

LOS ANGELES

Daily Journal

MONDAY,
AUGUST 21, 2006
VOL. 119 NO. 160

All Rights Reserved

— SINCE 1888 —

Epson Agrees to \$900 Million Settlement in Out-of-Ink Case

By Rebecca Beyer
Daily Journal Staff Writer

LOS ANGELES — The ink is dry on a potentially \$900-million settlement in a class action against Epson America and there's good news for frustrated office workers everywhere: There was ink left in that print cartridge and now you may get some money for it.

The plaintiffs — representing an estimated 20 million Epson printer owners — allege Epson intentionally programmed its cartridges to say they were out of ink 80 percent of the way through the barrel.

The settlement, finalized Tuesday before Judge Peter D. Lichtman of Los Angeles County Superior Court, came after a year and a half of mediations. It includes \$35 million in attorney fees. *JCCP 4347* (L.A. County Super. Ct., settled

Aug. 15, 2006).

"Judge Lichtman's exclamation was, 'What a benefit!' [for the class] — and that's a quote," said Michael Saltz, the original plaintiffs' lawyer on the case and a partner at Los Angeles' Jacobson, Russell, Saltz & Fingerman.

"He said he couldn't remember seeing a case that bestowed such a benefit on such a large class," Saltz said of Lichtman.

Lichtman could not be reached for comment.

Defense attorneys from Stroock & Stroock & Lavan also could not be reached.

It was during a photo shoot for Muscle & Fitness magazine that Saltz stumbled upon the case that, he said, eventually grew well beyond his own individual strength as an attorney.

See Page 9 — EPSON

Epson Settles No-Ink Case for \$900 Million

Continued from page 1

A photographer for the magazine, for which Saltz' wife is an editor, said he thought he had a potential class action. His computer and printer notified him that his Epson ink cartridges were empty before they actually were. When he took the Epson chip off a new cartridge and put it on the old cartridge and placed the old cartridge back in the printer, he could print at least 13 more full color photo pages without a loss of quality.

"I wanted to be doubly sure," Saltz said. "So I hired a deposition video crew, and we filmed six hours worth of tape."

To bolster his team, Saltz recruited help from Los Angeles plaintiffs' attorneys Byron T. Ball, of the Ball Law Firm, Brian S. Kabateck and Richard L. Kellner of

Kabateck Brown Kellner, and John P. McNicholas of McNicholas & McNicholas. San Francisco lawyers Paul S. Rosenlund and W. Andrew Miller of Duane Morris, joined as well as lawyers from Atlanta and Houston.

In discovery, attorneys found Epson ink cartridges may have 10 to 20 percent ink remaining when the printer stops.

Kabateck said Epson had a good defense — that some ink is needed to prevent damage to the printer head — but that it hadn't notified consumers of the cartridge's capacity.

"When the case began with Michael," Kabateck explained, "it began as being cheated out of ink, but what it has become is a misrepresentation Epson was making — the prompt says you're out of ink

and that's not true."

Class members — registered Epson printer owners since 2000 — have three options in the settlement: a \$45 credit to the Epson online store, \$25 cash and a \$20 credit, or 25 percent off an online purchase up to \$100.

The likely settlement amount is between \$220 million and \$300 million although if all class members made claims it could reach \$900 million.

The settlement may be one of the last of its kind. Class actions filed after Feb. 18, 2005, are regulated by the Class Action Fairness Act of 2005, which sends cases to federal District Courts if they include more than 100 class members, representing different states and if the amount exceeds \$5 million.