso claims in the TrueNorth LCA: "The comparative results indicate that the Excel dryers have between 80% to 97% fewer impacts than the paper towel baseline" and "The cradle-to-grave global warming potential associated with the paper towel product ranges from 52 to 69 grams CO₂ equivalent, while the global warming potential of the Excel dryers range from 2.9 to 3.4 grams CO₂ equivalent per use."
126. UL Solutions provides in its PCR the methodology for calculating environmental impacts based on drying time. When actual drying times (70-90 seconds) are substituted for claimed times (8 seconds), all environmental calculations become invalid.
127. The energy savings and environmental claims made by hand dryer manufacturers are a primary reason they are purchased and the most heavily marketed aspect of their performance. Energy savings are based on the false 8-second operational cycle. At actual drying times, the claimed environmental advantages disappear entirely.

L. The Empirical Proofs

128. Plaintiff's testing and analysis are fully documented, transparent, and open to independent verification. All underlying data, images, sampling records, and chain-of-custody materials have been preserved and are available for review.
129. Plaintiff's research methodology, data, and analysis are published in ten studies with Digital Object Identifiers on Zenodo and at the Harvard Dataverse. All raw data, 1.3TB, is hosted at Cloudflare and Backblaze. These are: (1) Microbial Contamination Study - DOI: 10.5281/zenodo.15504115; (2) Residual Moisture Study - DOI: 10.5281/zenodo.15503698; (3) Systematic Failure Analysis - DOI: 10.5281/zenodo.17858443; (4) Energy Claims Refutation - DOI: 10.5281/zenodo.17859198; (5) Cross-Manufacturer Analysis - DOI: 10.5281/zenodo.17869567; (6) Ambient Air Comparison - DOI: 10.5281/zenodo.17859894; (7) Wandering Plume Study - DOI: 10.5281/zenodo.17860971.
130. The standards at issue were not imposed on Defendants by regulators. Defendants created them. Defendants promoted them. Defendants certified products under them. Defendants' own data proves compliance is impossible.
131. Drying Time Performance Testing Results
132. Performance curves from three manufacturers across 462 drying-time trials demonstrated convergent correlation coefficients exceeding $r = 0.99$ across all pairwise comparisons ($p < 0.001$). In 31 trials below 15 seconds, zero achieved the NSF P335 specification of 0.1 grams residual moisture. The failure was not manufacturer-specific. The failure was physics.
133. In real-world use, at a 15 second drying time, hands remain visibly wet in 100% of observed trials. Water can be seen visibly dispersing from hands

during the entire cycle. No user achieves satisfactory dryness at claimed times.

134. NSF P335 Section 6.3 establishes clear, quantified requirements: residual moisture of 0.1 grams or less at manufacturer-specified times, with 95% compliance across 20 trials.
135. The independent research program conducted 462 trials—more than twenty times the sample size required for NSF certification. Zero trials achieved 0.1 grams or less at manufacturer-specified times. The average residual moisture at 8 seconds was 2.5-3.0 grams—2,500 to 3,000 percent over specification.
136. The probability that products achieving zero percent compliance in 462 trials would achieve 95% compliance in a 20-trial certification test approaches zero ($p < .001$, $r = .99$). This is not sampling variation. Either the certification tests were never run as described, or their results never resembled these; Defendants' own files hold the answer, and both answers are actionable.
137. The Physical Impossibility of Certified Drying Times
138. The claimed drying times are not merely difficult to achieve. They are physically impossible to achieve.
139. Plaintiff's data demonstrates that water removal follows a bi-modal decay pattern. The first phase removes loose surface water quickly. The second phase removes bound water slowly. All dryers—regardless of manufacturer—hit an inflection point at approximately 12-15 seconds where the easy-to-remove water is gone and only the hard-to-remove water remains.
140. Plaintiff later discovered that Excel's own researchers had identified bi-modal drying. In an undated white paper filed as an exhibit in federal court

proceedings, Excel researchers Aisenberg and Freedman documented the bimodal pattern and noted that achieving the 0.1 gram threshold would require substantially longer times than claimed.

141. Independent research tested this bi-modal framework across three manufacturers: Dyson, Excel (XLERATOR), and World Dryer. All three demonstrated effectively identical performance curves. Cross-manufacturer correlation exceeded $r = 0.999$. The physics does not vary by brand.
142. On December 4, 2025, prior to testing a third manufacturer for the first time, Plaintiff documented a formal prediction: World Dryer products would fail identically to Dyson and Excel because this is not a manufacturer problem—it is a physics problem. World Dryer products failed as predicted.
143. The joint probability of three independent manufacturers producing correlation coefficients all exceeding $r = 0.99$ under the null hypothesis (that performance varies by manufacturer) is less than $p < 0.001$. The convergence proves the failure is fundamental to the technology.
144. Contamination Results: Microbe Load in Output Dryer Air
145. Plaintiff's Microbial Contamination Study (Study 1, $n=87$) and Ambient Air Comparison Study (Study 9, $n=49$) documented bacterial amplification across all tested units. The methodology was consistent: sterile petri dishes exposed to dryer output air for a fixed interval, incubated, and colonies counted.
146. One hundred thirty-six consecutive tests showed amplification. No dryers reduced bacterial load. The probability of this occurring by chance is $p < 10^{-41}$. This is not sampling variation. This is a physical property of the devices.

147. Products certified as "hygienic" amplify bacterial contamination by 50 to 110 times compared to ambient room air, literally the opposite of hygienic. Defendants certified an industry built on hand hygiene that makes hands less hygienic than doing nothing.
148. The test remains simple: remove the dryer from the room. Is it more or less sanitary?

Water Spray: The Absent Standard

149. Plaintiff has created a novel but accurate distinction that brings clarity to the current state of the hand dryer market. There are Dispersal-type dryers and Capture-type dryers.
150. Capture dryers collect water in receptacles for disposal. Very few remain in use.
151. Dispersal dryers have no mechanism for processing the water after the output dryer air jets hit it. They spray it everywhere in a truly bizarre design parameter that everyone sees and nobody seems to have noticed is a problem—until now.
152. NSF P335 Section 6.5 imposes detailed, strict disinfection requirements on capture dryers—and zero requirements on dispersal dryers.
153. The UL PCR and the NSF P335 have no standards for the water coming off of hands, the necessary last phase of the product operational system cycle. It is as though a car company passed emission tests and the test protocol never checked where the exhaust went.
154. Dispersal dryers operate at air velocities of 400 to 690 kilometers per hour—hurricane force. At these speeds, water is mechanically stripped from hands and thrown into the room with very little evaporation. The water sprays onto walls, floors, users, and into the air as aerosol.

155. Plaintiff's baseline water study documented 7.30 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 goes somewhere. Defendants' standards provide no specification for where.
156. Plaintiff's Visual Dispersal Study documented where the water goes. High-speed video captured water destinations including: Adjacent walls and floor surfaces. User clothing: torso, forearms, thighs, shoes. User face and hair from upward air dispersion. Airborne mist visible for 3+ seconds after use.
157. Paper towels showed a single destination: absorption into the towel material, followed by disposal. Minimal environmental dispersal.
158. Remove the dryers from the room and replace them with white paper towels. What is the impact on the restroom and the users?
159. The dispersed water cannot be sterile. Plaintiff's microbial studies documented 50-110× bacterial amplification in dryer output air. The contamination measured on petri dishes arrived via the air. That same contaminated air strikes wet hands and picks up water droplets, carrying contamination to every surface and person in range.
160. Every user's output becomes every other user's input.
161. Poor washing plus a paper towel equals contamination contained in the towel and disposed in trash. Poor washing plus dispersal dryer equals contamination broadcast to surfaces and people in the space.
162. At 150 million daily dispersal-type dryer uses in the United States, water dispersal occurs at population scale: Daily: 2.8 to 4.6 million cups of water sprayed onto users, walls, floors, and fixtures. Annually: 1.0 to 1.7 billion cups.

163. That is not incidental moisture. It is systematic environmental contamination at industrial scale.
164. Neither NSF P335 nor the UL PCR contains any standard, test, measurement, or specification for water dispersal. The primary output of the device—where the water goes—is completely unaddressed.
165. Remove the dryers from the room. Is it more or less hygienic?
166. Physical Environmental Mold Contamination: The Plume of Filth
167. Plaintiff's Wandering Plume of Filth Study documented visible contamination patterns beneath hand drying equipment. Plaintiff randomly entered 127 public restrooms and visually examined the areas directly beneath hand dryers and paper towel dispensers.
168. Statistical comparison: $\chi^2 = 72.0$, $p < 0.001$; Ratio: Dispersal dryers show 8× higher mold rates than white paper towel installations (100% vs. 13%).
169. Every dispersal-type hand dryer installation exhibited visible wall mold. One hundred percent. The contamination pattern radiates outward from the device, originating narrow at the unit and fanning outward as it descends—consistent with water dispersal physics.
170. Independent laboratory analysis by Hayes Microbial Consulting (EPA Laboratory ID: VA01419) confirmed fungal presence in wall contamination samples. Species identified include Aspergillus/Penicillium, Alternaria, Cladosporium, and Chaetomium—genera associated with respiratory sensitization and opportunistic infections.
171. The plume is a persistent physical presentation that correlates perfectly with the microbial and fungal findings in the dryer output air. The fact that mold is found at 100% of dryer installations is an indictment of the entire design concept, built into the certification standards that never address it.

172. Critical finding: The contamination affects everyone who enters the restroom, not just dryer users. A person who uses paper towels, who uses the sink but not the dryer, who enters but uses nothing—all are exposed to the contaminated environment created by the dryer.

The Paper Towel Alternative

173. Plaintiff's paper towel contamination studies produced a novel finding: prior paper towel research never sorted by towel type.
174. White paper towels are statistically equivalent to ambient room air in microbial content. In testing, 55.6% of white towels were completely sterile. The remainder contained 1-2 CFU. Mean contamination approached zero.
175. Brown paper towels are contaminated from the factory. 100% of samples contained microbial colonies. The contamination is intrinsic to the product.
176. The distributions do not overlap. The 75th percentile of white towels falls below the 25th percentile of brown towels. This complete distributional separation is exceptionally rare in biological data.
177. Paper towels dry hands in 20-30 seconds to 0.1g residual moisture—faster than dryers at actual performance. Water is absorbed into the towel and disposed in trash. No dispersal. No aerosol. No plume. No mold.
178. Remove the dryer. Install a white paper towel dispenser. Every problem documented in this complaint disappears.

The Green Energy Catastrophe

179. False drying time claims corrupt every environmental calculation built upon them. Energy consumption is power multiplied by time. When manufacturers claim 8 seconds but products require 70-90 seconds, energy consumption increases by 775-1,025%.

180. Manufacturers claim hand dryers use 3 Wh per dry and produce 85-90% less CO₂ than paper towels. These claims assume 8-12 second drying times. At actual drying times of 70-90 seconds, energy consumption is 17-25 Wh per use and CO₂ emissions equal or exceed paper towels.
181. Using Defendants' own commissioned lifecycle data, the claimed 85-90% environmental advantage disappears entirely. At actual drying times, hand dryers produce CO₂ emissions equivalent to paper towels or 2-3× higher.
182. False times create false energy and CO₂ emissions values, leading to false marketing claims made by manufacturers with explicit attribution to certification by Defendants.
183. Products marketed as environmentally superior consume 7-10 times more energy than claimed and provide no CO₂ advantage over paper towels.

The Causal Chain

184. The false drying time claim is the root cause of environmental contamination and energy/environmental failure. Each step follows inevitably from the one before:
185. Manufacturers claim 8 to 14 second drying times. Actual drying requires 80 to 90 seconds. The claim is false by 500 to 1,000 percent.
186. If a use stops drying at claimed times, 2.5 to 3.5 grams of water remain on hands. That water has been infested with the microorganisms in the dryer output air stream.
187. Carrying that water after dryer use increases microorganism transfer by 1000×.
188. If a user dries until hands are dry—80-90 seconds—microorganism amplifications on the hands increase over room air by 50-110×.

189. Energy and CO₂ production become equal to or greater than that of paper towels.
190. At 400 to 690 km/h air velocity in a Dispersal-type dryer water is violently blown onto walls, floors, users, and into the air as aerosol.
191. Dispersed water carries microorganisms from users' hands and the output air jets, contaminating the room for the users who come after.
192. Continuous deposition grows visible mold in 100% of installations.
193. The restroom becomes a permanent contamination zone. Everyone who enters is exposed, regardless of whether they use the dryer.
194. The hypothetical answers itself. Remove the dryer and every step in this chain disappears.

The Users' Dilemma

195. Users of certified hand dryers face two options, both creating harm.
196. Option one: Use the dryer for the specified 8 to 14 seconds. Leave with wet hands, freshly sprayed with bacteria and fungus. Transfer bacteria to every surface touched thereafter.
197. Option two: Use the dryer for 70 to 90 seconds to actually achieve dry hands. During this extended exposure, breathe air contaminated by liquid aerosols with 50 to 110 times room air microorganisms.
198. A user cannot achieve dry hands without extended exposure to contaminated output or pull out prematurely and leave with wet hands transmitting organisms at a rate 500 times higher than dry hands.
199. Following the rules makes you sick. Every option the certification system provides leads to the same place: elevated contamination exposure.

M. How These Certifications Came to Exist

200. In April 2007, NSF International established NSF P335, titled "Hygienic Commercial Hand Dryers." Section 3.4 defined dry hands as "less than 0.1 g residual moisture." Section 6.3 required 95% compliance across 20 trials. This was the original standard.
201. In 2012, Excel Dryer proposed amending NSF P335 to change the dryness threshold from 0.1 grams to 0.2 grams. NSF rejected this proposal. Dyson's attorneys stated in federal court filings: "Excel proposed to amend NSF P335 to increase the threshold to 0.2g per hand. NSF rejected Excel's proposed amendment."
202. Excel used the rejected standard anyway, advertising compliance under a "modified NSF protocol." SGS testing commissioned by Excel in 2012 applied "a revised version of NSF Protocol P335 Hygienic Commercial Hand Dryers currently being developed and reviewed by NSF"—a version NSF had explicitly rejected.
203. In July 2016, UL Solutions published the Product Category Rules for Hand Dryers with a 0.25 gram threshold—weaker than the proposal NSF had rejected four years earlier. The committee that created this standard was chaired by William Gagnon, Excel's VP and COO. Excel held 4 of 10 manufacturer seats.
204. On July 25, 2017, UL Environment issued Environmental Product Declaration No. 4787137936.102.1 for Excel Dryer's XLERATOR hand dryer certifying 8-second drying time and 3.68 Wh energy consumption.
205. The UL certificate expired in July 2022. Excel did not renew with UL. UL continues to certify hand dryers for other manufacturers.

206. Virginia State Corporation Commission records show: April 26, 2022: Articles of organization filed for "EPD USA LLC" with Anna Lasso as registered agent. July 6, 2022: Articles of amendment changing name to "Smart EPD LLC."
207. At the time of the April 2022 LLC formation, Anna Lasso was either employed by UL Environment or had recently terminated employment there.
208. The timing is significant. Anna Lasso formed EPD USA LLC in April 2022 while UL continued to certify hand dryers for other manufacturers. Hokwang's UL EPD was issued April 1, 2022—the same month Anna Lasso formed her competing company. UL certified Hokwang at 30-35 seconds drying time.
209. On June 23, 2023, Smart EPD issued Certificate No. SmartEPD-2023-002-0006-01 for Excel Dryer's XLERATOR certifying 8-second drying time and 3.68 Wh energy consumption—identical to the expired UL certificate.
210. The trajectory is documented. NSF established 0.1 grams in 2007. Excel proposed 0.2 grams. NSF rejected it. UL created 0.25 grams in 2016. Anna Lasso certified Excel to that standard. All these thresholds remain below actual performance of 2.5-3.0 grams.

N. The 2012 SGS Report

211. SGS Performance Test Report No. 2774929EFF-001, dated September 7, 2012, was filed as Exhibit B to Excel's motion for preliminary injunction in federal court. The report is the foundational test data for all subsequent lifecycle assessments and certifications.
212. The report tested five hand dryer models. Samples were received between June 29 and August 16, 2012.
213. 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 incorporating input from the project sponsor." The "project sponsor" was Denis Gagnon, Excel's President.

- 214. 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."
- 215. 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," SGS doubled the allowable moisture. This was the proposal NSF had rejected.
- 216. Table 1 of the SGS report reveals the test results: Excel Dryer XL-BW at 12 seconds: 0.186 grams average residual moisture. Excel Dryer XL-BW at 15 seconds: 0.108 grams average residual moisture.
- 217. SGS certified these results: XLERATOR at 0.186 grams at 12 seconds. The 462 independent trials document 2.5 to 3.0 grams at the same intervals—1,350 to 1,600 percent higher than SGS results.
- 218. Excel's current marketing claims 8 seconds. Denis Gagnon testified under oath to 12 seconds. The SGS report tested at 12 and 15 seconds. The 8-second claim has no published test data supporting it.

O. ISO 14025 Independence Violation

- 219. ISO 14025:2006, Section 8.1.3 requires that EPD verification be performed by an independent verifier "independent of the organization, the EPD, and any parties that have a commercial interest in the EPD."
- 220. The SmartEPD certificate for XLERATOR Hand Dryer lists Anna Lasso in three capacities on Page 2: as contact for Smart EPD, the EPD Program Operator; as Independent Critical Reviewer; and as Independent External Verifier.

- 221. Smart EPD LLC was incorporated in Virginia in April 2022. Four months later, Smart EPD issued its first major certification: the Excel XLERATOR EPD. Excel was not a new client relationship. Anna Lasso had worked directly with William Gagnon for years.
- 222. The TrueNorth Collective LCA underlying the SmartEPD certificate was also reviewed by Anna Lasso as panel chair.
- 223. ISO 14025 requires three layers of independence: Program Operator, LCA Reviewer, External Verifier. One person occupies all three roles. That is not compliance with ISO 14025. That is the opposite of ISO 14025.

O. The Excel v Dyson Litigation

- 224. In December 2012, Excel Dryer sued Dyson in the United States District Court for the District of Massachusetts, Case 3:12-cv-30211-MAP, producing sworn testimony and documentary evidence regarding drying time standards and test results.
- 225. Excel represented to the court that its SGS testing used "a revised version of NSF Protocol P335 currently being developed." Dyson's attorneys revealed that NSF had rejected Excel's proposed amendment.
- 226. Dyson's memorandum stated explicitly: "The Xlerator is not NSF Certified, meaning NSF has not independently verified that it passes NSF P335 and dries hands within 15 seconds." This remains true today.
- 227. On February 22, 2013, Dyson filed counterclaims alleging: "The claim that the Xlerator dries hands completely in 10-15 seconds is false."
- 228. Both companies' sworn claims are now proven false. Plaintiff's 462 trials demonstrate that neither product achieves threshold dryness until 70-90 seconds.

229. The case settled before discovery. Neither company wanted its testing methodology examined under oath.

P. The Document That Proves It

230. Certificate SmartEPD-2023-002-0006-01, issued June 23, 2023, certifies the XLERATOR Hand Dryer. The EPD Holder is Excel Dryer.
231. EPD Program Operator: Smart EPD, with Anna Lasso as contact.
Independent critical review: Anna Lasso. Independent External Verifier: Anna Lasso.
232. ISO 14025 requires independence between the program operator, the LCA reviewer, and the external verifier. These are meant to be separate parties providing independent oversight. On this certificate, one person occupies all three roles.
233. Page 3 of the certificate states: "The XLERATOR dries hands completely in 8 seconds."
234. Page 13 states: "Dry Time and Energy Use: Tests were performed by SGS International on standard XLERATOR Hand Dryer with 0.8 inch nozzle to 0.25g or less of residual moisture, pursuant to UL Environment Global Product Category Rules for Hand Dryers."
235. The certificate explicitly documents testing to 0.25 grams—the UL PCR threshold that is 2.5 times weaker than NSF P335.
236. The TrueNorth LCA underlying this certificate states: "Dry time, power and energy consumption are based on the average test results provided by Excel." No independent verification.

237. The same TrueNorth LCA states: "Although hygiene is another purpose for hand dryers that is of interest to the scientific community, hygiene is not considered in this study."
238. Excel Dryer's current marketing claims XLERATOR dries hands in 8 seconds. No test data in the evidentiary record supports this claim. The 2012 SGS report tested at 12 and 15 seconds. Denis Gagnon testified under oath that 12 seconds was accurate.
239. Plaintiff's independent trials show actual drying time to 0.1 grams is 70-90 seconds across all manufacturers.
240. The claim has propagated through the certification ecosystem without ever being validated. The actual performance of all production hand dryers has never not been 70-90 seconds to 0.1g of residual water.
241. Defendants can replicate their certified results for the Court in minutes. Or not.

Q. Plaintiff's Harm

242. Plaintiff installed approximately 8,000 XLERATOR hand dryers across approximately 2,000 retail stores based on Defendants' false representations and certifications. The devices do not perform as represented. They do not dry hands in 8 seconds. They do not provide hygienic hand drying. They do not deliver the energy savings or environmental benefits claimed. Every unit installed based on Defendants' false certifications represents economic loss.
243. Plaintiff suffered direct economic harm including: the purchase price of approximately 8,000 XLERATOR units; installation costs for national deployment through the RMSe partnership; excess energy costs from dryers operating 7-10 times longer than claimed across a high-traffic retail

environment; and ongoing remediation costs to address water damage and mold contamination at Plaintiff's facilities.

244. Plaintiff suffered property damage distinct from the hand dryers themselves. Independent research documented visible mold colonization in 100% of dispersal-type hand dryer installations. Across Plaintiff's approximately 2,000 stores, the walls and floors adjacent to hand dryers have been subjected to continuous water dispersal with every use. The cumulative damage—water staining, mold growth, surface degradation—requires remediation, repair, and in some cases replacement of building materials.
245. Plaintiff suffered reputational harm. Target has built its brand on providing a clean, safe, welcoming shopping environment. Defendants' false certifications induced Plaintiff to install equipment that degrades rather than maintains restroom hygiene. When Defendants' false claims become public, Plaintiff faces reputational consequences for having installed products that amplify contamination rather than reduce it.
246. Plaintiff's customers and employees have been exposed to bacterial and fungal contamination at levels 50-110 times higher than ambient air with every use of Plaintiff's restroom facilities. Across approximately 2,000 high-traffic retail locations serving millions of customers annually, the cumulative exposure is substantial.
247. Plaintiff's facilities team made a national purchasing decision affecting 2,000 stores based on Defendants' certifications. That reliance was reasonable. That reliance was induced by Defendants' false representations. The harm flows directly from Defendants' conduct.
248. Plaintiff rejected its own products based on Defendants' false certifications. Target sells paper towels and paper towel dispensers. Defendants' certifications represented that hand dryers were superior—more hygienic,

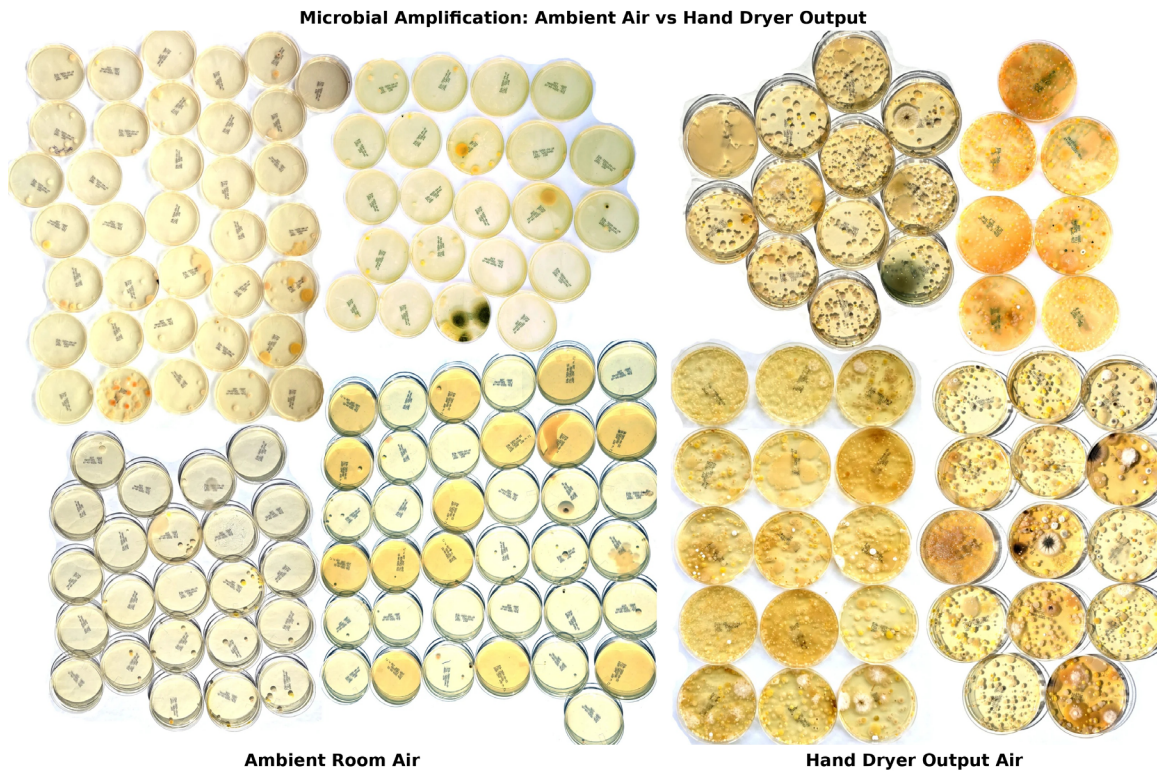
more energy efficient, more environmentally responsible. Plaintiff chose hand dryers over paper towels based on those representations. The representations were false. Plaintiff was induced to favor a competitor's product over its own merchandise, losing both the margin on paper towel sales to its own facilities and the operational benefits that paper towels would have provided.

R. Timeliness

249. Defendants' false representations are ongoing. Defendants' website, marketing materials, technical data sheets, and EPD certifications containing the false claims identified herein remain publicly available and continue to be used to market the products.
250. Plaintiff has purchased replacement units in reliance on Defendants' same false claims within the applicable limitations period, creating a continuing relationship and continuing violations.
251. The scientific research establishing the specific nature and magnitude of failures described herein was conducted between August 2023 and December 2025. The research findings were published with DOIs beginning in 2024, providing the first publicly available documentation of these failures.
252. This action is timely under the discovery rule, the continuing violation doctrine, and principles of equitable tolling.

S. The Hypothetical

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



V. CAUSES OF ACTION

COUNT I

VIOLATION OF MASSACHUSETTS GENERAL LAWS CHAPTER 93A, § 11

(Unfair and Deceptive Trade Practices – Against All Defendants)

254. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
255. All Defendants are persons engaged in the conduct of trade or commerce within the meaning of M.G.L. c. 93A, § 11. The actions and transactions constituting the violations alleged occurred primarily and substantially within the Commonwealth: Excel's representations issued from its East Longmeadow headquarters, the certified products were manufactured in Massachusetts, and the certifier Defendants' services were directed at and performed for a Massachusetts manufacturer.
256. Plaintiff is a person engaged in the conduct of trade or commerce who has suffered loss of money or property as a result of Defendants' conduct.
257. Defendants' conduct as described herein constitutes unfair and deceptive acts and practices in violation of M.G.L. c. 93A, § 2, including but not limited to: (a) making false and misleading statements regarding product performance; (b) issuing false certifications regarding drying time, energy consumption, and hygiene; (c) failing to disclose known material facts regarding product failure; (d) representing products as compliant with standards when they are not; (e) creating, issuing, and maintaining certifications without adequate verification.
258. Defendants' violations were willful and knowing. Excel had access to the UL PCR Figure 2 data establishing that 8-second claims were impossible. UL

published that data in the standard it created. SmartEPD and Anna Lasso certified claims they knew or should have known were false. SGS tested at 12-15 seconds while enabling marketing claims of 8 seconds.

259. As a direct and proximate result of Defendants' unfair and deceptive conduct, Plaintiff has suffered ascertainable losses including the purchase price of products, excess energy costs, remediation costs, and property damage.
260. Plaintiff is entitled to recover actual damages, double or treble damages pursuant to M.G.L. c. 93A, § 11, reasonable attorneys' fees and costs.

COUNT II

BREACH OF EXPRESS WARRANTY

(M.G.L. c. 106, § 2-313 – Against Excel)

261. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
262. Defendant Excel made express warranties to Plaintiff through affirmations of fact and promises, including: (a) that XLERATOR hand dryers dry hands in 8 seconds; (b) that the products are hygienic; (c) that the products consume 1.7 Wh per use; (d) that the products reduce carbon footprint by 88% compared to paper towels; (e) that the products provide 95% cost savings compared to paper towels.
263. These affirmations of fact and promises became part of the basis of the bargain between Plaintiff and Defendant.
264. Defendant's products do not conform to these express warranties. Independent testing establishes that: (a) the products require 70-90 seconds to achieve claimed dryness; (b) the products amplify contamination rather

than providing hygienic drying; (c) actual energy consumption is 17-25 Wh per use; (d) CO₂ emissions equal or exceed paper towels; (e) no cost savings exist at actual operational parameters.

265. As a direct and proximate result of Defendant's breach, Plaintiff has suffered damages.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(M.G.L. c. 106, § 2-314 – Against Excel)

266. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

267. Defendant Excel is a merchant with respect to commercial hand dryers.

268. An implied warranty of merchantability arose in connection with Plaintiff's purchase.

269. To be merchantable, goods must be fit for the ordinary purposes for which such goods are used.

270. Defendant's products are not fit for the ordinary purposes for which commercial hand dryers are used—namely, drying hands hygienically and efficiently.

271. As a direct and proximate result of Defendant's breach, Plaintiff has suffered damages.

COUNT IV

BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE

(M.G.L. c. 106, § 2-315 – Against Excel)

272. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
273. At the time of contracting, Defendant had reason to know the particular purpose for which Plaintiff required commercial hand dryers—namely, providing hygienic, efficient hand drying in retail facilities.
274. Defendant had reason to know that Plaintiff was relying on Defendant's skill and judgment to furnish suitable goods.
275. Plaintiff relied on Defendant's skill and judgment in selecting Defendant's products.
276. Defendant's products are not fit for the particular purpose for which Plaintiff required them.
277. As a direct and proximate result of Defendant's breach, Plaintiff has suffered damages.

COUNT V

NEGLIGENT DESIGN

(Against Excel)

278. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
279. Defendant Excel designed, manufactured, distributed, and sold the XLERATOR hand dryers at issue.

280. Massachusetts law addresses defective design through negligence and through the implied warranty of merchantability, G.L. c. 106, § 2-314, which performs the function of strict products liability. The defect is the design itself, not a manufacturing flaw. The XLERATOR products, as designed, are incapable of achieving their specified performance. The design relies on high-velocity air to remove water but physically cannot dry hands to threshold levels in claimed times.
281. A safer alternative design exists: paper towel dispensing systems. Paper towels remove both loose and bound water through absorption, achieving threshold dryness in 20-30 seconds without dispersing water or amplifying contamination.
282. The design defect caused damage to property other than the products themselves, including walls, floors, and fixtures damaged by water dispersal and mold colonization.
283. As a direct and proximate result of the design defect, Plaintiff has suffered damages.

COUNT VI

NEGLIGENT FAILURE TO WARN

(Against Excel)

284. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
285. Defendant had a duty to warn users and purchasers of known or reasonably knowable risks.

286. Defendant's products present risks that are not obvious, including: microbial amplification, water dispersal causing property damage, and mold colonization.
287. Defendant failed to provide adequate warnings of these risks.
288. Defendant knew or should have known of these risks through reasonable testing.
289. As a direct and proximate result of Defendant's failure to warn, Plaintiff has suffered damages.

COUNT VII

NEGLIGENT MISREPRESENTATION

(Against Excel)

290. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
291. Defendant Excel made misrepresentations of material fact regarding drying time, energy consumption, hygiene benefits, environmental impact, and cost savings.
292. Defendant made these misrepresentations under circumstances in which Defendant should have known of their falsity. Defendant had access to UL PCR Figure 2 data showing 8-second drying produces 0.456 grams residual moisture—82% over threshold.
293. Defendant made these misrepresentations with the intent to induce purchases.
294. Plaintiff justifiably relied on Defendant's misrepresentations.
295. As a direct and proximate result, Plaintiff has suffered damages.

COUNT VIII

UNJUST ENRICHMENT

(Against All Defendants)

296. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
297. Plaintiff conferred a benefit on Defendants by purchasing products and paying prices that included certification fees.
298. Defendants accepted and retained this benefit.
299. Defendants' retention of this benefit under these circumstances is unjust.
300. Plaintiff is entitled to restitution.

THE CERTIFIER COUNTS

301. The following Counts are brought against the certifier Defendants on both grounds set out in the Application of the Certification Chain above: the contract ground — the certifiers' obligations extended to Plaintiff as the purchasing party who paid the certification premium carried in the per-unit price — and, independently and in the alternative, the ground of Restatement (Second) of Torts § 552, which Massachusetts adopted in *Nycal Corp. v. KPMG Peat Marwick LLP*, 426 Mass. 491 (1998). The commercial purchasers of certified products are the paradigm class for whose guidance certification information is supplied, and no privity is required. *Toman v. Underwriters Laboratories, Inc.*, 532 F. Supp. 1017 (D. Mass. 1982), states the boundary these Counts respect: a certifier answers for its own negligence, not vicariously for the manufacturer's — and it is the certifiers' own products, the standards and the certifications, that are at issue here.

COUNT IX

NEGLIGENT MISREPRESENTATION

(Against UL Solutions)

302. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
303. UL made false representations of material fact by creating and publishing the Product Category Rules for Hand Dryers; by certifying Excel's XLERATOR under EPD No. 4787137936.102.1 with specifications that UL's own PCR Figure 2 data showed were impossible; and by publishing Figure 2 while certifying products that its own data proved could not comply.
304. UL made these representations in the course of its business and in transactions in which it had a pecuniary interest.
305. UL failed to exercise reasonable care in creating standards, conducting testing, and issuing certifications.
306. Plaintiff justifiably relied on UL's certifications.
307. UL's negligent misrepresentations were the direct and proximate cause of Plaintiff's damages.

COUNT X

NEGLIGENT MISREPRESENTATION

(Against SmartEPD and Anna Lasso)

308. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

309. SmartEPD and Anna Lasso made false representations of material fact by issuing Environmental Product Declaration No. SmartEPD-2023-002-0006-01 certifying that XLERATOR dries hands in 8 seconds; by occupying all three verification roles in violation of ISO 14025; and by certifying claims without independent verification.
310. SmartEPD and Anna Lasso made these representations in the course of their business.
311. SmartEPD and Anna Lasso failed to exercise reasonable care in issuing certifications.
312. Plaintiff justifiably relied on SmartEPD certifications.
313. SmartEPD's and Anna Lasso's negligent misrepresentations were the direct and proximate cause of Plaintiff's damages.

COUNT XI

NEGLIGENT MISREPRESENTATION

(Against SGS)

314. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
315. SGS made false representations of material fact by issuing Performance Test Report No. 2774929EFF-001 purporting to validate hand dryer performance; by testing at 12 and 15 seconds while manufacturers claimed 8 seconds; and by using a rejected NSF standard while representing it as "currently being developed."
316. SGS made these representations in the course of its business.

317. SGS failed to exercise reasonable care in conducting testing and issuing reports.
318. Plaintiff justifiably relied on SGS testing data.
319. SGS's negligent misrepresentations were the direct and proximate cause of Plaintiff's damages.

COUNT XII

NEGLIGENT UNDERTAKING (RESTATEMENT § 324A)

(Against UL, SmartEPD, Anna Lasso, and SGS)

320. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
321. Defendants UL, SmartEPD, Anna Lasso, and SGS voluntarily undertook to perform certification and testing services for the benefit of commercial purchasers including Plaintiff.
322. Defendants knew or should have known that Plaintiff and other commercial purchasers would rely on their certifications and test reports.
323. Defendants failed to exercise reasonable care in performing their undertaking.
324. Plaintiff relied on Defendants' undertaking to Plaintiff's detriment.
325. Defendants' negligent undertaking was the direct and proximate cause of Plaintiff's damages. To the extent Restatement (Second) of Torts § 324A is read to require physical harm, this Count rests on the physical harm pleaded above — the water dispersal, mold colonization, and property damage at Plaintiff's facilities — and the economic losses are pleaded independently under the misrepresentation and Chapter 93A Counts.

COUNT XIII

NEGLIGENT STANDARD CREATION

(Against UL Solutions)

326. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
327. UL voluntarily undertook to create standards for hand dryer performance through the Product Category Rules for Hand Dryers.
328. UL knew or should have known that commercial purchasers including Plaintiff would rely on products certified under these standards.
329. UL failed to exercise reasonable care in creating standards by allowing manufacturers to dominate the standards committee (80% manufacturer representation); by setting thresholds (0.25 grams) that its own Figure 2 data showed could not be achieved at claimed times; by creating standards that omit all water dispersal specifications; and by enabling certifications of physically impossible claims.
330. UL's negligent standard creation was the direct and proximate cause of Plaintiff's damages.

COUNT XIV

EPD VERIFICATION NEGLIGENCE

(Against SmartEPD and Anna Lasso)

331. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
332. SmartEPD and Anna Lasso voluntarily undertook to verify Environmental Product Declarations for hand dryers.

333. SmartEPD and Anna Lasso failed to exercise reasonable care in performing verification by certifying 8-second drying times without independent testing; by occupying all three verification roles in violation of ISO 14025; and by certifying the same specifications that UL would not renew.
334. SmartEPD's and Anna Lasso's negligent verification was the direct and proximate cause of Plaintiff's damages.

COUNT XV

DECLARATORY AND INJUNCTIVE RELIEF

(Against All Defendants)

335. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
336. An actual controversy exists between Plaintiff and Defendants regarding the accuracy of Defendants' certifications and representations.
337. Plaintiff seeks a declaratory judgment that: Defendants' certified drying time specifications are false; Defendants' certified energy consumption specifications are false; Defendants' hygiene claims are false; SmartEPD certifications violate ISO 14025 independence requirements.
338. Plaintiff seeks injunctive relief requiring Defendants to: withdraw, correct, or revoke false certifications; cease marketing products with false performance claims; cease certifying products without independent verification.
339. Plaintiff has no adequate remedy at law. Defendants' false certifications remain active and continue to cause harm.

VI. DAMAGES

- 340. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damages including but not limited to:
- 341. The purchase price of Defendant's products;
- 342. Excess energy costs resulting from actual operational times substantially exceeding claimed times;
- 343. Costs of repairing or replacing walls, floors, and fixtures damaged by water dispersal and mold colonization;
- 344. Costs of remediation, cleaning, and ongoing maintenance;
- 345. Loss of the benefit of the bargain;
- 346. Such other incidental and consequential damages as may be proven at trial.

VII. JURY DEMAND

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

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Target Corporation respectfully requests that this Court enter judgment in its favor and against all Defendants as follows:

- 348. Compensatory damages in an amount to be proven at trial;
- 349. Double or treble damages pursuant to M.G.L. c. 93A, § 11;
- 350. Reasonable attorneys' fees and costs pursuant to M.G.L. c. 93A, § 11;
- 351. Pre-judgment and post-judgment interest as permitted by law;
- 352. Declaratory relief as specified in Count XV;

353. Injunctive relief requiring Defendants to correct false marketing claims and certifications;

354. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

TARGET CORPORATION

By its attorneys,

[Attorney Name]

[Bar Number]

[Firm Name]

[Address]

[City, State ZIP]

[Telephone]

[Email]

Dated: _____, 2026

NOTE TO COUNSEL — FORUM, CHOICE OF LAW, AND THE RETAIL DIMENSION

This note is addressed to counsel evaluating this complaint.

Forum. This complaint is drafted for the District of Massachusetts. Complete diversity exists — Target (Minnesota) faces no Minnesota defendant — so federal court is available, and Massachusetts is chosen deliberately: Excel resides here, its representations issued from here, the certifier Defendants' services were directed

at a Massachusetts manufacturer (the personal-jurisdiction theory is pleaded in the jurisdiction section), and Chapter 93A's "primarily and substantially" element is pleaded on Excel's Massachusetts conduct. The District of Minnesota is the natural alternative — venue and personal jurisdiction are straightforward where the products were deployed and the harm was felt — but Minnesota substantive law carries a complication counsel should weigh: Minn. Stat. § 604.101 bars common-law misrepresentation claims between merchants relating to goods sold unless the misrepresentation was intentional or reckless, which this complaint, by design, does not plead against the manufacturer. Massachusetts law carries no equivalent bar, and Nycal supplies the § 552 foundation for the certifier Counts.

The retail dimension. Target sells Excel products through its retail channels and sells paper towels and dispensers as its own merchandise — facts pleaded above as reliance and harm. The Counts are deliberately scoped to Target's installed fleet and plead nothing concerning Target's own retail sales of hand dryers. Counsel should nonetheless evaluate three retail-side matters this complaint deliberately leaves open: Target's potential exposure as a seller of certified products to downstream purchasers, which is itself a reason to resolve the certification question promptly; indemnification and tender rights against Excel under Target's vendor agreements; and a retailer-reliance damages theory — the decision to stock and sell certified products is certification reliance — available should counsel choose to plead it.

The interlocking relationships. The facts pleaded describe a small and interlocking world: a manufacturer's executive chairing the committee that wrote the rule governing his own product's declarations; the rule's project manager becoming, within months, the program operator, independent critical reviewer, and independent external verifier of the declaration issued under it; and testing performed under a standard its author had rejected. These facts are pleaded individually and are independently actionable. No fraud or collusion is pleaded,

because the internal communications that would establish coordination as a matter of proof are within the Defendants' exclusive possession. The Counts, as pleaded, open those records.

TABLE OF AUTHORITIES

CONTROLLING (Massachusetts and federal): *Nycal Corp. v. KPMG Peat Marwick LLP*, 426 Mass. 491 (1998) (§ 552); M.G.L. c. 93A, §§ 2, 11; M.G.L. c. 106, §§ 2-313, 2-314, 2-315; *Toman v. Underwriters Laboratories, Inc.*, 532 F. Supp. 1017 (D. Mass. 1982); 28 U.S.C. §§ 1332, 1391.

PERSUASIVE: *Hempstead v. General Fire Extinguisher Corp.*, 269 F. Supp. 109 (D. Del. 1967); *Hanberry v. Hearst Corp.*, 276 Cal. App. 2d 680 (1969); *Brand Marketing Group LLC v. Intertek Testing Services, N.A.*, 801 F.3d 347 (3d Cir. 2015); *Warren Technology, Inc. v. UL LLC*, 962 F.3d 1324 (11th Cir. 2020); *Idaho Potato Commission v. M & M Produce Farm & Sales*, 335 F.3d 130 (2d Cir. 2003); *The T.J. Hooper*, 60 F.2d 737 (2d Cir. 1932); *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270 (Pa. 2005). SECONDARY: Restatement (Second) of Torts §§ 552, 324A; Restatement (Second) of Contracts §§ 4, 19. STANDARDS: UL PCR for Hand Dryers (2016); NSF Protocol P335; ISO 14025. A filing party should confirm and supplement Massachusetts authority for each Count before filing.

EXHIBITS

Journal Preprints

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

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

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

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

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

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

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

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

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

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

Complete List of Testing Data Files

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

Dryer Time Test Results Graphs

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

Petri Dish Images

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

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

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

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

Plume of Filth Images

[EXHIBIT-Q] Hand Dryer Plume of Filth Images

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

Comprehensive summary articles

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

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

Lab Testing

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

Evidence of Plaintiff Exposure

[EXHIBIT-V] [Reconceived for Plaintiff — Target’s procurement and facilities records: the XLERATOR deployment across approximately 2,000 stores, prices paid, installation and energy records. Plaintiff to supply underlying records.]

Standards documents

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

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

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

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

Certifications

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

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

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

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

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

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

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

[EXHIBIT-HH] XLERATOR LEED v4.1 Document

[EXHIBIT-II] DYSON LEED May 2014 Document

Collusion Network Structures

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

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

Defendant Source Documents

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

Journalistic Industry Analysis and History

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

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

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

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

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

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

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

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

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

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

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

ITC Complaint

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

False Claims Summary Documents

[EXHIBIT-WW] False Advertising Claims Analysis Dyson

[EXHIBIT-XX] False Advertising Claims Analysis Excel

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

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

Global Dryer Statistical Estimates

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

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

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

Hokwang Dryer Product Sheets, UL

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

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

Journal Preprint

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

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

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

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

[EXHIBIT-JJJ] Screenshot False Advertising Claims Supporting Material

[EXHIBIT-KKK] Grand Central Terminal Excel Case Study

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

[EXHIBIT-MMM] Northwestern University Hospitals Excel Case Study

[EXHIBIT-NNN] Seabury Excel Case Study

[EXHIBIT-OOO] USDA Excel Case Study

[EXHIBIT-PPP] Dyson Energy Saving Signs

[EXHIBIT-QQQ] Excel Energy Savings Signs

[EXHIBIT-RRR] Gia AIRMID study

[EXHIBIT-SSS] Xlerator Hygiene Technical Data Sheet

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