

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

EPIC OFFICE SOLUTIONS LLC

Plaintiff,

v.

EPSON AMERICA, INC.,

Defendant.

Civil Case No. ____

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff, Epic Office Solutions LLC (“Plaintiff” or “Epic”), by its attorneys The Roth Law Firm, PLLC, brings this action against Epson America, Inc. (“Defendant” or “Epson”) and hereby alleges the following:

NATURE OF THE CASE

1. This is an action for fraud and negligence against Epson for flagrantly misrepresenting the ink cartridge yields of its printers to Plaintiff Epic, its largest customer of Epson printers, resulting in extraordinary financial losses to Epic.

2. Epson’s conduct, as set forth below, is a disquieting twist on the “razor and blades business model” - a business strategy designed to generate reliable, recurring income by locking a consumer onto a platform or proprietary tool for a long period, such as by selling a razor at low price to lock in future sales of proprietary blades.¹ Here, Epson’s printers are the razor and ink is the blade.

¹ <https://www.investopedia.com/terms/r/razor-razorblademodel.asp>

3. Epson fraudulently misrepresented the amount of ink its printers used to not only lock Epic into purchasing the “highly efficient” printers, but more importantly, lock Epic into purchasing hundreds of thousands of replacement ink cartridges in the future for its printers that “drink ink”.

4. The outrageous misrepresentations and conduct by Epson towards Epic cannot be understated. Epic has the nation’s largest fleet of Epson machines and, this year, was named Epson dealer of the year.

5. As its lead dealer, Epic provided Epson with irrefutable data showing that Epson has misrepresented its printers’ yields, and has provided Epson many opportunities to cure its fraud but has failed to do so.

6. By this action, Epic seeks damages for the serious and significant harm Epson caused to its business.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the claims asserted in this action pursuant to the federal courts’ statutory diversity jurisdiction under 28 U.S.C. § 1332(a), as the matter in controversy exceeds the sum or value of \$75,000 and the parties are citizens of different states.

8. This Court has specific personal jurisdiction over Epson because it has sufficient minimum contacts in this jurisdiction, including conducting advertising, marketing, and distribution of the products at issue, and engages in continuous and systematic business activities in this District and is authorized to do business in New York and has designated an agent for service of process in this judicial district.

9. The parties entered into an authorized reseller agreement on or about August 24, 2020 that appoints Epic as a non-exclusive authorized reseller of Epson products, and contains a clause providing for venue in Central District of California for any disputes “arising out of this

agreement.” The clause is inapplicable to Epic’s claims for fraudulent or negligent representation because such claims arise outside of the reseller agreement.

PARTIES

10. Plaintiff Epic Office Solutions (“Epic”) was founded by co-owners Mark Allen (“Allen”) and Cliff Kilman (“Kilman”) and is a Texas limited liability company. Epic has its principal place of business at 5467 New Copeland Rd., Tyler, Texas 75703. Allen and Kilman are both residents of Texas.

11. Upon information and belief, Defendant Epson America, Inc., (“Epson”) is a California corporation authorized to do business in New York and is one of the largest manufacturers of printers and imaging-related equipment in the United States.

PLAINTIFF’S BUSINESS

12. Epic is an authorized reseller of Epson printers and has the nation’s largest fleet of Epson printers and copiers.

13. Epic leases printing and copying equipment it purchases from Epson to third party businesses, and maintains such equipment, including ink cartridge replacements, in exchange for a fixed monthly fee, paid by Epic’s customers, agreed upon at the time the equipment is leased.

14. Epic currently has the largest fleet of Epson printers in the nation.

15. This year, Epson awarded Epic “dealer of the year” at the 2023 Epson InkBoldly Partner Conference:



Kilman and Allen accept the award for Epson Dealer of the Year at the 2023 Epson InkBoldly Partner Conference.

EPSON'S MISREPRESENTATIONS

16. In 2020, Plaintiff began researching a potential partnership with Epson who had advertised that Epson's new ink technology was more efficient, cheaper to run and less service intensive than the toner technology used by Epson's competitors.

17. During Epic and Epson's initial conversations, Account Manager Chris Torbett and Business Development Manager Jeff Fox at Epson, represented that, given the efficiency of their ink technology, Epic would be able to sell the ink at \$0.01 per page for black prints and \$0.04 for color prints to get 50% margins on Epson large Work Force Enterprise machines ("WFE machines") that Epic purchased and leased to third parties.

18. After Epic became an authorized Epson dealer in or around June 2020, Epic was given access to Epson's service manual via Epson's online Partner Portal Service, which contained a "Consumables Specifications" information sheet ("Spec Sheet 1") for "Work Force" machines, including these models: WF-C21000, WF-C20750, and WF-C20600.

19. Spec Sheet 1 represented that Epson's black ink cartridges yielded approximately 62,000 pages in these WFE machines, 12,000 pages more than Epson generally advertised, and that the color ink cartridges in these machines yielded approximately 50,000 pages:

Consumables Specifications



Consumables List

Name	Part #	WF-C21000	WF-C20750	WF-C20600	WF-C20590 series compatible
Black ink cartridge for WF-C21000	T02Y1	✓	-	-	-
Color ink cartridge for WF-C21000	T02Y2 T02Y3 T02Y4	✓	-	-	-
Black ink cartridge for WF-C20750	T02S1	-	✓	-	-
Color ink cartridge for WF-C20750	T02S2 T02S3 T02S4	-	✓	-	-
Black ink cartridge for WF-C20600	T02Q1	-	-	✓	-
Color ink cartridge for WF-C20600	T02Q2 T02Q3 T02Q4	-	-	✓	-
Maintenance box	T6713	✓	✓	✓	✓
Staple cartridge (for flat binding)	C12C935401	✓	✓	✓	-
Staple cartridge (for saddle stitching)	C12C935411	✓	✓	✓	-

Consumable Yields

Name	Yields
Black Ink Cartridge	Approx. 62,000 pages
Color Ink Cartridge	Approx. 50,000 pages
Staple cartridge (for flat binding)	5,000 staple
Staple cartridge (for saddle stitching)	2,000 staple

20. On or about June 30, 2020, Epson’s national distributor, Impression Solutions, Inc. gave Epic another spec sheet from Epson which provided a different breakdown of the ink yields for each cartridge (“Spec Sheet 2”). Spec Sheet 2 provided that both black and color ink cartridges would produce a yield of 40,000 pages per cartridge, which constituted 80% of the yield Epson generally advertised:

					
DO NOT FORGET TO ADD FREIGHT!					
Epson Supply Item	Black Ink	Yellow Ink	Cyan Ink	Magenta Ink	Maint. Box
MSRP	\$400.00	\$490.00	\$490.00	\$490.00	\$25.00
Dealer Cost	\$70.00	\$160.00	\$160.00	\$160.00	\$12.50
50%GP	\$140.00	\$320.00	\$320.00	\$320.00	\$25.00
Epson Stated Yield	50,000	50,000	50,000	50,000	120,000
Dealer Yield %	80%	80%	80%	80%	80%
Dealer Yield	40,000	40,000	40,000	40,000	108,000
Dealer Cost Est CPP	\$0.00175	\$0.00400	\$0.00400	\$0.00400	\$0.00012
Dealer Cost Mono Est CPP	\$0.00187				
Dealer Cost Color Est CPP	\$0.01387				
Customer Paying Cost Per Page including all Supplies and Service					
Mono CPP/Ink & Service	\$0.00673	(Based on above Supplies GP+ Service at .003cpp)			
CMYK CPP/Ink & Service	\$0.03273	(Based on above Supplies GP+ Service at .005cpp)			

21. During the course of Epic’s relationship with Epson, Epson representatives have provided Epic with a third series of more detailed spec sheets for Epson’s for each EpsonWFE machines including the WF-C21000, WF-C20600, and WF-C20750 models, as well as for two WorkForce Pro machines (“WFP machines”), WF-C579R and WF-C879R, among others (collectively, “Individual Spec Sheets”). The Individual Spec Sheets provided the following approximate ink yields for each machine per ink cartridge:

- WFE machine models:
 - WF-C21000: Black: 50,000 pages; Color: 50,000 pages each
 - WF-C20600: Black: 50,000 pages; Color: 50,000 pages each
 - WF-C20750: Black: 50,000 pages; Color: 50,000 pages each
- WFP machine models:
 - WF-C579R: Black: 10,000 pages; Color: 5,000 pages each (standard ink packs)
 - WF-C879R: Black: 20,000 pages; Color: 20,000 pages each (standard ink packs)

22. On August 24, 2020, Epic and Epson executed a reseller agreement, permitting Epic to resell and lease Epson products to their customers.

23. Relying on the ink efficiency touted by Epson representatives, as well as the yields advertised in Spec Sheet 1, Spec Sheet 2, and Individual Spec Sheets, Epic has purchased approximately 2,000 machines, thousands of ink packs, and a host of other supplies from Epson for a total cost of over \$7 million, since June 2020. Further, Epic has purchased additional parts and labor required to maintain and tend to the defective machines.

Epic's Investigation of Epson

24. In early 2023, Epic reviewed its accounts and, after so doing, became aware that it was losing a tremendous amount of money. Epic investigated the cause of the loss and identified that its loss was due to Epson misrepresenting the performance capabilities and ink yields of its products.

25. Each Epson printer that Epic leases has a serial number and maintains real-time data delineating the performance of that printer, including its yields. This data concerning print yield of each printer is also maintained in Epson's online Remote Service Portal available to Epic as an authorized Epson dealer. Epson's online Remote Service Portal enables Epic (and Epson) to track the performance and ink yields of all 1,700 printers it has leased to third parties across the country by serial number.

26. Epic's analysis concluded that Epson's machines were printing 50% less than the yields represented and in some extreme cases, certain Epson machines use more than a full set of color ink to produce 10 color pages or less instead of the 50,000 pages represented by Epson. For illustrative purposes of the serious financial damages caused by Epson's fraudulent representations, Epic cites the performance of Epson machines with the following serial numbers:

- (i) X74P000628: this machine will cost Epic \$9,558.72 in ink and waste containers over Epic's 60-month contract with its client based on this machine's performance to date. In contrast, if Epsons' representations were accurate, Epic would only spend \$333.40 over the life of the contract.

- (ii) X74P000580: this machine has gone through 4 (four) color cartridges with only 666 color pages printed. Epson represented 50,000 yield per cartridge. Epic is only getting 0.003% of the yield represented by Epson. **Epic's cost per color page printed is \$1.35** instead of the \$.02 Epic represented.
- (iii) X74P000582: this machine has has used 3.9 color ink cartridges to print only 5 color pages. **Epic's cost per color page printed is \$175.50**. There are 42 months left on Epic's contract with its customer for this machine. This machine is using color ink even when no color page is printed.
- (iv) X74P000578: this machine has used 8.25 color ink cartridges to print only 12 color pages. Epic's cost per color page printed is **\$154.69** per color page. There are 42 months left on Epic's contract with its customer for this machine.

Epic's clients with these serial numbers, and others, can literally print Epic out of business.

27. Epson's misrepresentations span all models purchased by Epic, including each of the machines listed below.

Workforce Enterprise AM-C4000

28. Epson's spec sheet represent that its AM-C4000 machines will print 50,000 black and white pages and 30,000 color pages per cartridge.

29. Epic relied on these representations in the AM-C4000 spec sheet and purchased 41 machines between January 2023 and October 2023, at a total cost of \$134,480.

30. In fact, the yields on these machines are far lower than the the representations made in Epson's spec sheets.

Workforce Enterprise AM-C5000

31. Epson's spec sheet represents that its AM-C5000 machines will print 50,000 black and white pages and 30,000 color pages per cartridge.

32. Epic relied on these representations in the AM-5000 spec sheet and purchased twelve (12) AM-C5000 machines between January 2023 and July 2023, at a total cost of \$46,884.

33. In fact, the yields on these machines are far lower than the the representations made in Epson's spec sheets.

Workforce Enterprise AM-C6000

34. Epson's spec sheet represents that its AM-C6000 machines will print 50,000 black and white pages and 30,000 color pages per cartridge.

35. Epic relied on these representations in the AM-C6000 spec sheet and purchased three (3) AM-C6000 machines between January 2023 and May 2023, at a total cost of \$13,875.

36. In fact, the yields on these machines are far lower than the the representations made in Epson's spec sheets.

Workforce Enterprise WF-C20590

37. Epson's spec sheet represents that its WF-C20590 machines will print 50,000 black and white pages and 50,000 color pages per cartridge.

38. Epic relied on these representations in the WF-C20590 spec sheet and purchased twelve (12) WF-C20590 machines in November 2020 at a total cost of \$39,000.

39. In fact, the yields on these machines are far lower than the the representations made in Epson's spec sheets.

Workforce Enterprise WF-C20600

40. Epson's spec sheet represents that its WF-C20600 machines will print 50,000 black and white pages and 50,000 color pages per cartridge.

41. Epic relied on these representations in the WF-C20600 spec sheet and purchased 309 WF-C20600 machines between October 2020 and May 2021 at a total cost of \$1,557,775.

42. In fact, the yields on these machines are far lower than the the representations made in Epson's spec sheets.

43. Epic’s investigation further revealed that, on average, the WF-C20600 machines they have leased produce a yield of 24,000 pages per black ink cartridge (48% of the amount represented by Epson), and 15% or 8,000 pages per color ink cartridge (15% of the amount represented by Epson). Epic also concluded that the maintenance box (waste container) averaged 26.7% or 32,048 pages, as opposed to Epson’s 120,000 page stated yield in Spec Sheet 2. These figures demonstrate that the machines are using ink to keep the printhead healthy and then dumping the ink in the waste container at an exorbitant rate.

44. The ink yields for one of Epic’s largest clients, Diversified Energy Company PLC (“DEC”), further reveals the severity of the issue. Epic has placed 10 WF-C20600 printers at DEC. DEC’s WF-C20600s machines have an average black ink yield of 19% per cartridge and a color yield of 16% per cartridge – a far cry from the 80% yields promised on Spec Sheet 2.

Workforce Enterprise WF-C20750

45. Epson’s spec sheet represents that its WF-C20750 machines will print 50,000 black and white pages and 50,000 color pages per cartridge.

46. Epic relied on these representations in the WF-C20750 spec sheet and purchased 270 WF-C20750 machines between January 2021 and May 2021 at a total cost of \$1,563,466.

47. In fact, the yields on these machines are far lower than the the representations made in Epson’s spec sheets.

Workforce Enterprise WF-C21000

48. Epson’s spec sheet represents that its WF-C21000 machines will print 50,000 black and white pages and 50,000 color pages per cartridge.

49. Epic relied on these representations in the WF-C21000 spec sheet and purchased 72 WF-C21000 machines between May 2021 and August 2022, at a total cost of \$451,950.

50. In fact, the yields on these machines are far lower than the the representations made in Epson's spec sheets.

Workforce Enterprise WF-C529R

51. Epson's spec sheet represents that its WF-C529R machines will print 10,000 black and white pages and 5,000 color pages per standard ink pack.

52. Epic relied on these representations in the WF-C529R spec sheet and purchased 37 WF-C529R machines between September 2022 and April 2023, at a total cost of \$8,999.

53. In fact, the yields on these machines are far lower than the the representations made in Epson's spec sheets.

Workforce Enterprise WF-C579R

54. Epson's spec sheet represents that its WF-C579R machines will print 10,000 black and white pages and 5,000 color pages per standard ink pack.

55. Epic relied on these representations in the WF-C579R spec sheet and purchased 1,084 WF-C579R machines between January 2021 and October 2023 at a total cost of \$441,647.

56. In fact, the yields on these machines are far lower than the the representations made in Epson's spec sheets.

Workforce Pro WF-C878R

57. Epson's spec sheet represents that its WF-C878R machines will print 20,000 black and white pages and 20,000 color pages per standard ink pack.

58. Epic relied on these representations in the WF-C878R spec sheet and purchased nine (9) WF-C878R machines in 2022 at a total cost of \$11,963.

59. In fact, the yields on these machines are far lower than the the representations made in Epson's spec sheets.

Workforce Pro WF-C879R

60. Epson's spec sheet represents that its WF-C879R machines will print 20,000 black and white pages and 20,000 color pages per standard ink pack.

61. Epic relied on these representations in the WF-C879R spec sheet and purchased 71 WF-C879R machines between July 2021 and June 2023, at a total cost of \$126,967.

62. In fact, the yields on these machines are far lower than the the representations made in Epson's spec sheets.

Black Ink Cartridges

63. Epic has purchased 4,769 black ink cartridges from Epson at a total cost of \$361,193, at an average cost of \$75.74 per black ink cartridge.

64. The black ink cartridges were purchased from Epson between December 2020 and November 2023 to service the Epson machines identified above wherein Epson fraudulently misrepresented the ink yields. If Epson's representations that Epic relied on were true, Epic would have spent less than 50% of this amount on black ink cartridges and has been damaged thereby.

Color Ink Cartridges

65. Epic has purchased approximately 11,538 color ink cartridges from Epson at a total cost of \$1,020,063, at an average cost of \$88.41.

66. These color ink cartridges were purchased from Epson between January 2021 and November 2023 to service the Epson machines identified above that Epson fraudulently misrepresented the ink yields. If Epson's representations that Epic relied on were true, Epic would have spent less than 80% of this amount on color ink cartridges and has been damaged thereby.

Additional Printer Add-Ons Purchased by Epic

67. In addition to purchasing all of the printers identified herein, Epic in reliance on Epson's misrepresentations regarding yields, purchased hundreds of thousands of dollars of add-

ons for its printers including staple finishers, finisher hole punch units, optional cabinets, optional sheet cassettes, multi fax boards and maintenance boxes.

68. Epic never would have purchased any of the Epson printers or these add-ons if Epson did not misrepresent the yields for each printer as well as the misrepresentations mentioned herein.

69. Epic has incurred substantial additional costs in servicing these finishers and add-ons.

Epson Refuses to Correct Its Fraud

70. As a result, remarkably, Epic literally loses money every time its customers print a page.

71. Epic presented the results of its investigation to Epson in July 2023.

72. After Epic reported the results of its investigation to Epson, Elliot Williams, the Director of Product Marketing & Business Imaging told Epic that Epson's WFE machines have to run at least 8,000 pages per month, 20% of which should be color, in order to for the machines to operate correctly. This was the first time Epson had ever informed Epic of this information, despite being fully aware that Epic had placed hundreds of the large machines into offices that printed less than 8,000 pages per month. Moreover, Epic's data shows that even the machines printing at the 80/20 black to color ratio suggested by Elliot Williams are still bleeding ink.

73. In addition, Elliot Williams disclosed to Epic that Epson's printers use ink to keep the printheads "healthy" even while not printing.

EPSON HAS A HISTORY OF MANIPULATING INK CAPACITIES

74. Public filings have disclosed that Epson has a history of being accused of manipulating ink cartridge capacities for its own benefit.

75. In 2006, Epson settled a class action lawsuit that alleged Epson inkjet printers and inkjet cartridges indicate that the cartridges are “empty” and suspend printer function, even though substantial ink remained.²

76. In 2015, an investigation by Bellvue Fine Art determined that Epson 9900 printers indicated ink cartridges had only 1% ink left and that a change of ink cartridge was required, when in fact the ink cartridges contained between 100-150ml of ink out of the full 700ml cartridge.³

77. In 2020, a class action lawsuit was filed against Epson alleging that Epson printer software updates intentionally prevent Epson printers from working if they have third-party ink cartridges installed.⁴

CAUSES OF ACTION

COUNT I FOR FRAUD

78. Plaintiff repeats and realleges the allegations set forth above as though set forth fully herein.

79. Epson made material misrepresentations to Plaintiff related to the yields on black and color ink from its copiers and printers.

80. Epson’s misrepresentations concerning black and color ink yields were made to Plaintiff with knowledge that they were false.

81. Epson made these material misrepresentations with the intent to defraud Plaintiff into purchasing Epson’s copiers and printers.

82. Plaintiff reasonably relied on Epson’s misrepresentations as the yields represented by Epson were in line with other printer manufacturers.

² <https://www.epsonsettlement.com/>

³ <https://petapixel.com/2015/09/11/this-is-how-much-ink-the-epson-9900-printer-wastes/>

⁴ <https://topclassactions.com/lawsuit-settlements/consumer-products/electronics/epson-class-action-alleges-printer-ink-defect/>

83. As a result of Plaintiff's reliance on Epson's misrepresentations, Plaintiff purchased nearly \$7.64 million worth of Epson's products since June 2020.

84. In addition to the \$7.64 million paid by Plaintiff to purchase Epson products in reliance on Epson's misrepresentations, Plaintiff has incurred additional damages for each printed page.

85. As a result of the Epson's fraud, Plaintiff is spending up to \$80,000 every month on ink for its customers, over and above, the yields represented by Epson.

86. In addition, as result of Epson's fraud, Plaintiff is unable to lease or resell approximately \$600,000 worth of Epson printers that Plaintiff purchased from Epson as a result of Epson's misrepresentations and Plaintiff continues to incur costs for storing these printers.

87. In addition, Epic has and continues to suffer damages as a result of its inability to sell its leased machines to its third-party customers as part of the buyout option in Epic's contracts with its customers.

88. As a direct result of Epson's fraud, Epic been damaged in amount to be determined at trial, but believed to exceed \$20,000,000.00, plus interest, costs and legal fees.

COUNT II FOR NEGLIGENT REPRESENTATION

89. Plaintiff repeats and realleges the allegations set forth above as though set forth fully herein.

90. Epson knew, or should have known, that its representations regarding yields would be reasonably relied upon and used by potential purchasers of its machines to make a decision among competing brands and gage the soundness of their investments in Epson's machines.

91. Plaintiff, an authorized Epson dealer, reasonably relied on Epson's representations regarding yields of its products.

92. Epson was aware that Plaintiff was the largest Epson dealer in the nation and knew or should have known that Plaintiff relied on Epson's representations when it purchased \$7.64 million worth of Epson's products.

93. Epson's representations concerning yields in Black and White and Color ink are misstated. Rather than the yields represented by Epson for black and white and color ink, Epson's machines yields are in fact, on average, less than half the amount represented by Epson.

94. Epson's misstatements, if not outright fraud, in the alternative, resulted from Epson's negligence and/or lack of due diligence in accurately testing its machines yields.

95. Plaintiff relied on Epson's misstatements when it purchased each of the approximately two thousand machines from Epson.

96. As a result, Plaintiff has suffered damages including both over \$7.64 million Plaintiff paid to Epson for the machines, finishers and add-ons, as well as additional damages for storage and service of Epsons' machines, and additional damages of up to \$80,000 every month on ink for its customers, over and above, the yields represented by Epson..

97. In addition, Epic has and continues to suffer damages as a result of its inability to sell its leased machines to its third-party customers as part of the buyout option in Epic's contracts with its customers.

98. Epson possessed unique or specialized expertise and had a special position of confidence and trust with Plaintiff as a result of Epson's close relationship with Plaintiff as "dealer of the year" and Epson's unique ability as the manufacturer and seller of the machines to test the accuracy of the yields represented to Plaintiff on statistically valid basis across a sufficient sample size only available to Epson at the time the representations were made.

99. As a direct result of Defendant's negligent representation. Epic been damaged in amount to be determined at trial, but belived to exceed \$20,000,000.00, plus interest, costs and legal fees, all of which will be determined at the trial of this action.

Demand for Jury Trial

100. Plaintiff respectfully requests a trial by jury on all claims asserted in this Complaint.

Prayer for Relief

WHEREFORE, Plaintiff, by its attorneys, The Roth Law Firm, PLLC, respectfully requests that judgment be entered against Epson America, Inc. as follows:

- A. For judgment assessing Defendant for the damages suffered, including an award of actual damages, punitive damages, and exemplary damages, in an amount not less than \$20,000,000.
- B. For judgment granting such other, further, and different relief as the Court may seem just and proper.

Dated: New York, New York
December 26, 2023

THE ROTH LAW FIRM, PLLC



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