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11 *Attorneys for Plaintiffs and the Proposed Class*

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

14 **WILLIAM MONDIGO and**
15 **RICHARD FAMIGLIETTI,**
16 *individually and on behalf of all others*
17 *similarly situated,*

18 **Plaintiffs,**

19 **v.**

20 **EPSON AMERICA, INC.**

21 **Defendant.**

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

JURY TRIAL DEMANDED

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

25 **I. NATURE OF THE CASE**

26 1. This is a class action brought to seek redress on behalf of all persons
27 and entities who purchased an Epson Printer and suffered harm as result of Epson's
28 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.

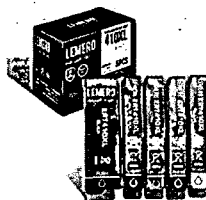
15 16. Original Equipment Manufacturer (“OEM”) ink cartridges for the
16 Epson XP-830, ink code 410, cost approximately \$12.99 for a single black, cyan,
17 magenta or yellow ink cartridge. A set of four standard ink cartridges typically costs
18 approximately \$48.29.¹ A 410XL capacity ink cartridge 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	+ 
 Epson 410, Photo Black Ink Cartridge	410	\$12.99	0	+ 
 Epson 410, Cyan Ink Cartridge	410	\$12.99	0	+ 
 Epson 410, Magenta Ink Cartridge	410	\$12.99	0	+ 
 Epson 410, Yellow Ink Cartridge	410	\$12.99	0	+ 
 Epson 410, Photo Black and Color Ink Cartridges, C/M/Y and Photo Black 4-Pack	410	\$48.20	0	+ 

Color	Ink Code	Our Price	Qty	Change Qty
 Epson 410XL, Black Ink Cartridge, High Capacity	410XL	\$24.99	0	+ 
 Epson 410XL, Photo Black Ink Cartridge, High Capacity	410XL	\$18.99	0	+ 
 Epson 410XL, Cyan Ink Cartridge, High Capacity	410XL	\$18.99	0	+ 
 Epson 410XL, Magenta Ink Cartridge, High Capacity	410XL	\$18.99	0	+ 
 Epson 410XL, Yellow Ink Cartridge, High Capacity	410XL	\$18.99	0	+ 

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



Lemero Remanufactured Ink Cartridge Replacement for Epson 410XL (Black,Cyan,Magenta,Yellow , 5-Pack)
by Lemero






















\$34.99, prime
FREE Delivery by Sat, Nov 3

★★★★☆ 48

Save \$2.00 with coupon

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

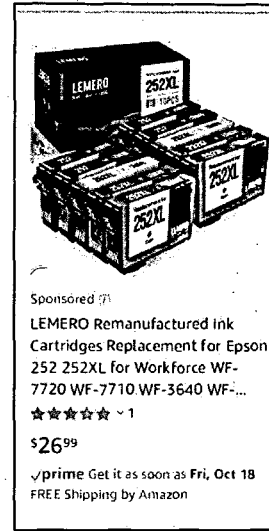
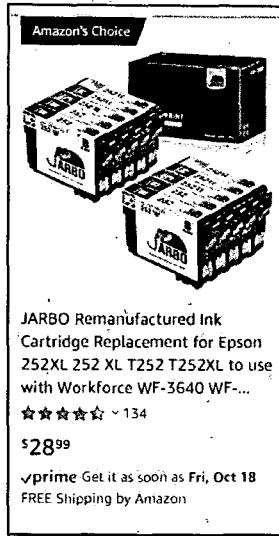
Color	Ink Code	Our Price	Change Qty
 Epson 252, Black and Color Ink Cartridges, C/M/Y/K 4-Pack	252	\$56.15	 0 
 Epson 252 Black Ink Cartridges, 2 Pack	252	\$37.99	 0 
 Epson 252, Black Ink Cartridge	252	\$19.99	 0 
 Epson 252, Cyan Ink Cartridge	252	\$12.99	 0 
 Epson 252, Magenta Ink Cartridge	252	\$12.99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



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

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

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

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28 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 an 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 printer 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.*