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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WILLIAM MONDIGO and
RICHARD FAMIGLIETTI,
*individually and on behalf of all others
similarly situated,*

Plaintiffs,

v.

EPSON AMERICA, INC.

Defendant.

Case No. **'19CV2009 BEN BGS**
CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs William Mondigo and Richard Famiglietti, individually and on behalf of all others similarly situated, bring this Complaint against Epson America, Inc., (“Epson” or “Defendant”) and allege as follows:

I. NATURE OF THE CASE

1. This is a class action brought to seek redress on behalf of all persons and entities who purchased an Epson Printer and suffered harm as result of Epson’s anti-competitive, unfair, fraudulent and oppressive and illegal conduct.

1 2. Specifically, Epson engaged, and continues to engage, in a systematic
2 campaign of disabling Epson printers when the owner attempts to use non-Epson ink
3 cartridges in an effort to improperly and illegally quash competition from third-party
4 manufacturers. To carry out this scheme, Epson designed and delivered software
5 and/or firmware Updates to Epson printers that purposely disabled those printers
6 with non-Epson printer cartridges installed. For many users, these software updates
7 effectively ruined their printers. For others, the updates forced them to purchase
8 Epson ink cartridges, which are significantly more expensive than third-party
9 cartridges.

10 3. There is nothing inherently wrong with the third-party ink cartridges
11 that causes them to fail or that precludes their use in Epson printers. Indeed, these
12 cartridges function without issue on Epson printers that do not have the Updates
13 installed.

14 4. Epson never informed Epson printer owners that the Updates would
15 prevent their printers from working if they had third-party ink cartridges installed.
16 To the contrary, the Epson Software License informs consumers that the software
17 and/or firmware Updates will improve the printers and fix known issues.

18 5. Epson’s actions violate the federal Computer Fraud and Abuse Act
19 (“CFAA”), 18 U.S. C. § 1030, the Connecticut Unfair Trade Practices Act
20 (“CUTA”), the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code
21 §§ 17200, *et seq.*, the California False Advertising Law (“FAL”), Cal. Bus. & Prof.
22 Code §§ 17500, *et seq.* and California Computer Penal Code § 502 (Unauthorized
23 access to computers, computer systems and computer data).

24 **II. PARTIES**

25 **Plaintiffs**

26 6. Plaintiffs William Mondigo purchased and owns an Epson WorkForce
27 WF-3640 All-in-One Printer. He is a resident of San Diego, California. Plaintiffs
28 Mondigo carefully reviewed the printer specifications before he chose to purchase

1 the Epson WorkForce WF-3640 All-in-One Printer. The specifications did not
2 disclose that Epson would disable the printer if he used third-party ink cartridges.

3 7. Plaintiffs Richard Famiglietti purchased and owns an Epson XP-830
4 Small-in-One® printer. He is a resident of Waterbury, Connecticut. Plaintiffs
5 carefully reviewed the printer specifications before he chose to purchase the Epson
6 XP-830 Small-in-One® printer. The specifications did not disclose that Epson
7 would disable the printer if he used third-party ink cartridges.

8 **Defendant**

9 8. Defendant Epson America, Inc. is headquartered in Long Beach,
10 California. Epson is the American subsidiary of Seiko Epson Corporation, a
11 Japanese corporation. Epson America, Inc. is incorporated in the State of California.
12 Epson America, Inc. is responsible for selling and marketing Epson printers in the
13 United States.

14 9. information and belief, Epson's conduct emanated from its
15 headquarters in Long Beach, California and the Epson employees/personnel
16 responsible for this conduct are located at Epson's California headquarters.

17 **III. JURISDICTION AND VENUE**

18 10. This Court has federal question subject-matter jurisdiction pursuant to
19 18 U.S.C. § 1331 because Plaintiffs alleges that Epson violated the Computer Fraud
20 and Abuse Act, 18 U.S.C. § 1030 *et seq.*

21 11. This Court has subject-matter jurisdiction pursuant to the Class Action
22 Fairness Act, 28 U.S.C. § 1332(d) in that the matter in controversy exceeds the sum
23 or value of \$5,000,000, exclusive of interest and costs, there are at least 100 members
24 of the proposed class, and at least one member of the class is a citizen of a different
25 state than Defendant. Further, greater than two-thirds of the members of the Classes
26 resides in states other than the state in which Defendant is a citizen.

27 12. This Court also has supplemental jurisdiction over the state law claims
28 pursuant to 28 U.S.C. § 1367(a) because all the claims alleged form part of the same

1 case or controversy.

2 13. Venue is proper in this district pursuant to 28 U.S. C. §§ 1391(b)(2) and
3 1391(d) because a substantial part of the events and omissions giving rise to the
4 claims emanated from activities within this District.







5 **IV. FACTUAL ALLEGATIONS**






6 14. Epson markets and sells printers and Epson ink cartridges in the United
7 States. Consumers can purchase printers directly from Epson or directly from
8 retailers such as Staples, Best Buy, Walmart, Amazon and others.

9 15. The printers, usually, come with ink cartridges but those ink cartridges
10 will eventually need to be replaced as the printer is used. The sale of replacement
11 ink cartridges is an important source of revenue and profit for Epson as Epson ink
12 cartridges range in price from approximately \$10 to \$150 or more for high-end
13 printers. In many cases, the cost of replacement cartridges over the life of a printer
14 is significantly larger than the cost of the printer itself.

15 16. Original Equipment Manufacturer (“OEM”) ink cartridges for the
16 Epson XP-830, ink code 410, cost approximately \$12.99 for a single black, cyan,
17 magenta or yellow ink cartridge. A set of four standard ink cartridges typically costs
18 approximately \$48.29.¹ A 410XL capacity ink cartridge for the XP-830 costs
19 between \$18.99 and \$24.99. As shown in the graphic below, a set of four XL
20 cartridges costs between \$75.96 (four (4) cartridges at \$18.99 each) to \$82.96 (three
21 (3) cartridges at \$18.99 and one (10 cartridge at \$24.99):

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28 ¹ Epson, Epson Expression Premium XP-830 Small-in-One All-in-One Printer Ink, <https://epson.com/InkFinder/i/C11CE78201> (last accessed Oct. 14, 2019).

Color	Ink Code	Our Price	Qty	Change Qty
 Epson 410, Black Ink Cartridge	410	\$12.99	0	<input type="button" value="+"/> <input type="button" value="-"/>
 Epson 410, Photo Black Ink Cartridge	410	\$12.99	0	<input type="button" value="+"/> <input type="button" value="-"/>
 Epson 410, Cyan Ink Cartridge	410	\$12.99	0	<input type="button" value="+"/> <input type="button" value="-"/>
 Epson 410, Magenta Ink Cartridge	410	\$12.99	0	<input type="button" value="+"/> <input type="button" value="-"/>
 Epson 410, Yellow Ink Cartridge	410	\$12.99	0	<input type="button" value="+"/> <input type="button" value="-"/>
 Epson 410, Photo Black and Color Ink Cartridges, C/M/Y and Photo Black 4-Pack	410	\$48.29	0	<input type="button" value="+"/> <input type="button" value="-"/>








Color	Ink Code	Our Price	Qty	Change Qty
 Epson 410XL, Black Ink Cartridge, High Capacity	410XL	\$24.99	0	<input type="button" value="+"/> <input type="button" value="-"/>
 Epson 410XL, Photo Black Ink Cartridge, High Capacity	410XL	\$18.99	0	<input type="button" value="+"/> <input type="button" value="-"/>
 Epson 410XL, Cyan Ink Cartridge, High Capacity	410XL	\$18.99	0	<input type="button" value="+"/> <input type="button" value="-"/>
 Epson 410XL, Magenta Ink Cartridge, High Capacity	410XL	\$18.99	0	<input type="button" value="+"/> <input type="button" value="-"/>
 Epson 410XL, Yellow Ink Cartridge, High Capacity	410XL	\$18.99	0	<input type="button" value="+"/> <input type="button" value="-"/>

17. Third-party ink cartridges for the Epson XP-830 cost substantially less. For instance, on Amazon, it is possible to purchase a 5-pack of 410XL Lemero remanufactured ink cartridges for only \$34.99.²



² Amazon, https://www.amazon.com/s?k=Epson+xp+830+ink+cartridge+replacements&url=searchalias%3Delectronics&ref=nb_sb_noss (last accessed Oct. 14, 2019).

18. Similarly, Original Equipment Manufacturer (“OEM”) ink cartridges for the Epson WF-3640, ink code 252, cost approximately \$19.99 for a single black, or \$12.99 for a single cyan, magenta or yellow ink cartridge. A set of four standard

Color	Ink Code	Our Price	Change Qty
 Epson 252, Black and Color Ink Cartridges, C/M/Y/K 4-Pack	252	\$56.15	- 0 +
 Epson 252 Black Ink Cartridges, 2 Pack	252	\$37.99	- 0 +
 Epson 252, Black Ink Cartridge	252	\$19.99	- 0 +
 Epson 252, Cyan Ink Cartridge	252	\$12.99	- 0 +
 Epson 252, Magenta Ink Cartridge	252	\$12.99	- 0 +
 Epson 252, Yellow Ink Cartridge	252	\$12.99	- 0 +
 Epson 252, Color Ink Cartridges, C/M/Y 3-Pack	252	\$36.19	- 0 +

ink cartridges typically costs approximately \$56.15.³

19. Third-party ink cartridges for the Epson WF-3640 cost substantially less. For instance, on Amazon, it is possible to purchase a 5-pack of remanufactured ink cartridges for less than \$30.⁴

³ Epson, Epson WorkForce WF-3640 All-in-One Printer Ink, <https://epson.com/InkFinder/i/C11CD16201> (last accessed Oct. 14, 2019).

⁴ Amazon, https://www.amazon.com/s?k=replacement+ink+WF-3640&ref=nb_sb_noss_2 (last accessed Oct. 14, 2019).



20. In its 2018 Annual Report, Seiko Epson Corporation acknowledges that, “Third parties also supply ink cartridges and other printer consumables that can be used in Epson printers.”⁵

21. The Epson 2018 Annual Report further acknowledges that third-party ink cartridges could cut into its bottom line and could result in its losing market share.

22. In that report, however, Epson does not discuss disabling printers to increase market share. Instead, the report suggests more benign methods for achieving that goal such as “emphasiz[ing] the quality of genuine Epson brand” ink cartridges, “enhance[ing] customer experience and develop[ing] new products like printers with “high capacity ink tanks.” *Id.* Epson goes far beyond these measures. It actively interferes with the functioning of third-party ink cartridges installed in Epson printers, that it acknowledges “can be used” by installing firmware and software Updates that prevent them from working in order to quash competition.

⁵ Seiko Epson Corporation, 2018 Annual Report (“Epson 2018 Annual Report”), 18, available at <https://global.epson.com/IR/library/pdf/ar2018.pdf> (last accessed Oct. 14, 2019).

1 **The Firmware/Software Updates**

2 23. A printer owner must agree to Epson’s software license when
3 purchasing and using and Epson printer. The second paragraph of that license states
4 that “Epson may, however, from time to time, issue updated versions of the Software
5 and the Software may automatically connect to Epson or third-party servers via the
6 Internet to check for available Updates to the Software, such as bug fixes, patches,
7 upgrades, additional or enhanced functions, plug-ins and new versions (collectively,
8 “Updates”) and may either (a) automatically electronically update the version of the
9 Software that you are using on your personal device or (b) give you the option of
10 manually downloading applicable Updates.”⁶

11 24. The Software License covers “any related documentation, firmware, or
12 Updates.”⁷

13 25. Certain updates require the user to agree to the EPSON EULA EN
14 10/30/2009 Seiko Epson Corporation Software License Agreement. That license
15 does not discuss software Updates or fixes, except to state that any license includes
16 any future Updates.

17 26. Under the terms of Epson’s software licenses, Plaintiffs (and any other
18 Epson Pinter user who downloaded Epson software) authorized Epson to access their
19 printers to apply fixes and upgrades. The Software licenses do not alert owners that
20 these software Updates might freeze their machine if they have third-party ink
21 cartridges installed. Instead, they promise fixes and improvements.

22 27. Plaintiffs and other Epson printer owners *did not* authorize Epson to
23 disable their printer to prevent them from using cheaper third-party alternatives to
24 Epson’s OEM ink cartridges. Instead, Epson exceeded its authority when it disabled
25 their printers (and the Class and Subclasses’ printers, as defined below.)

26 _____
27 ⁶ Epson, Software License Agreement, available at <https://epson.com/SoftwareLicenseAgreement>
28 (last accessed Oct. 14, 2019).

⁷ *Id.*

1 **Epson’s Misrepresentations and Omissions**

2 28. Epson made misrepresentations and omissions regarding Epson
3 printers and the use of third-party ink cartridges.

4 29. Specifically, after Updates are installed to detect and disable third-party
5 ink cartridges, Epson printers display a message claiming that the printer did not
6 “recognize” a third-party ink cartridge when installed.

7 30. The error message that the printers displayed after Updates were
8 installed, misrepresented the cause of the printer issue, suggesting that the previously
9 functioning third-party cartridges were broken or not installed properly when,
10 instead, the updated software simply disables replacement ink cartridges that would
11 otherwise work.

12 31. These error messages are in direct contradiction to Epson’s
13 representations to Plaintiffs and class members that its software and firmware
14 Updates were intended to fix or improve printer functionality.

15 32. Furthermore, Epson misrepresented to Plaintiffs and class members
16 that third-party cartridges were incompatible, when those cartridges would have
17 worked in Epson printers and were compatible until Epson intentionally altered the
18 software that controlled Epson printers.

19 33. Epson neglected to inform Plaintiffs and others like them that accepting
20 Updates would potentially disable their machine and, at the very least, force them
21 into purchasing Epson ink cartridges.

22 34. Epson’s decision not to inform Plaintiffs and others like them that the
23 Updates would disable their printers if they attempted to use third-party ink
24 cartridges was made and implemented from its headquarters in California.

25 **Epson’s Unfair and Oppressive Conduct**

26 35. Epson’s actions were contrary to public policy as set forth in the federal
27 Computer Fraud and Abuse Act (“CFAA”), 18 U.S. C. § 1030 and the California
28

1 Penal Code § 502, which prohibit computer intrusions that damage or disable
2 computer equipment including Epson printers.

3 36. Epson used its ability to access and alter their programming to disrupt
4 the functioning of the Epson Printers to suppress competition.

5 37. Epson's conduct caused harm to Plaintiffs and other Epson printer
6 owners by forcing them to buy more expensive OEM cartridges and by rendering
7 their less expensive cartridges useless as means for Epson to maintain its market
8 share and profits.

9 38. There were reasonable alternatives to Epson's conduct, which are listed
10 in the Epson 2018 Annual Report. Epson could have created reasons for Epson users
11 to choose its ink cartridges. It could emphasize that Epson printers are of higher
12 quality. Epson could have won over customers by providing superior customer
13 experiences or by providing alternatives to its customers rather than by secretly
14 causing functioning printers with functional ink cartridges installed to stop working.

15 39. Epson's conduct was intentional and designed to suppress competition,
16 and resulted in forcing Epson customers to pay for Epson's more expensive ink.

17 40. Epson was able to take unfair advantage of Plaintiffs and others like
18 them by rendering their printers non-functional and providing misleading error
19 messages.

20 41. Epson's conduct was widespread, pervasive, and well-known by
21 owners of Epson printers, as well as technology industry analysts and advocates.
22 For example, on or about October 10, 2018, a letter was sent by the Electronic
23 Frontier Foundation, a nonprofit public interest organization that defends the rights
24 of technology users, to the Office of the Attorney General of Texas detailing Epson's
25 conduct, as described herein, and asking the Attorney General to investigate Epson's
26 practice of disabling printers when third-party ink cartridges are installed. A true
27 and correct copy of the October 10, 2018 letter is attached hereto as **Exhibit 1**.

28

1 42. Additionally, individual accounts of having been victimized by Epson's
2 conduct are widely available on consumer and technology websites. Some examples
3 of these complaints are as follows:

4
5 I Installed a firmware update, and now the printer can no
6 longer "recognize" my print cartridges which had been
7 working fine until the update. Word on the Internet is that
8 Epson deliberately tries to punish people who buy
9 replacement cartridges from other vendors, so they can
10 sell their overpriced ones, and they do that by updating
11 the firmware so that other vendor cartridges are "not
12 recognized".

13 This is despicable. I will never buy another Epson
14 product. They have even spawned a cottage industry that
15 for \$5 sells a firmware downgrade.

16 It is cheaper to buy a new printer than to buy Epson
17 replacement cartridges. Their business practices are
18 predatory and should be illegal.

19 By: PissedConsumer1167767

20 Source: [https://epson.pissedconsumer.com/after-
21 firmware-update-cartridges-not-recognized-
22 201801121167767.html](https://epson.pissedconsumer.com/after-firmware-update-cartridges-not-recognized-201801121167767.html)

23 I am so disgusted with Epson right now. I purchased my
24 Epson 446 printer. I purchased my ink. In no way should
25 Epson be able to lock up my printer because I choose to
26 use re-purposed ink cartridges. I bought this printer
27 because I am a Girl Scout Leader/Volunteer who wears
28 many hats. I need a printer that will hold up. I also need a
printer for some small home jobs too. I was in the middle
of a print job and locked up because I decided to run the
firmware update and now it will not recognize my ink. I
wasted money buying this printer because now I cannot
do anything with it. I just purchased \$50+ in ink. I will
not be forced to use Epson ink. I will go buy a new
printer, and I will never recommend or buy another
Epson product.

 By: ColdBlackbird305

 Source: <https://epson.pissedconsumer.com/review.html>

1 I do bookkeeping at home. I was working this weekend
2 and noticed I had a download. I have always used off
3 brand ink and have an entire box of it. As soon as I did
4 the download my printer locked and said to replace all
5 my inks. I feel I should be able to use any ink I choose. I
6 feel like my printer is being held hostage. I feel like this
7 is communism - you buy a product but it is really not
8 yours. Needless to say I could continue to work or do
9 payroll. I'm throwing it out the window. I will never buy
10 another Epson product.

11 *By:* Peggy of Spartanburg, SC

12 *Source:*

13 <https://www.consumeraffairs.com/computers/epson.html>

14 I recently purchased a new Lenovo computer and
15 installed my Epson Stylus SX 115 software onto it. All
16 was fine until the black ink ran out. To make sure that the
17 printer was entirely compatible with the new computer I
18 decided to upgrade the driver before I replaced the black
19 ink. I always use compatible inks, because Epson inks are
20 so extortionately expensive, and have never had any
21 problems with them. Accordingly, after I had installed
22 the new driver, I replaced the black with a compatible in.

23 When I next went to print I received a message telling me
24 that the black I had installed was not a genuine Epson ink
25 and, after various other caveats, it asked me if I wished to
26 continue anyway. I clicked the continue button and was
27 then taken to a screen that said that the ink cartridge
28 'cannot be recognised', and it showed a big cross over
the black cartridge symbol. Since when I have been
unable to print anything.

There has recently been a considerable number of
complaints in the press about the practice of printer
manufacturers refusing to recognize third-party inks
when the firmware is updated over the internet. Only this
month Which magazine has an article about it which tells
me that such practices are against my consumer rights
because I am entitled to use whichever inks I choose with
my printer.

1 I therefore request that Epson immediately tell me how to
2 resolve this problem so that I can get my printer working
3 again with third-party inks. I am copying this to Which
4 magazine, as they are asking to hear from people like me
5 who have had such problems.

6 *By:* Cherry Lewis from Birmingham, ENG

7 *Source:* [https://www.hissingkitty.com/complaints-
8 department/epson](https://www.hissingkitty.com/complaints-department/epson)

9 **Plaintiff Famiglietti's Experience**

10 43. Plaintiff Famiglietti purchased an Epson XP-830 in the beginning of
11 2018 from OfficeMax.

12 44. Plaintiff Famiglietti considered several different printers but chose the
13 Epson XP-830 because it had the features he was looking for.

14 45. At the time of the purchase, Plaintiff Famiglietti understood and
15 believed that he would be able to use less expensive third-party ink cartridges. The
16 Epson material he reviewed did not cause him to believe otherwise.

17 46. Plaintiff Famiglietti's Epson XP-830 uses 410 & 410XL cartridges. A
18 couple of months after he purchased his Epson printer, Plaintiff Famiglietti
19 purchased EZink remanufactured replacement cartridges from Ebay. They cost less
20 than \$20.00 for a pack of four. Plaintiff Famiglietti purchased the non-Epson
21 cartridges because they were less expensive than the Epson OEM ink cartridges.
22 Epson cartridges would have cost significantly more.

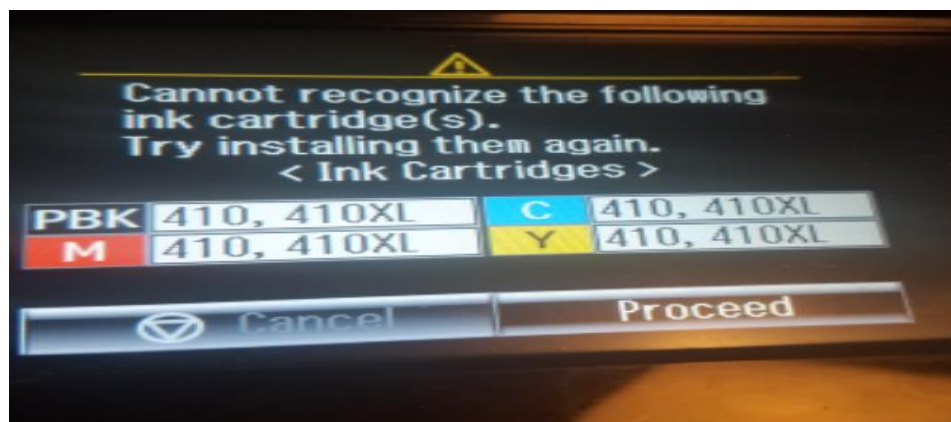
23 47. When his printer ran out of ink, Plaintiff Famiglietti replaced the Epson
24 OEM cartridges with the EZink ink cartridges. The EZink cartridges worked for
25 several months. He was able to print using his Epson XP-830 without interruption.

26 48. In March or April, Plaintiff Famiglietti received a message from Epson
27 when he booted up his printer alerting him that there were available Updates for his
28 printer. Plaintiff Famiglietti understood that the Updates would improve his
printer's functionality. Plaintiffs proceeded to install the Updates.

1 49. After he installed the Updates, Plaintiff Famiglietti's Epson printer
2 stopped printing.

3 50. The Updates included instructions that detected that Plaintiff
4 Famiglietti had installed non-Epson ink cartridges in his XP-830 printer and disabled
5 his printer.

6 51. After the firmware update, Plaintiff's XP-830 printer displayed an error
7 message:



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16 52. Plaintiff Famiglietti was unable to print using his Epson printer after
17 the Updates were installed. He did not know that Epson would or that it, in fact did,
18 use the Updates to access his printer and disable the ink cartridges.

19 53. Based on the error message his printer displayed, Plaintiff Famiglietti
20 replaced all four ink cartridges with new EZink replacement cartridges. The printer
21 still did not work and continued to display the same error message: "Ink Cartridges
22 not recognized, replace the cartridges."

23 54. Plaintiff Famiglietti attempted to resolve the error message by
24 unplugging the printer for five (5) minutes and plugging it back in. When prompted
25 to install cartridges he reinstalled them. His printer still did not work and the same
26 message appeared on the printer display.

27 55. Plaintiff Famiglietti later learned that Updates caused the problem and
28 attempted to uninstall the Updates that Epson had remotely installed in his printer.

1 The new software prevented him from reverting to the previous version that did not
2 disable the EZink ink cartridges.

3 56. Epson prevents Epson printer owners to roll back the firmware once it
4 is installed. Plaintiff Famiglietti attempted to uninstall the software. When his
5 printer powered up again, it contacted an Epson site and re-installed the Updates
6 and, once again, disabled his printer.

7 57. Plaintiff Famiglietti learned that Epson ink cartridges include one or
8 more sensor chips that track ink usage, report low-ink conditions, and balk at
9 wrongly installed or otherwise unacceptable cartridges. By Epson's standards,
10 "unacceptable" includes any consumables Epson itself did not manufacture.

11 58. Plaintiff Famiglietti had no reason to believe that Epson would exceed
12 his permission to access his printer to cause him harm.

13 59. Plaintiff Famiglietti reasonably relied on Epson's promise to improve
14 his printer's functioning by installing Updates.

15 60. Epson engaged in anti-competitive behavior, by limiting Plaintiff
16 Famiglietti and other Epson Printer owners' choice by forcing them to purchase
17 Epson OEM ink cartridges and to replace less expensive third-party ink cartridges.

18 61. Epson abused Plaintiff Famiglietti's permission to remotely install
19 Updates or upgrades. Rather than fixing bugs, providing enhanced features or
20 otherwise improving his printer's performance, Epson damaged his printer.

21 62. As a result of Epson's conduct, Plaintiff Famiglietti suffered harm.
22 Epson's software update rendered his EZink ink cartridges useless and required him
23 to replace them with more expensive ink cartridges. He has had to continue
24 purchasing more expensive ink cartridges.

25 **Plaintiff Mondigo's Experience**

26 63. Plaintiff Mondigo purchased an Epson WorkForce WF-3640 All-in-
27 One Printer in 2016 from Costco.

1 64. Plaintiff Mondigo considered several different printers but chose the
2 Epson WorkForce WF-3640 All-in-One Printer because it had the features he was
3 looking for.

4 65. At the time of the purchase, Plaintiff Mondigo believed that he would
5 be able to use less expensive third-party ink cartridges in the future. The Epson
6 material he reviewed did not cause him to believe otherwise.

7 66. Plaintiff Mondigo's Epson WorkForce WF-3640 All-in-One Printer
8 uses 252XL cartridges. After his purchase, Plaintiff Mondigo replaced the printer's
9 empty ink cartridges with new Epson cartridges and also with refilled Epson
10 cartridges. Plaintiff Mondigo switched from these Epson products in 2018 when he
11 purchased FreeSub replacement cartridges. Plaintiff Mondigo purchased the non-
12 Epson cartridges because they were less expensive than the Epson ink cartridges.
13 Epson cartridges would have cost significantly more.

14 67. To this end, when his printer ran out of ink in 2018, Plaintiff Mondigo
15 replaced the Epson cartridges with the FreeSub ink cartridges. The FreeSub
16 cartridges worked for multiple months. He was able to print using his Epson
17 WorkForce WF-3640 All-in-One Printer without interruption.

18 68. At some point, Updates were installed on Plaintiff Mondigo's printer
19 without his knowledge or consent.

20 69. The Updates included instructions that detected that Plaintiff Mondigo
21 had installed non-Epson ink cartridges in his printer and disabled his printer.

22 70. After the Updates were installed, Plaintiff Mondigo received a message
23 from Epson after turning on his Epson WorkForce WF-3640 All-in-One Printer. The
24 error message instructed Plaintiff Mondigo to restart his printer. After he did so, the
25 printer printed a test page but would not print any other job Plaintiff Mondigo sent
26 it.

27 71. Plaintiff Mondigo attempted to fix his Epson WorkForce WF-3640 All-
28 in-One Printer by restarting it, reinstalling the ink cartridges, and replacing the ink

1 cartridges. When these efforts failed, Plaintiff Mondigo purchased a replacement
2 printer.

3 **V. CLASS ACTION ALLEGATIONS**

4 72. Plaintiffs bring this action, on behalf of themselves and all others
5 similarly situated, as a class action under Rules 23(a) and (b)(3) of the Federal Rules
6 of Civil Procedure.

7 73. Plaintiffs bring this action and seek to certify and maintain it as a class
8 action on behalf of themselves and a Nationwide Class, as defined below, or in the
9 alternative, on behalf of State Subclasses, as defined below.

10 **A. The Nationwide Class**

11 74. The Nationwide Class (the “Class”) is initially defined as follows:

12 All United States residents who, within the applicable limitations period,
13 owned or purchased an Epson Printer.

14 Excluded from the Nationwide Class are Defendants, their employees, co-
15 conspirators, officers, directors, legal representatives, heirs, successors and wholly
16 or partly owned subsidiaries or affiliated companies; class counsel and their
17 employees; and the judicial officers or their immediate family members and
18 associated court staff assigned to this case.

19 **B. The State Subclasses**

20 75. In the alternative to the Nationwide Class, Plaintiffs alleges claims on
21 behalf of a state-wide class for certain states (the “Subclasses”). The Subclasses are
22 defined as follows:

23 **The Connecticut Subclass**

24 All Connecticut residents who, within the applicable limitations period,
25 owned or purchased an Epson Printer.

26 Excluded from the Connecticut Subclass are Defendants, their employees, co-
27 conspirators, officers, directors, legal representatives, heirs, successors and wholly
28 or partly owned subsidiaries or affiliated companies; class counsel and their

1 employees; and the judicial officers or their immediate family members and
2 associated court staff assigned to this case.

3 **The California Subclass**

4 All California residents who, within the applicable limitations period, owned
5 or purchased an Epson Printer.

6 Excluded from the California Subclass are Defendants, their employees, co-
7 conspirators, officers, directors, legal representatives, heirs, successors and wholly
8 or partly owned subsidiaries or affiliated companies; class counsel and their
9 employees; and the judicial officers or their immediate family members and
10 associated court staff assigned to this case.

11 76. Plaintiffs reserve the right to re-define the Class and Subclasses prior
12 to class certification, and thereafter, as necessary.

13 77. The members of the Class and Subclasses are so numerous that
14 individual joinder is impracticable. Upon information and belief the Class and
15 Subclasses include thousands of owners of Epson printers. Plaintiffs do not know
16 the precise number of Class and Subclasses members, but they may be ascertained
17 from Defendant's books and records.

18 78. There are numerous questions of law and fact common to Plaintiffs and
19 the Class and Subclasses. Questions common to the Class and Subclasses
20 predominate over any questions that may affect individual Class or Subclass
21 members, including, but not limited to:

- 22 a. Whether Epson violated the Computer Fraud and Abuse Act 18
23 U.S.C. § 1030;
24
25 b. Whether Epson violated the California Computer Data Access
26 And Fraud Act, Cal. Penal Code § 502;
27
28

- 1 c. Whether Epson violated the California Unfair Competition Law,
2 Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and the California False
3 Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*;
- 4
5 d. Whether Epson violated the Connecticut Unfair Trade Practices
6 Act, Conn. Gen. Stat. § 42-110a *et seq.*;
- 7
8 e. Whether Epson made material misrepresentations and omissions
9 regarding Plaintiff's and the Class and Subclasses' Epson
10 printers;
- 11
12 f. Whether Epson's disablement of consumers Epson printers
13 constituted unfair or fraudulent practices under California law;
- 14
15 g. Whether Epson's practices harmed Plaintiffs and Class and
16 Subclass members;
- 17
18 h. Whether Plaintiffs' and the Class and Subclass members' Epson
19 printers are electronic or high speed data processing devices as
20 defined in the Computer Fraud and Abuse Act;
- 21
22 i. Whether Epson knowingly accessed Plaintiffs' and Class and
23 Subclass members' Epson's printers;
- 24
25 j. Whether Plaintiffs' and Class and Subclass members authorized
26 Epson to access their Epson printers;
- 27
28 k. Whether Epson exceeded its authority when it accessed
Plaintiffs' and Class and Subclass members' Epson printers;

- 1 l. Whether Epson knowingly transmitted a program information,
2 code, or command that damaged Plaintiffs' and Class and
3 Subclass members' Epson printers;
- 4 m. Whether Epson knowingly added, altered, deleted, or destroyed
5 any data, computer software or program related to Plaintiffs' and
6 Class and Subclass members' printers;
- 7 n. Whether Epson knowingly disrupted the Plaintiffs' and Class
8 and Subclass members' printers;
- 9 o. Whether Plaintiffs' and Class and Subclass members are entitled
10 to equitable relief;
- 11 p. The proper measure of damages; and
- 12 q. Whether Plaintiffs' and Class and Subclass are entitled to
13 restitution, and if so, in what amount.

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18 79. Plaintiffs' claims are typical of the claims of the Class and Subclasses
19 he seeks to represent under FED. R. CIV. P. 23(a)(3) because Plaintiffs and members
20 of the Class and Subclasses purchased and/or owned an Epson printer and have been
21 subject to the same wrongful practices and have been harmed thereby in the same
22 manner.

23 80. Plaintiffs will fairly and adequately represent and protect the interests
24 of the Class and Subclasses as required by FED. R. CIV. P. 23(a)(4). Plaintiffs are
25 adequate representatives of the Class and Subclasses because they have no interests
26 that are adverse to the interests of the Class and/or Subclasses. Plaintiffs and their
27 counsel are committed to the vigorous prosecution of this action and have the
28

1 financial resources to do so. Plaintiffs have retained counsel who are competent and
2 experienced in handling class action litigation on behalf of consumers and who do
3 not have any interest adverse or antagonistic to those of the Class and Subclasses.

4 81. A class action is superior to any other available means for the fair and
5 efficient adjudication of this controversy, and no unusual difficulties are likely to be
6 encountered in the management of this class action. The damages or other financial
7 detriment suffered by Plaintiffs and each Class and Subclass member are relatively
8 small compared to the burden and expense that would be required to individually
9 litigate their claims against Defendant, so it would be impracticable for each Class
10 and/or Subclass member to individually seek redress for Defendant's wrongful
11 conduct. Even if Class and Subclass members could afford individual litigation,
12 individualized litigation creates a potential for inconsistent or contradictory
13 judgments, and increases the delay and expense to all parties and the court system.
14 By contrast, the class action device presents far fewer management difficulties, and
15 provides the benefits of single adjudication, economy of scale, and comprehensive
16 supervision by a single court.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**

19 **18 U.S.C. § 1030**

20 **(ON BEHALF OF THE CLASS)**

21 82. Plaintiffs repeat and re-allege the allegations contained in the foregoing
22 paragraphs as if fully set forth herein.

23 83. The CFAA is a federal criminal statute that prohibits computer crimes,
24 including unauthorized access to a computer, or access that exceeds any
25 authorization and allows persons who have been damaged thereby to bring claims
26 under the CFAA.

27 84. The CFAA permits “any person who suffers damages or loss by reason
28 of a violation of this section and may maintain a civil action against the violator to

1 obtain compensatory damages and injunctive relief or other equitable relief.” 18
2 U.S.C. § 1030 (g).

3 85. Plaintiffs and Class and Subclass members are “persons” under the
4 CFAA, 18 U.S.C. § 1030(e)(12).

5 86. Plaintiffs’ and Class and Subclass members’ Epson printers are
6 “computers” under the CFAA. Under the CFAA “the term ‘computer’ means an
7 electronic, magnetic, optical, electrochemical, or other high speed data processing
8 device performing logical, arithmetic, or storage functions, and includes any data
9 storage facility or communications facility directly related to or operating in
10 conjunction with such device.” 18 U.S.C. § 1030(e)(1). Epson printers are data
11 processing devices and perform storage functions.

12 87. Plaintiffs’ and Class and Subclass members’ Epson printers are
13 “protected computers” under the CFAA. They are “used in or affecting interstate or
14 foreign commerce or communication.” 18 U.S.C. § 1030(e)(2)(B).

15 88. Under the CFAA, “the term ‘damage’ means any impairment to the
16 integrity or availability of data, a program, a system, or information.”

17 89. The CFAA establishes liability against anyone who “knowingly causes
18 the transmission of a program, information, code, or command, and as a result of
19 such conduct, intentionally causes damage without authorization, to a protected
20 computer.” 18 U.S.C. § 1030(a)(5)(A).

21 90. “[T]he term “exceeds authorized access” means to access a computer
22 with authorization and to use such access to obtain or alter information in the
23 computer that the accesser is not entitled so to obtain or alter.”

24 91. Epson knowingly and with authorization exceeded its authorized access
25 to Plaintiffs and Class and Subclass members’ printers and caused damage.

26 92. Epson took advantage of its ability to access Epson printers and caused
27 the Epson printers to stop working. Epson used its software and/or firmware
28 Updates to “knowingly” transmit “a program, information, code, or command, and

1 as a result of such conduct” intentionally damaged Plaintiffs’ Epson printers as well
2 as the Class and Subclasses’ Epson printers. 18 U.S.C. § 1030(a)(5)(A).

3 93. Epson’s knowing intrusions into the Plaintiffs’ and the Class and
4 Subclasses’ Epson printers resulted in damage to Plaintiffs and Class members, by
5 using its Updates to disable Plaintiffs’ and Class member’s printers and by forcing
6 them to purchase more expensive third-party ink cartridges and preventing Plaintiffs
7 and Class members from using cheaper third-party ink cartridges.

8 94. Plaintiffs and Class members seek recovery of damages and all other
9 relief allowed under 18 U.S.C. § 1030(g).

10 **SECOND CAUSE OF ACTION**

11 **VIOLATION OF THE CONNECTICUT UNFAIR TRADE**

12 **PRACTICES ACT**

13 **CONN. GEN. STAT. § 42-110A *ET SEQ.***

14 **(ON BEHALF OF THE CONNECTICUT SUBCLASS)**

15 95. Plaintiff Famiglietti repeats and re-alleges the allegations contained in
16 paragraphs 1-113 above, as if fully set forth herein.

17 96. CUPTA prohibits “unfair methods of competition and unfair or
18 deceptive acts or practices in the conduct of any trade or commerce.” Conn. Gen
19 Stat. § 42-110b.

20 97. Plaintiff Famiglietti has suffered an ascertainable loss of money or
21 property as a result of Epson’s unfair methods of competition and unfair and
22 deceptive acts.

23 98. Epson’s acts offends public policy that prohibits knowing and or
24 unauthorized access to computers and printers, or access that exceeds any
25 authorization given to disable those devices in order to retain market share and
26 profits.

27 99. Epson’s practice of accessing Plaintiff’s and other Connecticut
28 Subclass’ to knowingly disable functioning third-party ink cartridges to force the

1 Plaintiff Famiglietti and the Connecticut Subclass to purchase Epson’s more
2 expensive OEM ink cartridges and to eliminate competition from third-party ink
3 cartridge vendors is immoral, unethical, oppressive and unscrupulous.

4 100. Epson had reasonable alternatives to ensure its market share and
5 maintain or increase profits.

6 101. Epson engaged in deceptive business practices by misrepresenting the
7 functionality of third-party ink cartridges and the purpose of its Updates.

8 102. Epson mislead Plaintiff Famiglietti and the Connecticut Subclass by
9 leading its members to believe that third-party ink cartridges would damage their
10 printers and could not function when, in truth, those ink cartridges would not harm
11 their printers and did function until Epson disabled them. Epson intentionally caused
12 the third-party ink cartridges to malfunction.

13 103. Plaintiff Famiglietti and the Connecticut Subclass relied on Epson’s
14 false and misleading statements and were harmed thereby.

15 104. The Connecticut Subclass is entitled to relief under CUPTA, including
16 damages, punitive damages, equitable and injunctive relief and attorneys’ fees and
17 costs to the extent allowed.

18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION**

20 **LAW (“UCL”)**

21 **(CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*)**

22 **(ON BEHALF OF THE CALIFORNIA CLASS)**

23 105. Plaintiffs repeat and re-alleges the allegations contained in paragraphs
24 1-123 above, as if fully set forth herein.

25 106. Epson’s headquarters are located in California and Epson regularly
26 conducts business throughout the State of California.

27 107. The conduct described herein emanated from Epson’s California
28 headquarters

1 108. Epson must adhere to the requirements of the UCL.

2 109. The UCL prohibits acts of unfair competition, including unlawful,
3 unfair or fraudulent business acts or practices.

4 110. Epson has engaged in unfair, unlawful or fraudulent business acts and
5 practices in violation of the UCL, in that: (a) Epson's practices and conduct are
6 immoral, unethical, oppressive and substantially harmful to Plaintiffs and the
7 members of the California Subclass; (b) the justification for Epson's practices and
8 conduct is outweighed by the gravity of the injury to Plaintiffs and the California
9 Subclass; and (c) Epson's practices constitute unfair, fraudulent, untrue or
10 misleading actions that exploit and mislead members of the public.

11 111. Epson's practices were unfair because it is unethical, immoral,
12 oppressive, and substantially injurious to consumers for Epson to knowingly and
13 intentionally disable functioning third-party ink cartridges to force Plaintiffs and the
14 California Subclass members to purchase Epson's more expensive OEM ink
15 cartridges and to eliminate competition from third-party ink cartridge vendors and
16 to use Updates that were characterized as providing improvements and fixes to
17 damage and disable Plaintiffs' and the California Subclass's Epson printers to force
18 them to use Epson OEM ink cartridges.

19 112. The gravity of the harm resulting from Epson's conduct outweighs any
20 possible utility of the conduct. Epson had reasonable alternatives to ensure its
21 market share and maintain or increase profits.

22 113. Epson's practices were fraudulent because Plaintiffs and the California
23 Subclass were deceived and likely to be deceived by Epson's misrepresentation
24 regarding its Updates and the functionality of third-party ink cartridges.

25 114. The harm caused by these practices outweighs any possible utility such
26 business practices could have.

1 115. Epson engaged in fraudulent business practices by misrepresenting the
2 functionality of third-party ink cartridges and the purpose of its software and
3 firmware Updates.

4 116. Epson’s statements and representations would mislead a reasonable
5 consumer into believing that it is not possible to use third-party ink in an Epson
6 printer. Epson further mislead consumers by leading them to believe that its
7 software and/or firmware Updates would improve their Epson printers’
8 functionality. Instead they disabled the printers. Plaintiffs and the California
9 Subclass reasonably relied on Epson’s statements and purchased ink cartridges that
10 Epson disabled or purchased more expensive Epson brand cartridges believing that
11 the third-party ink cartridges were defective.

12 117. Epson’s practices were unlawful because they violated the CFAA and
13 the California Penal Code § 502.

14 118. Epson’s conduct caused the California Subclass to suffer an injury in
15 fact.

16 119. The California Subclass is entitled to relief under the UCL, including
17 restitution, declaratory relief as well as attorneys’ fees and costs to the extent
18 allowed.

19 **FOURTH CAUSE OF ACTION**
20 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW**
21 **(“FAL”)**
22 **(CAL. BUS. & PROF. CODE § 17500, ET SEQ.)**
23 **(ON BEHALF OF THE CALIFORNIA CLASS)**

24 120. Plaintiffs repeats and re-alleges the allegations contained in paragraphs
25 1-138 above, as if fully set forth herein.

26 121. Epson violated the FAL by using false and misleading advertising and
27 statements and omitting material information.

1 122. Epson misled Plaintiffs and the California Subclass by leading its
2 members to believe that third-party ink cartridges would damage their printers and
3 could not function when, in truth, those ink cartridges would not harm their printers.
4 Epson intentionally caused the third-party ink cartridges to malfunction.

5 123. As a direct and proximate result of Epson's false and misleading
6 statements and advertising, the California Subclass suffered an injury in fact and lost
7 money and property.

8 124. The California Subclass relied on Epson's false and misleading
9 statements and were harmed thereby.

10 125. The California Subclass brings this action seeking to enjoin Epson from
11 continuing to engage in its false and misleading statements and to require Epson to
12 provide truthful and non-misleading information to consumers. The California
13 Subclass seeks restitution of the monies Epson obtained as a result of its false and
14 misleading advertising, with interest and an award of reasonable attorneys' fees and
15 costs, under the applicable law.

16 **FIFTH CAUSE OF ACTION**

17 **VIOLATION OF CAL. PENAL CODE § 502**

18 **(ON BEHALF OF THE CALIFORNIA CLASS)**

19 126. Plaintiffs repeats and re-alleges the allegations contained in paragraphs
20 1-144 above, as if fully set forth herein.

21 127. Cal. Penal Code § 502 prohibits knowing access to computers,
22 computer systems and networks.

23 128. The California Penal Code authorizes Epson printer owners to bring a
24 civil action "against the violator for compensatory damages and injunctive relief or
25 other equitable relief. Compensatory damages shall include any expenditure
26 reasonably and necessarily incurred by the owner or lessee to verify that a computer
27 system, computer network, computer program, or data was or was not altered,
28 damaged, or deleted by the access." Cal. Penal Code § 502(d)(1).

1 129. Cal. Penal Code § 502(c)(1) makes it an offense to “[k]nowingly
2 access[] and without permission alter[], damage[], delete[], destroy[], or otherwise
3 uses any data, computer, computer system, or computer network in order to either
4 (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B)
5 wrongfully control or obtain money, property, or data.”

6 130. Cal. Penal Code § 502(c)(4) makes it an offense to, “[k]nowingly
7 access[] and without permission add[], alter[], damage[], delete[], or destroy[] any
8 data, computer software, or computer programs which reside or exist internal or
9 external to a computer, computer system, or computer network.”

10 131. Epson accessed the California Subclass’s printers, in that Epson was
11 able “to gain entry to, instruct, cause input to, cause output from, cause data
12 processing with, or communicate with, the logical, arithmetical, or memory function
13 resources of a computer, computer system, or computer network.” Cal. Penal Code
14 § 502(b)(1).

15 132. Epson violated the Cal. Penal Code when it executed a scheme or
16 artifice and knowingly accessed the California Subclass’s printers and damaged and
17 interfered with them to “wrongfully control or obtain money, property or data” from
18 members of the California Subclass.

19 133. As a proximate result of Epson’s violation of Cal. Penal Code § 502,
20 the California Subclass were damaged and are entitled to compensatory damages,
21 equitable relief and reasonable attorneys’ fees.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs individually and on behalf of all others
24 similarly situated, respectfully request this Court enter a judgment against Defendant
25 in favor of Plaintiffs and grant the following relief:

26 A. Enter an Order certifying the proposed Class and Subclasses and
27 appointing Plaintiffs as Class Representatives;

28 B. Enter an Order issuing appropriate notice to the Class and Subclasses

1 at Defendant's expense;

2 C. Declare, adjudge and decree that Defendant violated the CFAA;

3 D. Declare, adjudge and decree that Defendant violated Cal. Penal Code §
4 502.

5 E. Declare, adjudge and decree that Defendant's conduct as alleged herein
6 is unlawful, unfair and/or deceptive;

7 F. Declare, adjudge and decree that Defendant engaged in unfair methods
8 of competition and unfair and deceptive acts;

9 G. Declare, adjudge and decree that Defendant's advertising and
10 statements were false and misleading;

11 H. Award Plaintiffs and the members of the Class and Subclasses
12 compensatory and statutorily enhanced damages or compensation as provided for
13 under law for each of the causes of action set forth above;

14 I. Award restitution and disgorgement of Defendant's revenues or profits
15 from its illegal behavior described herein to Plaintiffs and members of the Class and
16 Subclasses;

17 J. Award declaratory and injunctive relief as permitted by law or equity,
18 including: enjoining Defendants from continuing the unlawful practices as set forth
19 herein, and directing Defendants to identify, with Court supervision, victims of its
20 conduct and to disgorge to them all monies acquired by Defendants by means of any
21 act or practice declared by this Court to be wrongful or pay them restitution and
22 change their business practices.

23 K. Award Plaintiffs and the Class and Subclasses reasonable attorneys'
24 fees, costs and pre-and post-judgment interest; and

25 L. Award such other and further relief as the Court deems just and proper.
26
27
28

1 Date: October 18, 2019

Respectfully submitted,

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