

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

CLEAN WATER OPPORTUNITIES, INC.	*	
D/B/A ENGINEERED POLYURETHANE	*	Case No. 16-227-JWD-EWD
PATCHING SYSTEMS,	*	
	*	
Plaintiff,	*	
vs.	*	
	*	
THE WILLAMETTE VALLEY COMPANY,	*	
	*	
Defendant.	*	

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**MOTION TO DISMISS THE AMENDED AND RESTATED COMPLAINT FOR FAILURE TO STATE A CLAIM UNDER FRCP 12(B)(6)**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), The Willamette Valley Company (“Willamette”) hereby moves to dismiss, without leave to amend, the Amended and Restated Complaint filed by Clean Water Opportunities, Inc. d/b/a Engineered Polyurethane Patching Systems (“EPPS”), for failure to state a claim upon which relief can be granted. In support thereof, Willamette states:

1. The Amended Complaint fails to state a claim for “predatory pricing” because it fails to adequately allege that Willamette priced below its incremental cost of producing the product it sold.
2. The Amended Complaint fails to state a claim for “predatory pricing” because it fails to adequately allege that Willamette would likely be able to “recoup” the losses it allegedly incurred during the “predatory” phase of the purported offense.

3. The Amended Complaint fails to adequately allege a relevant antitrust product market, an essential element of EPPS's claim for violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.
4. The Amended Complaint fails to adequately allege a relevant antitrust geographic market, an essential element of EPPS's claim for violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, or geographic market.
5. The Amended Complaint fails to adequately allege that EPPS suffered antitrust injury from the sale of its assets to Willamette.
6. The Amended Complaint fails to adequately allege any violation of the Section 2 of the Sherman Act, 15 U.S.C. § 2.
7. The Amended Complaint fails to adequately allege a violation of the Louisiana Antitrust Statute, La. R.S. 51:122, *et seq.*

WHEREFORE, The Willamette Valley Company respectfully requests that the Court dismiss, with prejudice, EPPS's Amended and Restated Complaint in its entirety.

Respectfully submitted,

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**THE WILLAMETTE VALLEY COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion to Dismiss for Failure to State a Claim Under FRCP 12(b)(6) was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system. .

Baton Rouge, Louisiana, this 22<sup>nd</sup> day of May, 2017.

s/Bradley C. Myers  
Bradley C. Myers