

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

EXCEL DRYER, INC., a Massachusetts corporation,

UL SOLUTIONS INC., a Delaware corporation,

SMART EPD LLC, a Virginia limited liability company,

ANNA LASSO, individually,

SGS NORTH AMERICA INC., a New Jersey limited liability company,

Defendants.

Civil Action No. _____

COMPLAINT

JURY TRIAL DEMANDED

I. INTRODUCTION

A. The Test

1. The claims made in this case can be verified effortlessly by anyone in a few minutes. They can be experienced directly, without scientific equipment, without expert testimony, without specialized knowledge. Visit any public restroom equipped with an electric hand dryer claiming compliance with or certified by the NSF P335 or UL PCR standards. Wash your hands. Place them in the dryer for 15 seconds—the least stringent drying time standard among all claims made by the Defendants. We begin by giving Defendant 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 THE UNITED STATES 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. The United States of America, through the Department of Justice, brings this action against Excel Dryer, Inc. and the certification bodies that enabled its false claims—UL Solutions Inc., Smart EPD LLC, Anna Lasso, and SGS North America Inc.—for presenting false claims and false statements to the Federal Government in connection with sales of XLERATOR hand dryers to federal agencies including the United States Department of Agriculture, the United States Department of Transportation, the United States Department of Defense, the United States Department of Energy, and United States Embassies worldwide.

4. Defendant Excel manufactures and sells commercial hand dryers under the XLERATOR brand. Defendant Excel holds a General Services Administration Schedule Contract, making Defendant Excel's products available for purchase by all federal agencies. To obtain and maintain this contract, Defendant Excel submitted product specifications to the Federal Government representing that XLERATOR hand dryers achieve complete hand drying in 8 seconds with energy consumption of 1.7 watt-hours per use, while providing a "hygienic hand drying solution" that delivers "95% cost savings versus paper towels."
5. Every one of these specifications is false.
6. Independent scientific testing conducted between 2023 and 2025—comprising eleven peer-reviewed studies, 1,500 individual measurements, 409 drying trials, and 136 consecutive microbial tests—establishes that Defendant Excel's hand dryers do not dry hands at claimed times, do not consume energy at claimed rates, do not provide hygienic outcomes, and do not deliver claimed cost savings. The products fail every performance dimension by factors of 6 to 50.
7. The Federal Government relied on Defendant Excel's false specifications to make procurement decisions. The United States Department of Agriculture installed approximately 24 XLERATOR hand dryers throughout its Washington, D.C. complex based on Defendant Excel's representations regarding drying time, hygiene, and cost savings. USDA officials publicly endorsed Defendant Excel's products, stating the dryers would "improve bathroom hygiene" and eliminate waste—statements that were not independent validation but the recitation of Defendant Excel's representations by a federal agency that did not know they were false.
8. Defendant Excel then published USDA's induced endorsement as a marketing case study on Defendant Excel's website, using the credibility of a Cabinet-level federal agency to induce further purchases by state governments, municipalities, universities, hospitals, and private institutions. The case study remains live and accessible. The false representations continue.

D. The Enablers

9. Defendant 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 federal procurement decisions were the product of an ecosystem that validated without verifying.
10. 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. Defendant Excel held four of ten manufacturer seats. William Gagnon of Defendant Excel chaired the committee. The standard-setters were the parties whose products would be measured against the standard.
11. 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 Defendant Excel's proposal to change NSF P335 from 0.1 grams to 0.2 grams. When Defendant Excel could not weaken one standard, it helped create a weaker one.
12. From 2017 to 2022, UL Environment certified Defendant 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.
13. 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."

14. In April 2022—the same month Hokwang received a UL EPD at 30-35 seconds drying time—Defendant Anna Lasso formed EPD USA LLC, later renamed Smart EPD LLC. In July 2022, Defendant Excel's UL certification expired and was not renewed. UL would not certify 8 seconds. In June 2023, Defendant Anna Lasso's company certified Defendant Excel at the identical specifications UL had allowed to lapse: 8-second drying time, 3.68 Wh energy consumption.
15. On the SmartEPD certificate, Defendant 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 with while developing the underlying standard.
16. Defendant SGS tested Defendant Excel's products in 2012 using "a revised version of NSF Protocol P335"—a standard NSF had rejected. Defendant SGS tested at 12 and 15 seconds, not the 8 seconds Defendant Excel markets. Defendant SGS reported 0.186 grams residual moisture at 12 seconds; independent testing documents 2.5 to 3.0 grams at the same interval—a discrepancy of 1,350 to 1,600 percent.
17. The certification network functioned as designed: manufacturers controlled the standards, certifiers validated the claims, and federal contracting officers relied on the apparent independence of the process. The independence was illusory. The certifications were worthless. The reliance was betrayed.
18. The United States seeks treble damages, civil penalties, and injunctive relief under the False Claims Act, 31 U.S.C. §§ 3729-3733, together with damages for breach of contract, unjust enrichment, and negligent misrepresentation against all Defendants.

SAMPLE

II. PARTIES

A. Plaintiff

19. Plaintiff UNITED STATES OF AMERICA brings this action on behalf of itself and all federal agencies that purchased Defendant Excel's products based on false specifications, including but not limited to the United States Department of Agriculture, the United States Department of Transportation, the United States Department of Defense, the United States Department of Energy, and the General Services Administration.

B. Defendant Excel Dryer, Inc.

20. Defendant EXCEL DRYER, INC. is a corporation organized under the laws of the Commonwealth of Massachusetts, with its principal place of business at 357 Chestnut Street, East Longmeadow, Massachusetts 01028. Defendant Excel manufactures, markets, and sells commercial hand dryers under the brand names XLERATOR, XLERATOReco, and ThinAir. Defendant Excel is the holder of GSA Schedule Contract No. [to be identified in discovery], through which Defendant Excel sells products directly to federal agencies. Defendant Excel does business in all fifty states and the District of Columbia.

C. Defendant UL Solutions Inc.

21. Defendant UL SOLUTIONS INC. is a Delaware corporation with its principal place of business at 333 Pfingsten Road, Northbrook, Illinois 60062. Defendant UL created the Product Category Rules for Hand Dryers on July 13, 2016. The PCR establishes a 0.25 gram residual moisture threshold—2.5 times weaker than NSF P335. The UL PCR committee consisted of 10 manufacturer seats and 2 UL representatives. Defendant Excel held 4 of 10 manufacturer seats: William Gagnon, Denis Gagnon,

Tom Koetsch, and Peter Panaratos. William Gagnon, Defendant Excel's VP and COO, chaired the committee. From 2017 to 2022, UL Environment issued Environmental Product Declaration No. 4787137936.102.1 certifying Defendant Excel's XLERATOR Hand Dryer with specifications—8-second drying time and 3.68 Wh energy consumption—that UL's own PCR Figure 2 data proved were physically impossible.

D. Defendant Smart EPD LLC

22. Defendant SMART EPD LLC is a Virginia limited liability company, entity ID 11379451. Defendant 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." On June 23, 2023—eleven months after UL Environment's EPD for Defendant Excel expired without renewal—Defendant Smart EPD issued Environmental Product Declaration No. SmartEPD-2023-002-0006-01 for Defendant Excel's XLERATOR hand dryer with specifications identical to the expired UL certificate: 8-second drying time and 3.68 Wh energy consumption.

E. Defendant Anna Lasso

23. Defendant ANNA LASSO is an individual residing in Virginia. From 2016 to 2022, Defendant 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. On SmartEPD certificates, Defendant Anna Lasso appears in three roles: Program Operator, Independent Critical Reviewer, and Independent External Verifier. ISO 14025 requires these functions to be independent of one another. Defendant Anna Lasso occupies all three roles on certificates she issues for products manufactured by companies she worked with while developing the underlying standard.

F. Defendant SGS North America Inc.

24. Defendant SGS NORTH AMERICA INC. is a Delaware corporation 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, documented hand dryer testing at drying times of 12 and 15 seconds—not the 8 seconds manufacturers claim in marketing.

III. JURISDICTION AND VENUE

25. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1345 (United States as plaintiff), and 31 U.S.C. § 3730(a) (False Claims Act civil actions brought by the Attorney General).
26. This Court has personal jurisdiction over all Defendants. Defendant Excel conducts substantial business throughout the United States, including sales to federal agencies headquartered in this District. Defendant UL Solutions conducts certification activities affecting commerce throughout the United States. Defendants SmartEPD, Anna Lasso, and SGS have purposefully directed their certification and testing activities toward the national market, including federal agencies in this District.
27. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 31 U.S.C. § 3732(a) because a substantial part of the acts giving rise to this action occurred in the District of Columbia, including Defendant Excel's marketing to and sales to federal agencies headquartered in this District, including the United States Department of Agriculture located at 1400 Independence Avenue, S.W., Washington, D.C. 20250.

IV. FACTUAL ALLEGATIONS

A. Excel's Products and Marketing Claims

28. Defendant Excel manufactures and sells the XLERATOR line of commercial hand dryers. Defendant Excel markets these products to commercial and institutional purchasers, including federal agencies, with specific claims regarding drying time, hygiene, energy efficiency, cost savings, and environmental impact.
29. Defendant Excel claims its XLERATOR hand dryers dry hands "completely in 8 seconds" or "10 seconds." This claim is false. Independent scientific testing of 409 drying cycles across multiple time intervals established that zero percent of hand dryer uses achieve the claimed dryness at the claimed times. At Defendant Excel's claimed 8-second drying time, hands retain approximately 3.5 to 4.0 grams of residual moisture—35 to 40 times the 0.1 gram specification established by NSF Protocol P335 for "dry hands."
30. Defendant Excel's own data confirms the impossibility of its drying time claims. The UL Product Category Rules for Hand Dryers, published in July 2016, contains Figure 2 on page 35, which shows that at 8 seconds of drying time, residual moisture is 0.456 grams. This data was approved by a committee on which Defendant Excel held four of ten manufacturer seats. Defendant Excel's own committee-approved data proves that 8-second drying is impossible even under Defendant Excel's preferred testing methodology.
31. The UL PCR Figure 2 data cannot be the product of the testing methodology the UL PCR prescribes. Independent testing using the identical UL PCR methodology produces residual moisture of 2.83 to 4.0 grams at 8 seconds—not 0.456 grams. The discrepancy is 6 to 9 times. Same protocol, same time interval, results that differ by an order of magnitude. The Figure 2 data published in the UL PCR does not

reflect the physical performance of production hand dryers tested under the UL PCR methodology.

32. Defendant Excel claims its XLERATOR hand dryers provide "a hygienic hand drying solution" and are "the most hygienic hand drying solution for healthcare facilities." These claims are false. Independent scientific testing established that 100% of tested hand dryers—136 of 136 units across two studies—amplify bacterial and fungal contamination compared to ambient air. The median amplification factor is 49.6 to 110 times ambient contamination levels. The probability that this result occurred by chance is less than one in ten to the forty-first power ($p < 10^{-41}$).
33. Defendant Excel claims its XLERATOR hand dryers use "80% less energy than conventional hand dryers" and provide "95% cost savings when compared to paper towels." These claims are false because they are predicated on the false 8-second drying time.
34. Defendant Excel markets optional HEPA filtration with claims that they "remove 99.999% of viruses" and "99.97% of potentially present bacteria." These claims are misleading. HEPA-filtered hand dryers and non-HEPA hand dryers produced statistically indistinguishable contamination output ($p = 0.803$). The HEPA filter addresses intake air, but contamination originates downstream.

B. Excel's Relationship with the Federal Government

35. Defendant Excel holds a General Services Administration Schedule Contract that makes its products available for purchase by all federal agencies. GSA Schedule Contracts are indefinite delivery, indefinite quantity contracts that establish pre-negotiated prices for products and services.
36. To obtain and maintain a GSA Schedule Contract, contractors must submit accurate product specifications and pricing information. Contractors must certify that the information submitted is current, accurate, and complete. False

statements in connection with GSA Schedule Contracts violate the False Claims Act.

37. Defendant Excel submitted product specifications to the General Services Administration representing that XLERATOR hand dryers achieve the following performance characteristics: drying time of 8 seconds, energy consumption of 1.7 watt-hours per use, "hygienic" operation, and cost savings of 95% compared to paper towels.
38. These specifications were false when submitted and remain false today.
39. The United States Department of Agriculture purchased and installed approximately 24 XLERATOR hand dryers at USDA facilities in Washington, D.C. USDA made this procurement decision based on Defendant Excel's representations regarding drying time, hygiene, energy efficiency, and cost savings.
40. The prices the United States 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 the United States, 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 F below: the party who pays for the certification is owed the certification — and here that party is the United States.
41. Defendant Excel featured USDA in a marketing case study published on Defendant Excel's website. The case study, titled "USDA Goes Green with XLERATOR Hand Dryers," quotes USDA officials praising the products and states that the dryers will "improve bathroom hygiene" and eliminate paper towel waste.
42. USDA's statements in the case study were not independent validation of Defendant Excel's claims. USDA officials relied on Defendant Excel's representations when making procurement decisions and when providing statements for Defendant

Excel's marketing materials. USDA did not independently verify that the products achieved claimed specifications.

43. Defendant Excel used USDA's induced endorsement to market its products to other government agencies, state and local governments, and private institutions. The case study remains accessible on Defendant Excel's website. The false representations continue to induce purchases.

C. The Scientific Evidence

44. Independent scientific research has definitively established that Defendant Excel's claims are false. This research comprises eleven peer-reviewed preprint studies conducted between September 2023 and December 2025, with data archived at Zenodo and Harvard Dataverse. These are not "studies that suggest" or "evidence that indicates." These are physical facts established to scientific certainty.
45. Drying Time Failure: Independent testing of 409 drying cycles established that zero percent of hand dryer uses achieve the NSF P335 specification of 0.1 grams residual moisture at manufacturer-claimed drying times. At Defendant Excel's claimed 8-second drying time, hands retain approximately 3.5 to 4.0 grams of moisture—2,675% above specification. First compliance with the 0.1 gram specification occurs at 70 to 90 seconds. Blouch, R.A. Jr. (2025), Testing the Validity of Hand Dryer Drying Time Specifications, DOI: 10.5281/zenodo.15503698; Blouch, R.A. Jr. (2025), Systematic Performance Failure in Commercial Hand Dryers, DOI: 10.5281/zenodo.17858443.
46. Microbial Amplification: Independent testing of 136 hand dryers across two studies established that 100% of units amplify bacterial and fungal contamination compared to ambient air. The median amplification factor is 49.6 to 110 times ambient levels. The probability that this result occurred by chance is $p < 10^{-41}$. By contrast, white paper towels tested as statistically indistinguishable from ambient air ($p = 0.192$). Blouch, R.A. Jr. (2025), Transmission of Bacteria and Fungus via

Dyson and Xlerator Hand Dryers, DOI: 10.5281/zenodo.15504115; Blouch, R.A. Jr. (2025), Validation of Hand Dryer Microbial Amplification, DOI: 10.5281/zenodo.17859894.

47. Water Dispersal: High-speed video documentation established that dispersal-type hand dryers spray water at high velocity in all directions during every use. Each use disperses 7.3 grams of indeterminately clean/dirty water into the restroom environment. Patrick et al. established that wet hands transfer up to 500 times more bacteria than dry hands. Defendant Excel's products leave hands wet at claimed drying times, creating the precise condition the research warns against—then amplify the contamination and disperse it throughout the room. Blouch, R.A. Jr. (2025), Visual Analysis of Water Dispersion Patterns, DOI: 10.5281/zenodo.15503304; Blouch, R.A. Jr. (2025), Baseline Water Mass on Freshly Washed Hands, DOI: 10.5281/zenodo.17858834.
48. Mold Colonization: Evaluation of 126 restrooms established that 100% of dispersal-type hand dryer installations (50 of 50) exhibited visible mold colonization on adjacent walls and floors, compared to 0% of paper towel dispenser installations (0 of 50). Independent EPA-certified laboratory analysis confirmed fungal presence: *Aspergillus*, *Penicillium*, *Alternaria*, *Cladosporium*, and *Chaetomium*. Blouch, R.A. Jr. (2025), The Wandering Plume of Filth, DOI: 10.5281/zenodo.17860971.
49. Energy and Environmental Claims: Because Defendant Excel's energy and carbon calculations are predicated on the false 8-second drying time, they are mathematically invalid. If actual drying time is 70 to 90 seconds, actual energy consumption is approximately 17 watt-hours per use, not the 1.7 watt-hours Defendant Excel claims. Blouch, R.A. Jr. (2025), An Empirical Refutation of Green Energy Claims, DOI: 10.5281/zenodo.17859198.
50. The Bimodal Mechanism: Water on hands exists in two forms: "loose water" (surface water) and "bound water" (water held by capillary action). Loose water disperses rapidly in 5 to 12 seconds. Bound water resists removal regardless of air

velocity. No amount of air velocity changes this physical constraint. Physics does not negotiate. Blouch, R.A. Jr. (2025), Catastrophic Time-To-Dry Failures, DOI: 10.5281/zenodo.17869567.

D. Unbinding Mixed Law

51. 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 F below, together with the status it confers. That Chain is the analytical spine of this Complaint. Certifiers do not manufacture products. When a certified product fails due to manufacturing defect, the manufacturer is liable. That is not being contested.
52. 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 representations. See Restatement (Second) of Torts § 552 (negligent misrepresentation); § 324A (voluntary undertaking).
53. Defendants authored the standards. Defendants designed the test methods. Defendants controlled the protocols. Defendants issued the certifications. Every element was within Defendants' exclusive control. There is no intervening party to whom fault can be allocated. Defendants bear sole responsibility for the accuracy of certifications bearing their marks.
54. 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 defendants certified 0.1 to 0.25 grams.

Bacterial amplification of 50-110× when defendants certified products as "hygienic." Visible mold colonization in 100% of installations when defendants certified HEPA filtration as protective.

55. Every certified specification is proven false. The independent research data is fully public. The methodology is fully documented. Defendants' underlying test data is not.
56. The published record and the certified specifications cannot both be true, and only Defendants' own files — the test data behind the certifications — can say which. The record is public and fully documented; Defendants' underlying data is not, and this Complaint is how it is obtained. Defendants remain free to present evidence that their certifications are accurate. Absent such public evidence, no genuine dispute of material fact exists.

E. The Science Is The Product

57. 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 transfer.
58. 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 sale depends on it.
59. 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 in their own marketing. They use the science to sell the products. They are bound by the science when the products fail. They cannot claim ignorance of the science. That is the reason these products exist.

F. The Certification Chain

THE CERTIFICATION CHAIN — COMPLETE SUPPORTING BRIEF

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

Two features of this brief bear on the United States'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. the United States's position is stronger and sits earlier in the chain. the United States 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 the United States 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 the United States. 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 the United States is the purchaser, it stands on both grounds. A reader satisfied of these two propositions may proceed directly to the the United States application and the counts that follow; the brief is provided in full for the

reader who wishes to see the whole demonstration.

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

PURPOSE OF THIS MEMORANDUM

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

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

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

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

Two propositions are tested at the end of the chain by subtraction. Remove the mark, and the certifier's relationship with the manufacturer is untouched while everything downstream disappears. Remove the user, and the certified event itself ceases to exist —

there is nothing to certify, no reason to seek certification, and no standard worth writing. Together the two tests establish what the mark is for and whom the certification is about.

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

THE PROPOSITION

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

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

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

The omission half matters as much as the failure half. P335 names the hazards its protocol exists to address and prescribes no test that measures the air a functioning machine emits. Its section 6.5 requires six-log bacterial and four-log fungal disinfection of water captured in a tank, and says nothing about the same water thrown at a wall. UL's rule

declares the function hygienic and its conformance table lists electrical and electromagnetic standards and no hygiene standard at all. Each is a harm the certifier named and never wrote a measure for.

The event and its nine elements

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

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

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

The two tracks

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

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

THE CHAIN

1. ORIGIN

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

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

2. RESPONSIBILITY STANDARDS

Certifier promises valid standards and accurate testing.

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

3. RESPONSIBILITY PRODUCT

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

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

4. DOCUMENT

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

The certificate binds manufacturer to certifier by agreement and contract.

5. THE DOCUMENT CONFERS STATUS

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

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

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

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

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

6. TRANSACTION COMPLETE

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

The manufacturer holds the document, the transaction is complete.

7. THE INVENTION OF THE MARK

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

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

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

8. THE OFFER OF THE MARK

Certifier offers manufacturer a certifier branded sticker for the device.

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

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

9. ACCEPTANCE OF THE MARK

Manufacturer accepts.

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

10. MARK IS BOUND TO THE CERTIFICATE

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

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

11. THE MARK TRANSMITS STATUS

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

12. BINDING THE CERTIFICATE TO THE CONSUMER

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

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

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

13. CONTRACT

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

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

14. DEPLOYMENT

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

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

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

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

15. BINDING BY DUTY

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

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

the mark is placed. The certifier's mark binds through the manufacturer by reliance and duty.

16. RELIANCE

Users assume certification for public facing products in public buildings.

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

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

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

17. THE TEST

Remove the sticker.

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

Everything downstream disappears.

The absence of the sticker impacts only the purchaser and the user. A purchaser no longer believes the product is superior to any competing product, offering no increased value. A manufacturer could post the complete certification document on every public document

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

Reliance collapses.

18. THE SECOND TEST

Remove the user

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

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

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

THE MARK IS A CONTRACT

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

1. The certifier's product

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

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

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

2. The mark is an offer

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

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

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

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

3. The terms are definite

An offer “must be intentional, definite, in its terms and communicated.” *Stumpp v. Stroudsburg Municipal Authority*, 658 A.2d 333, 335 (Pa. 1995). No offer exists where

essential terms are unclear. *Columbian Rope Co. v. Rinek Cordage*, 461 A.2d 312, 316 (Pa. Super. 1983).

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

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

4. Acceptance

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

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

5. Consideration

The certification fee is not absorbed by the manufacturer out of charity. It is recovered in the price of the goods, and it is recoverable because the mark makes the goods worth more. The Third Circuit accepted that this is how the cost travels, treating the certification cost as “passed through ... as part of the per-unit price.” *Brand Marketing Group LLC v. Intertek Testing Services, N.A.*, 801 F.3d 347 (3d Cir. 2015). The purchaser pays it. The certifier collects it through that channel.

The manufacturer already holds the certificate before the mark is applied. What the fee buys beyond the certificate is the mark, and the mark's only function is its effect on people who will never read the certificate.

6. Subjective intent is not the question

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

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

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

7. The law implies the contract

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

8. Capacity and legality

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

9. The purchasers in this chain

The certification passed through more than one purchaser. Excel Dryer paid UL for certification and for the mark. Distributors and retailers acquired marked product. Facility operators — the agencies, 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. the United States, 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 went to work.

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 sovereign does not install a hygienic hand dryer because the government has hands. It installs it because its employees and the visiting public do. The certified quality the United States 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 in its facilities, the United States 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. The United States relied on those certifications specifically through its procurement system, which runs on certified status: GSA Schedule submittals recite certified specifications, contracting officers accept them as accurate, and federal purchasers select products on the strength of the status the marks assert.

The United States deployed the certified dryers in its federal facilities 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 THE UNITED STATES

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

the United States is the purchaser — the party who paid. the United States selected, purchased, and installed the certified hand dryers in its facilities, 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 the United States. the United States 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 the United States 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. the United States is that purchaser. The certifiers' obligations — that the standards are valid, that the testing is accurate, that the certified levels are met — ran to the United States 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 the United States paid, the United States's certifier claims do not depend on the absence of a contractual relationship, and

neither federal common law nor District of Columbia law bars them: the District recognizes negligent-misrepresentation liability under Restatement (Second) of Torts § 552, and information suppliers answer to the parties whose reliance they invite, without privity.

Ground two — duty (§ 552), in the alternative and independently. As set out in *The Mark Is a Duty*, the certifiers separately owed the United States 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 federal facilities. On this ground the United States 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. the United States 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.

THE STATUS

60. What the examination confers is not a document. The certifier examines the device; the examination, if passed, confers a status; the mark expresses that status as the certifier's instrument; and the sticker carries the mark on the machine. Act, condition, instrument, tag. A certified device is a different article of commerce from

a physically identical uncertified device — it commands a different price, enters different procurement channels, and hangs on walls the uncertified device never reaches. The difference between the two devices is the status, and the status is the certifier's work.

61. A status is not information. Information is addressed to an audience, and every doctrine governing information asks who the audience was. A status is held by the thing. The federal employee who has never read a certificate, never seen a standard, and never heard of the certifying body still encounters the status directly, because the status is in the device in front of him — the way title is in a deed, the way admission is in a license. The eighteen steps above are not an information flow. Steps one through six are an examination and a conferral. Steps seven through eighteen are the circulation of the instrument that displays what was conferred.
62. The status did the work in every transaction this Complaint describes. The status commanded the certification premium in the per-unit price. The status entered the GSA Schedule as certified specifications. The status was recited in procurement decisions, quoted in the case study, and asserted to every person who used the restrooms of the United States Department of Agriculture. The premium the United States paid purchased the status.
63. A status is conferred by examination, not by paperwork. The certificate does not create the status; it records a conferral that the examination performed. If the examination never showed compliance, then the conferral never occurred and the status never attached — whatever the certificate recites. The 462 independent trials establish that the certified performance does not occur at the certified specifications. Either the examinations showed compliance that independent physics cannot reproduce, or the certificates record conferrals that never took place. In the second case, every marked unit on every federal wall is presently asserting a status it does not hold.

64. This is the correct frame in which to state what distinguishes a genuine mark from a counterfeit one. The sticker is identical. The ink is identical. The brand is identical. The only feature that distinguishes a genuine mark from a counterfeit is the examination behind it. UL's certification of these products stood for five years. During those years, UL's own published data — Figure 2 of a study bearing its own name — showed the certified performance could not occur, and no surveillance by UL detected what its own publication disclosed. Whether the marks affixed to these devices are distinguishable from counterfeits is therefore a question only UL's test files can answer. If the files contain examinations showing compliance, UL may produce them, and the question becomes how those examinations coexist with UL's own published data. If the files contain no such examinations, then the marks assert conferrals that never occurred. Both answers are actionable. The files decide which.
65. One more status is at issue in this action, and it belongs to the certifier. UL holds recognition from the United States under 29 C.F.R. § 1910.7 as a Nationally Recognized Testing Laboratory — a status conferred by the sovereign, on examination, signifying that UL's examinations can be trusted. The United States is therefore not a stranger to this system; it is the recognizer of the certifier, and it brings this action in that character. The principle the United States applied in conferring UL's status is the principle this Complaint applies to the status UL conferred: recognition follows examination, and a status unmoored from examination is void.
66. The Counts apply this frame. The False Claims Act Counts plead the false statements and records by which the status entered federal procurement. The contract Count pleads that certified status was the description of the goods the United States purchased. The declaratory Count asks the Court to declare what the trials already show: that the status never attached.

G. The Standard Is Indivisible

67. 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 when they entered. This is not controversial.
68. 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 use cycle.
69. Defendants certified drying time. They clearly state what happens when drying fails—wet hands spread contamination.
70. 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 50-110×.
71. Defendants certified "hygienic" hand dryers. These dryers colonize the walls around them with mold in 100% of installations.
72. 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 must be occurring downstream of the filter. The UL PCR mentions hygiene once in 35 pages. Water dispersal—the primary mechanism by which these products affect public health—is not mentioned at all.
73. The omissions 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 rather than testing the claims manufacturers make for the entire device use cycle.

74. 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.

H. Scientific Consensus Compels Judicial Action

75. 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.
76. 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. Researchers, Public Health authorities and the Defendants themselves cite this science in their standards creation and in marketing. These products would not exist except for this science as their sole purpose is to reduce microbial transfer after hands are washed.
77. 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, with no contradicting studies in the literature.
78. The weight of prior science, combined with the independent empirical research, leaves the certified specifications and the published record in direct conflict — a conflict only Defendants' own test data can resolve. That data is in Defendants' exclusive possession, and Defendants remain free to produce evidence—using the publicly documented methodology—demonstrating their certifications are accurate.
79. The science justified the product's invention. The science now condemns its failure.

I. The Liability Position

80. 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. Leaving water on hands after drying was not permitted by their own self-selected standards.
81. 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 harmful.
82. 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.
83. Both positions establish liability.
84. 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 meaningless, they expose the certifications as fraud. Either position renders the certification fees unjustified and the resulting exposures compensable.
85. 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 certify products that could not be certified under legitimate standards. The physics never changed. The standards did.

J. Defendants' Cited Claims Analysis

86. Purpose

87. Defendant Anna Lasso as committee chair and verifier of the TrueNorth Collective Comparative Life Cycle Assessment of Hand Drying Systems: Excel Hand Dryers and Paper Towel Systems (May 2023) states on page 16, "The purpose of [Excel hand dryers] is to dry hands after washing in a public restroom."
88. Defendant Underwriters Laboratories states on page 9 of its UL Product Category Rules for Hand Dryers (2016), "The function of a hand dryer is to dry hands after washing in a public restroom."
89. NSF International in its Protocol P335: Hygienic Commercial Hand Dryers (April 2007), section 1.2 states, "Commercial hand dryers are commonly used in public or commercial hand washing stations to dry hands after hand washing."
90. Defendant SGS International states in Annex A of its Performance Test Report No. 2774929EFF-001 (Sept. 7, 2012), "The purpose of this test is to ensure that the hand dryer is able to thoroughly dry hands during one 15-sec operating cycle."
91. 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 proving that both together reduce disease individually and in populations.
92. Drying Time
93. Defendant Anna Lasso states in the SmartEPD Environmental Product Declaration: XLERATOR Hand Dryer, Registration No. SmartEPD-2023-002-0006-01 (2023), "The XLERATOR dries hands completely in 8 seconds." Also, "Tests were performed by SGS International on standard XLERATOR Hand Dryer with 0.8" nozzle to 0.25g or less of residual moisture, pursuant to the UL Environment Global Product Category Rules (PCR) for Hand Dryers."
94. 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. 'thoroughly dry' means that less than 0.1 grams of residual moisture per hand for a total of 0.2 grams or less is recovered when a user dries his or her hands on a paper towel after using the hand dryer."

95. 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 or 15 seconds, whichever is lower."
96. Defendant UL Solutions provides a standardized method for establishing drying time and residual moisture levels in Appendix II of its PCR, stating elsewhere, "Dry Time: After washing the hands, the length of time required to dry one's hands to a dryness threshold equaling 0.25 grams residual moisture or less using a hand dryer."
97. 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 unit energy use per dry. Long dry times increase the carbon footprint of the product. Long dry times expose the user to increased bacterial and fungal loads.
98. Hygiene
99. 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" and then, oddly, in the same document, states, "Although hygiene is another purpose for hand dryers that is of interest to the scientific community (Materials Systems Laboratory, 2011), hygiene is not considered in this study."
100. 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."

101. 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 and from other objects and people after leaving the machine" and "Commercial hand dryers can promote distribution of potentially pathogenic bacteria and allergenic mold spores or recontaminate hands with bacteria and molds during drying."
102. SGS entirely fails to mention hygiene anywhere in its test report.
103. Hand dryers are the direct result of a lineage of continuous science extending for 150 years that, without exception, proves that washed and dried hands decrease death and disease. The scientific consensus on this subject far exceeds the science on second hand cigarette smoke, already well established in the courts as causal for disease even without proof of downstream harm.
104. Water Dispersal
105. 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 strike it.
106. 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, Defendant states, "Move hands slowly and evenly through the air stream in order to blow off large water droplets," acknowledging that there are water droplets involved in the process.
107. 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 strike it in a dispersal-type dryer.
108. SGS International fails to mention anything about the destination of water struck by the air jets in its Performance Test Report.

109. In a product whose single purpose, its literal reason for existing, is to remove water from wet hands it is impossible to believe that the several certifying bodies writing the design, build, and testing standards for the products—and the manufacturers who make and sell them—completely fail to mention the destination and management of the water on hands after the dryer air strikes it. Water dispersal is the final stage of the product operational cycle and it has been entirely ignored.
110. Plume of Filth
111. 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.
112. 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.
113. 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.
114. 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.
115. Independent research 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 remediating it.
116. Energy and Environmental Claims
117. 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 of dryers can be 83% less than the cradle-to-grave global warming potential of paper towel baseline."

118. UL Solutions provides in its PCR the methodology for calculating environmental impacts, stating the purpose is to "support comparable, informed, and objective sustainable purchasing of hand dryers."
119. NSF Protocol P335 makes no direct environmental or energy claims. NSF P335 Section 2 incorporates "Dyson Test Method DTM 553, Evaluation of Hand Dryer Drying Times" as a normative reference. Those false certified values form the basis for all subsequent life cycle assessments.
120. SGS makes no energy claims but it is upon their false test results that all subsequent life cycle assessments are based.
121. 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 false dry times certified by the Defendants.

K. The Empirical Proofs

122. Independent 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 at multiple locations and will be made publicly available in their entirety at the time of filing. The conclusions are not asserted as matters of authority, but as matters of record: they are testable, falsifiable, and reproducible by any qualified party using the same methods and materials.
123. The 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. The studies are publicly available,

peer-accessible, and independently verifiable on 12 websites. All of this material is preserved on 50 hard drives distributed to 50 trusted individuals.

124. 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.
125. Drying Time Performance Testing Results
126. 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 conducted at manufacturers' exact claimed dry times—8 seconds for XLERATOR, 10-12 seconds for Dyson Airblade, 12 seconds for World Dryer—zero trials achieved any certification threshold. The most favorable result from all trials was 1.67 grams. Defendants certified 0.1 to 0.25 grams. Independent testing documented 1.67 grams at best, 2.5 to 3.0 grams typically—1000% to 2500% over specification.
127. In real-world use, giving all the parties involved full benefit of the doubt with a 15 second drying time, hands remain visibly wet in 100% of observed trials. Water can be seen visibly dispersing from the hands onto the walls, floors, and the user with every drying cycle. No instrumentation or special skill is required to see it. Any person can verify this for themselves.
128. 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.
129. Independent testing 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 measured 2.5 to 3.0 grams—25 to 30 times the allowed threshold. The NSF standard requires 95%

compliance. Actual compliance was zero percent. The deviation is not marginal. It is 2,500 to 3,000 percent.

130. 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, it is systematic failure. Defendants established these thresholds as the boundary between acceptable and unacceptable. Certified products exceed that boundary by 2,500 to 3,000 percent.
131. The Physical Impossibility of Certified Drying Times
132. The claimed drying times are not merely difficult to achieve. They are physically impossible to achieve.
133. Independent 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, technology, air velocity, or price—converge on 80 to 90 seconds of drying time to approach the 0.1 gram NSF drying threshold, with each brand and model having a slightly different profile but with all drying curves fitting together in a consistent pattern. R-squared across all trials of 0.9998—near-perfect fit.
134. Defendant Excel's own researchers had identified bi-modal drying. In an undated preprint filed as Exhibit H in Case 3:12-cv-30211-MAP on February 22, 2013, "An Ultrafast, Comfortable Hand Dryer," Defendant Excel's consultants Sol Aisenberg and G. Freedman documented the same bi-modal physics that independent research later confirmed. They wrote: "Two sequential phases of drying are used. Phase 1 is the blowing off of loose water droplets, accounting for about 75 percent of total water removal in the first 3 seconds, and Phase 2, the evaporation phase." Their Figure 4 shows residual moisture of 1.25 grams at 4 seconds, declining to 0.2 grams at 13.5 seconds—still using Defendant Excel's self-invented 0.2 gram threshold, not NSF's 0.1 gram standard. Defendant Excel now markets 8 seconds to

UL's 0.25g. Independent research found 80-90 seconds to approach 0.1g at $p < .001$.

135. 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 correlations exceeded $r = 0.999$ ($p < 0.001$). These are not similar curves. They are functionally identical curves produced by three different companies using three different engineering approaches.
136. On December 4, 2025, prior to testing a third manufacturer for the first time, a formal prediction was documented: World Dryer products would fail identically to Dyson and Excel because this is a physics issue, not an engineering problem. On December 5, 2025, independent research tested World Dryer VerdeDri units at three locations. The prediction was confirmed. World Dryer achieved first compliance with its claimed standard of 0.25 gram UL threshold at 40 seconds—233% longer than the manufacturer's 12-second claim.
137. 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 one in one billion.
138. Contamination Results: Microbe Load in Output Dryer Air
139. The 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: measure ambient air at a realistic drying time, then measure dryer output air at a realistic drying time, then calculate amplification factor.
140. One hundred thirty-six consecutive tests showed amplification, validating the hypothesis generated before the first sample was ever taken. No dryers reduced

bacterial load. The probability of this occurring by chance is approximately 10 to the negative 41st power.

141. 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 washing science, providing the conceptual base for the products to sell. They cannot now escape it.
142. The test remains simple: remove the dryer from the room. Is it more or less sanitary?
143. Water Spray, the Absent Standard
144. Independent research 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.
145. Capture dryers collect water in receptacles for disposal. Very few remain in use, although they were common in the past.
146. 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 think about. Does spraying water all over a restroom make any sense at any level of thinking?
147. NSF P335 Section 6.5 imposes detailed, strict disinfection requirements on capture dryers—and zero requirements on dispersal dryers.
148. The UL PCR and the NSF P335, along with all other known certifications, have no standards for the water coming off of hands, the necessary last phase of the product operational system cycle. It is never mentioned anywhere.
149. 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 occurring as part of the removal process. The physics is not subtle. It is violent.

150. The 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 must go somewhere.
151. The 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 dispersion. Airborne mist remaining visible for three or more seconds after drying. Concentrated accumulation patterns on all surrounding surfaces.
152. Paper towels showed a single destination with occasional large drops falling off as the towels are grasped: absorption into the towel material, followed by disposal. Minimal environmental dispersal.
153. Remove the dryers from the room and replace them with white paper towels. What is the impact on the restroom and the users?
154. The dispersed water cannot be sterile. The microbial studies documented 50-110× bacterial amplification in dryer output air. The contamination measured on petri dishes arrived via the air stream. The air stream contains water droplets. Those droplets originated from users' hands.
155. Further, the contamination problem compounds with user behavior. CDC and WHO guidelines require soap and twenty seconds of washing for effective hand hygiene. Compliance studies estimate proper handwashing rates at 5-30% in public restrooms. The dryer does not verify compliance. The dryer disperses whatever is on the user's hands—properly washed or not—throughout the room.
156. Consider three users: Compliant user (soap, 20 seconds, proper technique): Disperses water contaminated by dryer amplification of 50-110×. Average user

(quick rinse, minimal soap): Disperses significantly more contaminated water from inadequately washed hands plus dryer amplification. Non-compliant user (10 second wet, no soap): Disperses fecal bacteria, pathogens, and whatever was touched directly into the room—amplified by the dryer—for the next person to encounter.

157. Every user's output becomes every other user's input.
158. The least hygienic user contaminates the air for everyone who follows. Certifiers and manufacturers provide no guidance or design standards for containment or elimination. It is never mentioned in any of the Defendants' documents. The dryer broadcasts the consequences of improper washing to everyone in the space.
159. 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.
160. 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 to 1.7 billion cups of water dispersed into public restroom environments. Per dryer: Approximately 3 cups of water dispersed daily.
161. That is not incidental moisture. It is systematic environmental contamination at industrial scale.
162. 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.
163. Defendants certified drying time. Defendants certified energy consumption. Defendants certified HEPA filtration of intake air. Defendants ignore water that sprays onto walls, floors, clothing, faces, and into the lungs of everyone in the

room. The most consequential sanitation related output of the device is invisible to the certification standards.

164. Remove the dryers from the room. Is it more or less hygienic?
165. Physical Environmental Mold Contamination: The Plume of Filth
166. The Wandering Plume of Filth Study documented visible contamination patterns beneath hand drying equipment. Researchers randomly entered 127 public restrooms and visually examined the areas under the dryers and towel dispensers using NIOSH and FDA standard mold assessment protocols.
167. 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%).
168. 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 toward the floor like a plume—which is exactly what it is.
169. 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*—organisms documented by CDC and the Institute of Medicine as respiratory hazards and allergens.
170. 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 causal for dryers when in public use, making laboratory claims meaningless. The visible contamination is evidence of the invisible contamination.
171. Critical finding: The contamination affects everyone who enters the restroom, not just dryer users. A person who uses paper towels if they are provided, a person who

uses the sink but not the dryer, a person who simply walks through—all are exposed to amplified microbial loads and environmental contamination created by dryers.

172. The Paper Towel Alternative
173. The 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 Study 4 (n=29), 55.6% of white towels were completely sterile. The remainder contained 1-2 CFU. Mean contamination: 0.56 CFU. Wilcoxon signed-rank test against ambient air: $p = 0.23$ —no significant difference.
175. Brown paper towels are contaminated from the factory. 100% of samples contained microbial colonies, ranging from 6-186 CFU across both studies. The contamination is intrinsic to the product.
176. The distributions do not overlap. The 75th percentile of white towels (1 CFU) falls below the 25th percentile of brown towels (11 CFU). This complete distributional separation is exceptionally rare in biological data. Cohen's $h = 1.671$. $p < 0.003$.
177. Study 9 conducted dual-intervention tests: dryer and paper towels tested in the same restroom on the same day under identical ambient conditions. Hand dryers produced 138-407× more contamination than white paper towels. The difference is the device, not the environment.
178. 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.
179. The Wandering Plume study documented the environmental consequence. White paper towel dispensers showed 13% mold rates (5/39 installations). Brown paper towel dispensers showed 40% (12/30). Dispersal-type hand dryers showed 100%

(50/50). The 8-fold difference between white paper towels and dispersal dryers is definitive.

180. Remove the dryer. Install a white paper towel dispenser. Every problem documented in this complaint disappears. The infrastructure exists. The cost is equivalent. The dispenser fits the space. The hypothetical answers itself.
181. The Green Energy Catastrophe
182. 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 tenfold. The entire environmental marketing narrative collapses.
183. 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 rises to 25-28 Wh per dry—7.5 to 8.75 times higher than claimed.
184. 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. When independent academic studies are included, hand dryers produce 2-3 times more CO₂ than paper towels.
185. False times create false energy and CO₂ emissions values, leading to false marketing claims made by manufacturers with explicit attribution to certification by Defendants.
186. The false data propagates into building certification. Defendant Excel's LEED v4.1 guidance instructs building professionals to "input 3.68 Wh per 8 second cycle use... for energy modelling purposes." Thousands of LEED-certified buildings contain false energy data in their certification calculations.

187. Products marketed as environmentally superior consume 7-10 times more energy than claimed and provide no CO₂ advantage over paper towels.
188. Three independent AI systems (Claude, ChatGPT, Grok) verified these calculations using manufacturer-published lifecycle assessment data, working from primary sources without access to each other's outputs. All three converged on the same conclusion.
189. The Causal Chain
190. The false drying time claim is the root cause of environmental contamination and energy/environmental failure. Each step follows inevitably from the one before:
191. 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.
192. 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.
193. Carrying that water after dryer use increases microorganism transfer by 1000×.
194. If a user dries until hands are dry—80-90 seconds—microorganism amplifications on the hands increase over room air by 50-110×.
195. Energy and CO₂ production become equal to or greater than that of paper towels.
196. 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.
197. Dispersed water carries microorganisms from users' hands and the output air jets, contaminating the room for the users who come after.
198. Continuous deposition grows visible mold in 100% of installations, volume controlled by the cleaning practices of the restroom owners.

199. The restroom becomes a permanent contamination zone. Everyone who enters is exposed, regardless of whether they use the dryer.
200. The user faces several impossible choices with every restroom use: don't enter to avoid dryer contamination, wash and don't dry, dry for specified time and leave wet or dry for the actual time-to-dry and carry increased microbial exposure and use more energy.
201. The hypothetical answers itself. Remove the dryer and every step in this chain disappears. The water stays on hands or is absorbed by a towel. The mold doesn't grow. The contamination zone doesn't form. The impossible choices don't exist. The dryer is not incidental to the harm. The dryer is the harm.
202. The Users' Dilemma
203. Users of certified hand dryers face two options, both creating harm.
204. 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—doorknobs, phones, keyboards, other people, food.
205. 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 microorganism load and be sprayed with liquid water carrying the same.
206. 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. A user cannot limit exposure without leaving with wet hands. The product design creates an inescapable dilemma.
207. Once the problem is understood, the user faces a third harm: the knowledge that entering a restroom with a hand dryer means accepting one of the two options above, or not entering at all.

208. Following the rules makes you sick. Every option the certification system provides leads to the same place: elevated contamination exposure. The user who trusts the certification and uses the dryer for the claimed time is worse off than the user who ignores it.

L. How These Certifications Came to Exist

209. 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, created by the original certifier, with a threshold of 0.1 grams.
210. In 2012, Defendant Excel 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 an amendment to NSF Protocol P335 to amend the definition of 'dry hands' from 0.1 grams to 0.2 grams."
211. Defendant Excel used the rejected standard anyway, advertising compliance under a "modified NSF protocol." Defendant SGS testing commissioned by Defendant Excel in 2012 applied "a revised version of NSF Protocol P335 Hygienic Commercial Hand Dryers currently being developed and reviewed by NSF and its new technical panel for the 5 year protocol update." The proposal was rejected. Defendant Excel cited it anyway.
212. In July 2016, Defendant 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 80% manufacturer representatives. Defendant Excel held 40% of manufacturer seats. William Gagnon chaired it.
213. On July 25, 2017, UL Environment issued Environmental Product Declaration No. 4787137936.102.1 for Defendant Excel's XLERATOR hand dryer. The certificate

stated: Drying time: 8 seconds. Energy consumption: 3.68 Wh per use. Residual moisture threshold: 0.25 grams. Wade Stout, UL Environment EPD Project Manager, signed as external verifier. Thomas P. Gloria of Industrial Ecology Consultants verified the lifecycle assessment. The certificate had a five-year validity period.

214. The UL certificate expired in July 2022. Defendant Excel did not renew with UL. UL continues to certify hand dryers for other manufacturers.
215. Virginia State Corporation Commission records show the following timeline: April 26, 2022: Articles of organization filed for "EPD USA LLC" with Defendant Anna Lasso as registered agent. July 6, 2022: Articles of amendment filed changing company name to "Smart EPD LLC." July 2022: UL EPD No. 4787137936.102.1 expires.
216. At the time of the April 2022 LLC formation, Defendant Anna Lasso was either employed by UL Environment as Product Manager of EPDs and PCR Project Manager, or had recently terminated employment there.
217. The timing is significant. Defendant 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 Defendant Anna Lasso incorporated her company. When Defendant Excel's UL EPD expired three months later, Defendant Excel chose SmartEPD certification rather than UL renewal.
218. On June 23, 2023, Defendant Smart EPD issued Environmental Product Declaration No. SmartEPD-2023-002-0006-01 for Defendant Excel's XLERATOR hand dryer. The certificate stated: Drying time: 8 seconds. Energy consumption: 3.68 Wh per use. Residual moisture threshold: 0.25 grams. These specifications are identical to the expired UL certificate.
219. Thomas P. Gloria of Industrial Ecology Consultants verified the lifecycle assessment for the 2023 SmartEPD certificate. Thomas P. Gloria had verified the

lifecycle assessment for the 2017 UL certificate. The same LCA verifier signed both documents.

220. The trajectory is documented. NSF established 0.1 grams in 2007. Defendant Excel proposed 0.2 grams. NSF rejected it. Defendant UL created 0.25 grams in 2016. Defendant Anna Lasso certified Defendant Excel to that standard. All these thresholds—0.1, 0.2, and 0.25 grams—are proven false by independent data showing 2.5 to 3.0 grams at claimed times.

M. The 2012 SGS Report

221. Defendant SGS Performance Test Report No. 2774929EFF-001, dated September 7, 2012, was filed as Exhibit B to Defendant Excel's motion for preliminary injunction in Case 3:12-cv-30211-MAP, Document 6-2. The report is signed by Martin Dodd, Project Engineer, and reviewed by Jody Leber. The client is Defendant Excel.
222. The report tested five hand dryer models: Excel Dryer HO-IW, World Dryer XA5-974AU, Excel Dryer XL-BW, World Dryer K972A, Dyson AB04, and Dyson A01. Samples were received between June 29 and August 13, 2012. Testing occurred August 15-24, 2012.
223. Page 4 of the report states: "Each product was tested in accordance with a revised version of NSF Protocol P335 Hygienic Commercial Hand Dryers currently being developed and reviewed by NSF and its new technical panel for the 5 year protocol update."
224. Page 9 of Annex A states: "For the purposes of NSF Protocol P335, 'thoroughly dry' means that less than 0.1 grams of residual moisture per hand for a total of 0.2 grams or less is recovered when a user dries his or her hands on a paper towel after using the hand dryer." Defendant SGS certified results using the 0.2 gram threshold Defendant Excel proposed—that NSF rejected.

225. 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," Defendant Excel doubled the acceptable moisture while preserving the appearance of NSF compliance.
226. Table 1 of the Defendant SGS report reveals the test results at 120V, 60Hz: 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. Dyson AB04 at 12 seconds: 0.183 grams average residual moisture.
227. Defendant SGS certified these results: XLERATOR at 0.186 grams at 12 seconds. Independent 462 trials, following stated methodology, document 2.5 to 3.0 grams at the same intervals—1,350 to 1,600 percent higher than Defendant SGS findings.
228. Defendant Excel's current marketing claims 8 seconds. Denis Gagnon testified under oath to 12 seconds. The Defendant SGS report tested at 12 and 15 seconds. The 8-second claim, while attributed to current models, has no foundation in any testing document anywhere in the evidentiary record.

N. ISO 14025 Independence Violation

229. 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 product." Section 8.1.4 specifies that the program operator "shall not act as verifier for EPDs it registers."
230. The SmartEPD certificate for XLERATOR Hand Dryer, Certificate No. SmartEPD-2023-002-0006-01, lists Defendant Anna Lasso in three capacities on Page 2: as contact for Smart EPD, the EPD Program Operator; as "Independent critical review of the LCA and data, according to ISO 14044 and ISO 14071"; and as "Independent external verification of EPD, according to ISO 14025 and reference PCR."

231. Defendant Smart EPD LLC was incorporated in Virginia in April 2022. Four months later, Defendant Smart EPD issued its first major certification: the Defendant Excel XLERATOR EPD. Defendant Excel was not a new client relationship. Defendant Anna Lasso had worked "closely" with William Gagnon for seven years while he chaired the UL PCR committee.
232. The TrueNorth Collective LCA underlying the SmartEPD certificate was also reviewed by Defendant Anna Lasso as panel chair. The Critical Review Statement in Appendix I, dated June 19, 2023, bears her signature as "Chair of the External Independent Third-Party Review Panel." She chaired the LCA review panel and verified the EPD based on that LCA.
233. 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 compliance.

N. The Excel v Dyson Litigation

234. In December 2012, Defendant Excel sued Dyson in the United States District Court for the District of Massachusetts, Case 3:12-cv-30211-MAP, documenting, under oath, previously proprietary or trade secret information displaying an entire trail of conflicting claims about drying time, testing protocols, marketing representations, and expert data.
235. The litigation produced sworn testimony and documentary evidence of both companies and the certifying agencies arguing about standards and test results that powerfully foreshadow the claims made in this complaint. Each manufacturer publicly accused the other of fraud. Both were right. They appear to have seen the data in 2012 and settled to hide it.
236. Defendant Excel represented to the court that its Defendant SGS testing used "a revised version of NSF Protocol P335 Hygienic Commercial Hand Dryers currently

being developed and reviewed by NSF." Dyson's attorneys responded: "The phrase 'revised NSF Protocol P335' unambiguously communicates that at some point, NSF revised its protocol P335 and that Excel's test was based on this revised protocol. That is absolutely untrue."

237. Dyson revealed that Defendant Excel had proposed amending NSF P335 to change the dryness threshold from 0.1 grams to 0.2 grams. NSF rejected this proposal. Defendant Excel used the rejected standard anyway and represented to the federal court that it was "the revised NSF Protocol P335" without disclosing that NSF had rejected it.
238. 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. Defendant Excel has never achieved NSF P335 certification.
239. On February 22, 2013, Dyson filed its Answer, Statement of Defenses, and Counterclaims. In sworn counterclaims, Dyson alleged: "The claim that the Xlerator dries hands completely in 10-15 seconds is literally false. According to testing performed by Dyson in its laboratory facilities in the United Kingdom, the Xlerator requires 20 seconds or longer to dry hands to a level that meets NSF Protocol P335."
240. Both companies' sworn claims are now proven false. Independent 462 residual moisture trials demonstrate that neither product achieves threshold dryness until 70-90 seconds. Dyson was right about Defendant Excel. Defendant Excel was right about Dyson. Both are responsible for making false claims about themselves.
241. The case settled before discovery. Neither company wanted its testing methodology examined under oath. Neither company wanted to explain how products claiming 8-12 second drying times were tested at 12-20 seconds. Neither company wanted to

reconcile marketing claims with physical impossibility. The settlement silenced the dispute but preserved the underlying false claims.

O. The Document That Proves It

242. Certificate SmartEPD-2023-002-0006-01, issued June 23, 2023, certifies the XLERATOR Hand Dryer, 120V. The certificate expires June 23, 2028. The EPD Holder is Defendant Excel, 357 Chestnut St, East Longmeadow, MA. Page 2 of the certificate lists the verification parties. Three entries appear:
243. EPD Program Operator: Smart EPD, with Defendant Anna Lasso as contact at anna.lasso@smartepd.com. Independent critical review of the LCA and data, according to ISO 14044 and ISO 14071: Defendant Anna Lasso, Smart EPD. Independent external verification of EPD, according to ISO 14025 and reference PCR: Defendant Anna Lasso, Smart EPD.
244. 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. Defendant Anna Lasso operates the program, reviews the underlying data, and verifies the final product.
245. Page 3 of the certificate states: "The XLERATOR dries hands completely in 8 seconds." Page 4 lists product specifications including: "Dry time: 8 seconds."
246. Page 13, under Additional Environmental Information, 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 the UL Environment Global Product Category Rules (PCR) for Hand Dryers."
247. This certificate is not limited to environmental claims. It embeds the 8-second drying time as a product specification and uses that specification as the basis for all energy and lifecycle calculations. The functional unit is 100,000 instances of hand

drying. Energy consumption is calculated as 3.68 Wh per use—a figure derived from 8 seconds at 1,650 watts.

248. The certificate explicitly documents testing to 0.25 grams—the UL PCR threshold that is 2.5 times weaker than NSF P335. The certificate does not claim NSF compliance. It does not claim UL certification. It claims testing to the UL PCR standard, verified by the person who helped create that standard.
249. The TrueNorth Collective Life Cycle Assessment underlying this certificate states on page 1: "Dry time, power and energy consumption are based on the average test results provided by Excel." No independent verification. Manufacturer-provided data, certified by the manufacturer's former colleague.
250. The same TrueNorth LCA states: "Although hygiene is another purpose for hand dryers that is of interest to the scientific community (Materials Systems Laboratory, 2011), hygiene is not considered in this study." A Life Cycle Assessment for products marketed as "hygienic" explicitly excludes hygiene from consideration.
251. Defendant Excel's current marketing claims XLERATOR dries hands in 8 seconds. This claim appears on Defendant Excel's website, on Smart EPD certificates, and in LEED credit documentation. No test data in the evidentiary record supports this claim.
252. The 2012 Defendant SGS report tested at 12 seconds and 15 seconds. No 8-second data exists. Denis Gagnon testified under oath in 2012 that 12 seconds was accurate.
253. The 462 independent trials show actual drying time to 0.1 grams is 70-90 seconds across all manufacturers. No Defendant Excel unit achieved below 0.15 grams at any tested interval.
254. The claim has propagated through the certification ecosystem without ever being validated. Defendant Excel claims 8 seconds. Defendant Smart EPD certifies a

document stating 8 seconds. LEED credits reference documentation claiming 8 seconds. Building Green databases list 8 seconds. At no point in this chain has anyone independently verified that 8 seconds is achievable.

255. The actual, historical performance of all production hand dryers has never not been 70-90 seconds to 0.1g of residual water. Claims otherwise must be publicly validated. If they cannot be validated, the certifications must be publicly revoked.

256. Defendants can replicate their certified results for the Court in minutes. Or not.

P. Defendant Excel's Knowledge

257. Defendant Excel knew or should have known that its product specifications were false. Defendant Excel held four of ten manufacturer seats on the UL PCR committee that published Figure 2 showing 0.456 grams residual moisture at 8 seconds—82% above the 0.25 gram threshold the same committee established. Defendant Excel's own committee-approved data contradicted its marketing claims.

258. Defendant Excel's President, Denis Gagnon, testified under oath in 2012 that XLERATOR drying time was 12 seconds. Defendant Excel now markets 8 seconds. Defendant Excel's own executive contradicted the company's current marketing claims under penalty of perjury.

259. Defendant Excel's own consultants documented bi-modal drying physics showing residual moisture of 1.25 grams at 4 seconds and 0.2 grams at 13.5 seconds—using Defendant Excel's weakened threshold, not NSF's. Defendant Excel's own researchers could not achieve the times Defendant Excel now markets.

260. Defendant Excel proposed weakening NSF P335 from 0.1 grams to 0.2 grams. NSF rejected the proposal. Defendant Excel then helped create UL PCR with a 0.25 gram threshold—weaker than the proposal NSF rejected. When Defendant Excel could

not pass existing standards, Defendant Excel created weaker standards and claimed compliance with those.

261. Defendant Excel featured USDA in marketing materials, inducing federal agency endorsement through false representations, then using that induced endorsement to sell products to additional purchasers. This is not innocent error. This is a business model built on false specifications.

Q. Defendant UL Solutions' Knowledge

262. Defendant UL Solutions knew or should have known that the certifications it issued were false. Defendant UL published Figure 2 in its own PCR showing 0.456 grams residual moisture at 8 seconds. Defendant UL then certified Defendant Excel's products at 8 seconds to 0.25 grams. Defendant UL certified specifications that its own published data proved were impossible.
263. Defendant UL allowed Defendant Excel to hold four of ten manufacturer seats on the PCR committee—40% control by a single manufacturer. Defendant UL allowed William Gagnon of Defendant Excel to chair the committee. Defendant UL published a standard created by the parties whose products would be measured against it.
264. Defendant UL established a 0.25 gram threshold without scientific justification. No documentation in the 35-page PCR explains why 0.25 grams is the appropriate threshold for "dry hands." NSF had established 0.1 grams. Defendant Excel proposed 0.2 grams. NSF rejected that proposal. Defendant UL adopted 0.25 grams—weaker than the proposal NSF rejected.
265. Defendant UL continues to certify hand dryers for other manufacturers. Defendant UL certified Hokwang at 30-35 seconds drying time in April 2022. In July 2022, Defendant Excel's UL certification expired and was not renewed. Defendant UL would certify 30-35 seconds. Defendant UL would not certify 8 seconds.

R. Defendants SmartEPD and Anna Lasso's Knowledge

266. Defendants SmartEPD and Anna Lasso knew or should have known that the certifications issued were false. Defendant Anna Lasso worked at UL Environment for six years. Defendant Anna Lasso worked directly with William Gagnon as he chaired the PCR committee. Defendant Anna Lasso knew the standard. Defendant Anna Lasso knew the data. Defendant Anna Lasso knew what UL would and would not certify.
267. Defendant UL certified Hokwang at 30-35 seconds. Defendant UL allowed Defendant Excel's certification to expire without renewal. Defendant Anna Lasso then certified Defendant Excel at 8 seconds—specifications UL had declined to renew.
268. Defendant Anna Lasso occupies three roles—Program Operator, LCA Reviewer, External Verifier—that ISO 14025 requires to be independent. Defendant Anna Lasso cannot claim ignorance of ISO 14025 requirements. Defendant Anna Lasso was employed as UL Environment's Product Manager of EPDs and PCR Project Manager. The independence requirement is the core of the system Defendant Anna Lasso administered.
269. Defendant SmartEPD certified Defendant Excel using identical specifications to the expired UL certificate—8 seconds, 3.68 Wh—without updated testing. The same numbers from the same sources certified by the person who helped create the standard those numbers claim to satisfy.

S. Defendant SGS's Knowledge

270. Defendant SGS knew or should have known that its test results would be used to support false marketing claims. Defendant SGS tested at 12 and 15 seconds. Manufacturers claim 8 seconds. Defendant SGS knew its testing did not validate the times manufacturers market.

271. Defendant SGS used "a revised version of NSF Protocol P335" that NSF had rejected. Defendant SGS knew NSF rejected the proposed revision. Defendant SGS tested to a rejected standard and allowed its reports to be cited as third-party validation.
272. Defendant SGS reported 0.186 grams residual moisture at 12 seconds. Independent testing using identical methodology documents 2.5 to 3.0 grams at 12 seconds—a discrepancy of 1,350 to 1,600 percent. Defendant SGS's results cannot be independently replicated.

T. The Continuing Harm to the United States

273. The false certifications remain active. SmartEPD Certificate No. SmartEPD-2023-002-0006-01 is valid through June 23, 2028. Defendant Excel continues to market false drying time and hygiene claims to federal agencies. Defendant Excel continues to use USDA's induced endorsement in marketing materials.
274. Federal agencies continue to rely on Defendant Excel's GSA Schedule Contract to purchase products that do not perform as specified. Every federal purchase made in reliance on false specifications constitutes a false claim.
275. 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.

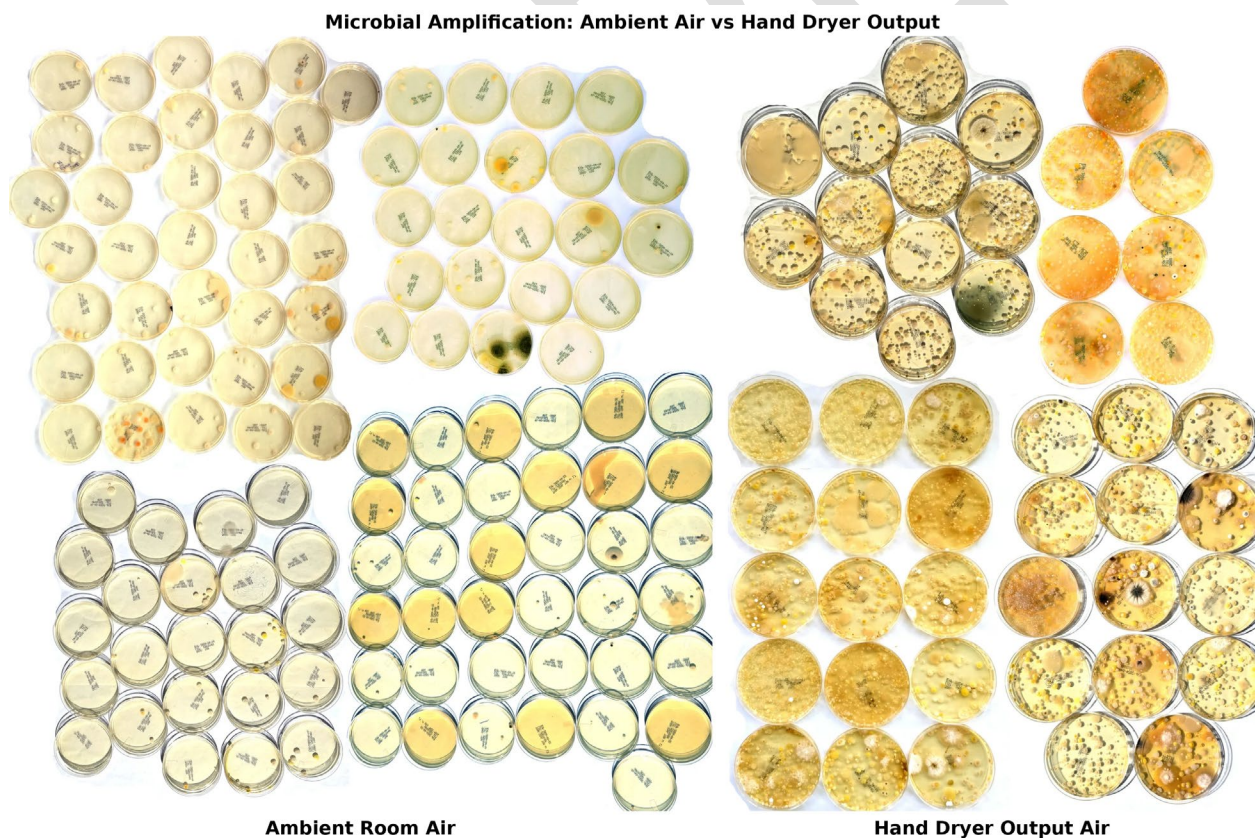
U. Timeliness

276. The United States' claims are timely. The independent scientific research establishing Defendants' misrepresentations was published between September 2023 and December 2025. The United States could not have discovered the falsity of Defendants' representations before this research was available.

277. Defendants' false certifications remain active. SmartEPD Certificate No. SmartEPD-2023-002-0006-01 is valid through June 23, 2028. Defendants continue to issue and maintain false certifications. The United States' injuries continue to accrue.
278. Defendants' misconduct constitutes a continuing course of wrongful action. Each day that Defendants maintain false certifications, each day that Defendant Excel markets false drying time claims, each day that federal agencies rely on false specifications—constitutes a new violation of the False Claims Act.

V. The Hypothetical

279. 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. COUNTS

COUNT I — VIOLATION OF THE FALSE CLAIMS ACT: PRESENTING FALSE CLAIMS

31 U.S.C. § 3729(a)(1)(A)

(Against Defendant Excel Dryer, Inc.)

280. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
281. Defendant Excel knowingly presented, or caused to be presented, false or fraudulent claims for payment or approval to the United States Government.
282. Defendant Excel submitted product specifications to the General Services Administration representing that XLERATOR hand dryers achieve drying time of 8 seconds, energy consumption of 1.7 watt-hours per use, "hygienic" operation, and cost savings of 95% compared to paper towels.
283. These specifications were false when submitted and remain false today.
284. Defendant Excel knew these specifications were false, or acted with reckless disregard for their truth or falsity, or acted with deliberate ignorance of their truth or falsity.
285. The Federal Government relied on these false specifications to make procurement decisions, including purchases by the United States Department of Agriculture and other federal agencies.
286. Each invoice submitted by Defendant Excel for payment under its GSA Schedule Contract constitutes a separate false claim.
287. The false specifications were material within the meaning of the Act and of *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016):

they went to the essence of what the Government purchased. The certified performance was not incidental to the products — it was the description under which the products were bought — and the Government does not knowingly pay for devices whose certified specifications are false.

288. By reason of Defendant Excel's violations of 31 U.S.C. § 3729(a)(1)(A), the United States has suffered damages and is entitled to recover treble damages plus civil penalties of not less than \$13,946 and not more than \$27,894 for each false claim, as adjusted for inflation pursuant to 28 C.F.R. § 85.5.

COUNT II — VIOLATION OF THE FALSE CLAIMS ACT: MAKING FALSE STATEMENTS

31 U.S.C. § 3729(a)(1)(B)

(Against Defendant Excel Dryer, Inc.)

289. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
290. Defendant Excel knowingly made, used, or caused to be made or used, false records or statements material to false or fraudulent claims.
291. Defendant Excel submitted product specifications to the General Services Administration and federal contracting officers that falsely represented product performance characteristics.
292. Defendant Excel published marketing materials, including the USDA case study, that falsely represented product performance and federal agency endorsement.
293. These false statements were material to the Government's payment decisions.
294. Defendant Excel knew these statements were false, or acted with reckless disregard for their truth or falsity, or acted with deliberate ignorance of their truth or falsity.

295. The false specifications were material within the meaning of the Act and of *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016): they went to the essence of what the Government purchased. The certified performance was not incidental to the products — it was the description under which the products were bought — and the Government does not knowingly pay for devices whose certified specifications are false.
296. By reason of Defendant Excel's violations of 31 U.S.C. § 3729(a)(1)(B), the United States has suffered damages and is entitled to recover treble damages plus civil penalties for each false statement.

COUNT III — VIOLATION OF THE FALSE CLAIMS ACT: FALSE RECORDS MATERIAL TO FALSE CLAIMS

31 U.S.C. § 3729(a)(1)(B)

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

297. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
298. The certifier Defendants knowingly made, used, or caused to be made or used, false records and statements material to false or fraudulent claims: the certifications, Environmental Product Declarations, verification statements, and test reports described in this Complaint. Those records assert a status — certified compliance with stated specifications — that the products do not hold.
299. The certifier Defendants issued those records for the purpose of commercial use: certifications exist to be displayed, cited, and relied upon in the sale of the certified products. Excel used them for precisely that purpose, in its GSA Schedule submittals, its marketing to federal agencies, and its representations to federal purchasers, and the certifier Defendants knew their certifications would travel with the products into procurement.

300. The certifier Defendants acted knowingly within the meaning of 31 U.S.C. § 3729(b)(1) — with actual knowledge, deliberate ignorance, or reckless disregard — as pleaded in the knowledge sections of this Complaint: UL published the Figure 2 data showing the certified performance could not occur, and maintained its certification for five years without surveillance that detected what its own publication disclosed; SGS tested the products at twelve seconds while the certified claim was eight; SmartEPD and Anna Lasso issued and verified a declaration through roles that ISO 14025 requires to be independent, and verified specifications no examination showed to be true.
301. The false records were material within the meaning of the Act and of *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016): the certified status was the description under which the Government purchased, and the Government does not knowingly pay for devices whose certifications are false.
302. By reason of the certifier Defendants' violations of 31 U.S.C. § 3729(a)(1)(B), the United States has suffered damages and is entitled to recover treble damages plus civil penalties for each violation, as adjusted pursuant to 28 C.F.R. § 85.5.

COUNT IV — BREACH OF CONTRACT

(Against Defendant Excel Dryer, Inc.)

303. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
304. Defendant Excel entered into a GSA Schedule Contract with the United States, agreeing to provide products that conform to specified performance characteristics.
305. Defendant Excel breached this contract by supplying products that do not conform to the performance specifications submitted to obtain the contract.

306. The United States performed all conditions precedent to Defendant Excel's performance obligations.
307. As a direct and proximate result of Defendant Excel's breach, the United States has suffered damages including the difference between the value of products as represented and the value of products as delivered, excess energy costs, and costs to remediate contamination caused by products that do not perform as specified.

COUNT V — UNJUST ENRICHMENT

(Against All Defendants)

308. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
309. Defendants have been unjustly enriched by receiving payment for products and services that do not perform as represented.
310. Defendant Excel received payment for products that do not achieve claimed drying times, energy efficiency, or hygiene standards.
311. Defendant UL Solutions received certification fees for certifications that do not reflect actual product performance.
312. Defendants SmartEPD and Anna Lasso received certification fees for certifications issued in violation of ISO 14025 independence requirements.
313. Defendant SGS received testing fees for test reports that cannot be independently replicated.
314. It would be unjust for Defendants to retain these benefits. The United States is entitled to restitution in an amount to be determined at trial.

THE CERTIFIER COUNTS

315. 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 the United States as the purchasing party who paid the certification premium carried in the per-unit price — and, independently and in the alternative, the ground of negligent misrepresentation by a supplier of information under Restatement (Second) of Torts § 552, which the District of Columbia recognizes and federal common law does not bar. What the certifiers did is stated in the Status section above: they conferred a status the products do not hold, and the status — not the manufacturer's conduct — is their own work. *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, the certifications, and the status they confer, that are at issue here.

COUNT VI — NEGLIGENT MISREPRESENTATION

(Against Defendant UL Solutions Inc.)

316. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
317. Defendant UL made false representations of material fact by creating and publishing the Product Category Rules for Hand Dryers; by certifying Defendant Excel's XLERATOR hand dryer under EPD No. 4787137936.102.1 with specifications that Defendant UL's own data proved were impossible; and by allowing its certification marks to be used in marketing materials containing false performance claims.
318. Defendant UL made these representations in the course of its business and in transactions in which it had a pecuniary interest.

- 319. Defendant UL failed to exercise reasonable care in creating standards, conducting testing, and issuing certifications.
- 320. The United States justifiably relied on Defendant UL's certifications in accepting Defendant Excel's products for purchase by federal agencies.
- 321. Defendant UL's negligent misrepresentations were the direct and proximate cause of the United States' damages.

COUNT VII — NEGLIGENT MISREPRESENTATION

(Against Defendants SmartEPD and Anna Lasso)

- 322. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
- 323. Defendants 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 certifying energy consumption of 3.68 Wh per use based on the false 8-second drying time; by claiming independent verification while Defendant Anna Lasso occupied all three verification roles; and by allowing SmartEPD certifications to be used in marketing materials containing false performance claims.
- 324. Defendants SmartEPD and Anna Lasso made these representations in the course of their business and in transactions in which they had a pecuniary interest.
- 325. Defendants SmartEPD and Anna Lasso failed to exercise reasonable care in issuing certifications.
- 326. The United States justifiably relied on SmartEPD certifications in evaluating XLERATOR hand dryers for federal procurement.
- 327. Defendants SmartEPD's and Anna Lasso's negligent misrepresentations were the direct and proximate cause of the United States' damages.

COUNT VIII — NEGLIGENT MISREPRESENTATION

(Against Defendant SGS North America Inc.)

328. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
329. Defendant 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; by using a "revised version of NSF Protocol P335" that NSF had rejected; and by allowing its test reports to be cited as third-party validation of claims the reports do not support.
330. Defendant SGS made these representations in the course of its business and in transactions in which it had a pecuniary interest.
331. Defendant SGS failed to exercise reasonable care in conducting testing and issuing reports.
332. The United States justifiably relied on Defendant SGS testing data in evaluating XLERATOR hand dryers for federal procurement.
333. Defendant SGS's negligent misrepresentations were the direct and proximate cause of the United States' damages.

COUNT IX — NEGLIGENT UNDERTAKING

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

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

335. Defendants UL Solutions, SmartEPD, Anna Lasso, and SGS voluntarily undertook to perform certification and testing services for the benefit of commercial purchasers including the United States.
336. Defendants knew or should have known that the United States and other commercial purchasers would rely on their certifications and test reports in making purchasing decisions.
337. Defendants failed to exercise reasonable care in performing their undertaking.
338. The United States relied on Defendants' undertaking to its detriment.
339. Defendants' negligent undertaking was the direct and proximate cause of the United States' damages.
340. To the extent Restatement (Second) of Torts § 324A is read to require physical harm, the preceding Count rests on the physical harm pleaded above — the water dispersal, mold colonization, and property damage in federal facilities, and the exposure of federal employees and the visiting public — and the economic losses are pleaded independently under the False Claims Act, contract, and misrepresentation Counts.

COUNT X — NEGLIGENT STANDARD CREATION

(Against Defendant UL Solutions Inc.)

341. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
342. Defendant UL voluntarily undertook to create standards for hand dryer performance and environmental claims through the Product Category Rules for Hand Dryers.
343. Defendant UL knew or should have known that commercial purchasers including the United States would rely on products certified under these standards.

344. Defendant UL failed to exercise reasonable care in creating standards by allowing manufacturers to dominate the standards committee (80% manufacturer representation); by giving Defendant Excel 40% plurality control; by setting thresholds (0.25 grams) that Defendant UL's own data proved were not achievable at claimed times; by ignoring water dispersal, contamination amplification, and mold colonization; and by creating functional unit calculations based on drying times that are physically impossible.
345. Defendant UL's negligent standard creation was the direct and proximate cause of the United States' damages.

COUNT XI — EPD VERIFICATION NEGLIGENCE

(Against Defendants SmartEPD and Anna Lasso)

346. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
347. Defendants SmartEPD and Anna Lasso voluntarily undertook to verify Environmental Product Declarations for hand dryers.
348. Defendants 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; by certifying specifications identical to an expired UL certificate without updated testing; and by allowing certifications to be used to market products to federal agencies despite excluding hygiene from consideration.
349. Defendants SmartEPD's and Anna Lasso's negligent verification was the direct and proximate cause of the United States' damages.

COUNT XII — DECLARATORY AND INJUNCTIVE RELIEF

(Against All Defendants)

350. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
351. An actual controversy exists between Plaintiff and Defendants regarding the accuracy of Defendants' certifications and representations.
352. 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; Defendants' environmental claims are false; SmartEPD Certificate No. SmartEPD-2023-002-0006-01 violates ISO 14025 independence requirements; and Defendants' certifications were negligently issued.
353. The declaration sought is, in substance, a declaration of status: that the certified status the marks assert never attached, because the examinations that alone confer it never showed compliance. A certificate cannot supply what the examination did not perform.
354. Plaintiff seeks injunctive relief requiring Defendants to: withdraw, correct, or revoke false certifications; cease marketing products with false performance claims to federal agencies; cease certifying products without independent verification of claimed specifications; remove the USDA case study from marketing materials; and disclose to federal agencies that certified specifications are not achievable.
355. Plaintiff has no adequate remedy at law. Defendants' false certifications remain active and continue to cause harm. Without injunctive relief, Defendants will continue to issue false certifications that mislead federal procurement officers.

VI. DAMAGES

356. As a direct and proximate result of Defendants' conduct, the United States has suffered damages including but not limited to: the purchase price of XLERATOR hand dryers purchased by federal agencies in reliance on false specifications; excess energy costs from dryers operating 7-10 times longer than represented; costs to remediate contamination caused by products that do not perform as specified; loss of the benefit of the bargain; statutory treble damages under the False Claims Act; and civil penalties for each false claim presented.

VII. JURY DEMAND

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

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America respectfully requests that this Court enter judgment against Defendants and award Plaintiff:

- 358. Treble damages under the False Claims Act, 31 U.S.C. § 3729(a), in an amount to be determined at trial;
- 359. Civil penalties under the False Claims Act for each false claim and false statement, as adjusted for inflation;
- 360. Compensatory damages for breach of contract in an amount to be determined at trial;

361. Restitution for unjust enrichment in an amount to be determined at trial;
362. Damages for negligent misrepresentation in an amount to be determined at trial;
363. Declaratory relief as specified in Count XI;
364. Injunctive relief as specified in Count XI, including an order requiring Defendants to withdraw false certifications and remove USDA marketing materials;
365. Pre-judgment and post-judgment interest at the maximum legal rate;
366. Costs of suit; and
367. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

UNITED STATES OF AMERICA

By: _____

United States Attorney

District of Columbia

Dated: _____

NOTE TO COUNSEL — THE FALSE CLAIMS ACT ARCHITECTURE, THE STATUS FRAME, AND THE PATH TO FILING

This note is addressed to counsel evaluating this complaint.

The architecture. This complaint is drafted as the Attorney General would bring it under 31 U.S.C. § 3730(a): federal-question and § 1345 jurisdiction, venue under § 3732(a), no state-law scaffolding. The False Claims Act Counts carry the case — per-invoice claims under the GSA Schedule Contract, treble damages, and inflation-adjusted penalties per claim — and the knowledge sections plead the scienter tripod for each Defendant separately. Escobar materiality is pleaded expressly in each False Claims Act Count: the certified specifications were the description under which the Government purchased. Count III extends § 3729(a)(1)(B) to the certifier Defendants as makers of false records material to Excel's claims; its scienter rests on the strongest records in the case — UL's own published Figure 2 data, SGS's twelve-second testing against an eight-second claim, and the independence violations on the Smart EPD certificate. The limitations framework is 31 U.S.C. § 3731(b): six years from violation, or three years from official knowledge, capped at ten — and the certifications remain active, so violations continue to accrue.

The status frame. The Status section following the Certification Chain states the frame this complaint pilots: certification is a conferral of status, not a supply of information. The frame does concrete work here. It is why the False Claims Act fits without strain — every invoice asserted a status that had never attached; why the counterfeit question is posed as a question — the only feature distinguishing a genuine mark from a counterfeit is the examination behind it, and only UL's files can say which this is; and why the United States is the right plaintiff to pose it — the sovereign that recognized UL under 29 C.F.R. § 1910.7 is the recognizer examining the examiner, applying to UL's conferrals the same principle it applied in conferring UL's recognition.

The path to filing. Only the Attorney General can bring this action in this form. The same architecture, unchanged in substance, supports a qui tam complaint under 31 U.S.C. §

3730(b): a private relator files under seal, serves the Government with the complaint and a written disclosure of substantially all material evidence, and the United States elects whether to intervene. The knowledge sections, the published research record, and the exhibits are the disclosure statement in draft. Counsel evaluating this document should read it as both things at once: the complaint as the Department of Justice would file it, and the map a relator's counsel would follow to bring it to the Department's door.

TABLE OF AUTHORITIES

CONTROLLING (federal): 31 U.S.C. §§ 3729–3733 (False Claims Act), including § 3729(a)(1)(A), (a)(1)(B), (b)(1); *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016); 28 U.S.C. §§ 1331, 1345, 1391; 31 U.S.C. §§ 3730, 3731(b), 3732(a); 28 C.F.R. § 85.5; 29 C.F.R. § 1910.7.

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); *Toman v. Underwriters Laboratories, Inc.*, 532 F. Supp. 1017 (D. Mass. 1982). 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; ISO 14044. A filing party should confirm and supplement controlling 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

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

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

[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)

[EXHIBIT-Q] Hand Dryer Plume of Filth Images

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

[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)

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

[EXHIBIT-V] Evidence of Federal Agency Exposure — USDA Installation Documentation

[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

[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

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

[EXHIBIT-GG] NSF P335 Dyson Certified Live Listing

[EXHIBIT-HH] XLERATOR LEED v4.1 Document

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

[EXHIBIT-JJ] Standards and Certification Chronology UL to Smart EPD

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

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

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

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

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

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

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

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

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

[EXHIBIT-TT] USDA Case Study — Excel Dryer Marketing Material

[EXHIBIT-UU] GSA Schedule Contract Documentation

SAMPLE