UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

CLEAN WATER OPPORTUNITIES, INC.	*	CIVIL ACTION NO. 16-cv-00227
	*	
	*	JUDGE JOHN W. deGRAVELLES
VERSUS	*	
	*	MAG. JUDGE ERIN WILDER-DOOMES
THE WILLAMETTE VALLEY COMPANY	*	
	*	JURY TRIAL REQUESTED

****

AMENDED AND RESTATED COMPLAINT

NOW INTO COURT, through undersigned counsel, comes Plaintiff, Clean Water Opportunities, Inc., d/b/a Engineered Polyurethane Patching Systems ("EPPS"), who does with respect represent:

JURISDICTION AND VENUE

1.

This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1331, 15 U.S.C. §§1 and 2, known as the Sherman Act, and Sections 4 and 7 of the Clayton Act, 15 U.S.C. §§ 15 and 18. This Court also has supplemental subject matter jurisdiction over any state law claims alleged pursuant to 28 U.S.C. §1367. This Court also has jurisdiction pursuant to 28 U.S.C. §1332(a) as the matter in controversy exceeds the sum or value of $75,000 and is between citizens of different states.

2.

Venue is proper in this district under 15 U.S.C. §22 because Defendant transacts business in this district and a substantial portion of the events giving rise to EPPS' claims occurred in, and a substantial portion of the affected interstate trade and commerce described more fully below, has been carried out within the Middle District of Louisiana. Additionally, Defendant has formally notified the Louisiana Secretary of State that its registered office in Louisiana is in Baton Rouge, and its registered agent for service of process is located in Baton Rouge, Louisiana.

PARTIES

3.

(a) Clean Water Opportunities, Inc., d/b/a Engineered Polyurethane Patching Systems ("EPPS") is a Louisiana corporation that transacts business and has its principal place of business in this district;

(b) The Willamette Valley Company ("WVCO") is an Oregon corporation with its principal place of business in Eugene, Oregon. WVCO is a privately owned multi-national corporation that manufactures and distributes a variety of products and services throughout the United States, Europe, Canada, Asia, and South America. Material to this litigation, WVCO is the manufacturer of polyurethane filling and patching materials ("Patch") used in the plywood manufacturing business. WVCO maintains one of its manufacturing plants in Pineville, Louisiana.

MARKET PRODUCT DEFINITION

4.

The market product at issue in this litigation is known as "Patch." Patch is a two-part polyurethane wood filler. Patch part "A" is the polyurethane intermediary. "A" Patch has as its base chemical a version of "polyol" (poly-propylene glycol) which has molecules that have from one to five or more ends terminating in an OH group (oxygen-hydogen). "B" Patch, or Patch part "B," is one of a group of chemicals referred to as isocyanates (methyl di-phenyl diisocyanate or polymeric MDI). Isocyanates have two or more molecular ends that terminate in NOH groups (nitrogen-oxygen-hydrogen).

5.

Patch is used in the "patch line" in the mill production of plywood where plywood panels (sheets of plywood) are machine-fed onto a conveyor chain at the rate of 6 to 12 per minute. The panels pass a routing station where the knots are routed out, then a few feet further down the line, the Patch operator, or "patcher," applies the Patch to the knot holes using a hand-held, two-part mixing valve, or a "patch gun," through an aluminum tube with a static mixing element inside (patch tube).

6.

For purposes of this litigation, "Patch" is the market product. Patch is sold to plywood manufacturers on a per-gallon price basis, but included in the price is the use of the Patch seller's application equipment. The Patch seller not only provides the application equipment that is to be used by the purchaser's employees, but it also services said equipment.

7.

The American Plywood Association ("APA") is the industry-based governing organization that serves to assure the quality of plywood, and the organization has set minimum standards for each grade of plywood marketed. In order for a sheet of plywood to display the APA stamp, it must meet each APA standard, and the APA regularly inspects plywood mills for performance. In this context, the APA puts out a guide for synthetic repairs which includes the "patch repair."

8.

The APA does allow two other types of veneer repair: "wood plug" repair and "wood dough"/"wood putty" repair; however, neither are suitable for high volume production of sanded plywood.

9.

The "wood plug" repair is allowed to fill imperfections up to about 2 ¼ inches by 4 inches, but is rarely if at all used anymore. The raw veneer sheets have to have the imperfections punched out by hand and then have to be stacked (laid up) to be pressed. The punched plugs then have to be inserted in to the removed defects in the face veneer by hand. This entire process creates a tremendous amount of added man hours and expense while slowing production to a crawl. These factors make plugging cost/production prohibitive, and to EPPS' knowledge, the "wood plug" method is no longer used. EPPS states that it is aware that MARTCO, a mill discussed below, has five plugging machines in storage.

10.

The "wood putty"/"wood dough" repair method has great limitations under the APA because its mechanical/reliability limits render it "not approved" for the majority of defects commonly found in panel faces today. Additionally, this repair options has other limitations, including long drying time, residual cracks, and other disqualifying characteristics.

11.

Thus, the Patch option is the only repair method for high production of sanded plywood and is really the only viable product that will meet APA standard. Accordingly, there are no market substitutes for Patch.

PRODUCT GEOGRAPHIC MARKET

12.

The geographic market for Patch is limited by the location of mills that produce plywood that require Patch to meet panel face grade and production targets. There are three geographic markets in the continental United States: (1) the Southern Market, which includes east Texas, Louisiana, Mississippi, Alabama, southern Arkansas, and the panhandle of Florida; (2) the Eastern Market, which includes from Tallahassee, Florida, to the Atlantic, Georgia, the Carolinas, Tennessee, Virginia, Kentucky, parts of Ohio, Indiana, West Virginia, and Pennsylvania; and (3) the Northwestern Market, which includes Washington, Oregon, Northern California, Idaho, parts of Montana, Colorado, Utah, and Nevada. These geographic market areas have been defined by WVCO, as well as, by the location of WVCO's production facilities.

13.

The geographic market, as outlined above, for the sale of Patch is limited by logistical issues related to the physical properties of Patch. Patch is a disbursed suspension with about two-thirds by weight being solid material. The product does have a functional shelf life, which is typically two to four weeks. Like any suspension, if it is vibrated, like it would be while being transported in a semi-bulk container on a flat-bed trailer (the standard method of delivery), the movement accelerates the settling, thereby shortening the usable life. Thus, if a supplier is required to deliver Patch outside of a market area of roughly six hours of travel time, the product will degrade, and its life span will be shortened.

14.

The requirement that a Patch seller also provide service to the application equipment is another limiting factor. To be economically feasible, a seller of Patch has to be able to make regular maintenance service calls and emergency "line down" service calls to a mill within six hours. Any mill beyond a six-hour service range affects the economic efficiency of an operation. Logistical concerns concerning supply and maintenance dictate these established geographic markets.

15.

The geographic product market for Patch as it relates to Plaintiff's business is defined as plywood manufacturers who utilize Patch in the manufacturing process within a 500-mile, six-hour drive time radius around Baton Rouge, Louisiana. This is the Southern Market (as indicated above) which includes portions of the states of Louisiana, Texas, Mississippi, Alabama, Florida, and Arkansas.

WVCO'S MONOPOLY IN THE PATCH MARKET AND SUBSTANTIAL BARRIERS TO ENTRY INTO THE MARKET

16.

In all three geographic markets, WVCO has established a monopoly as it is the sole supplier of Patch. It controls 100 percent of the market of Patch and has market power that said control establishes.

17.

There are significant barriers for entry into the market by entities other than WVCO. Primarily, the metering and application equipment used to apply Patch is not commercially available. Although WVCO will install the equipment in any facility where its Patch is sold, it does not allow others to purchase the equipment nor will it supply data to others on how to build the equipment. The equipment must be constructed from scratch, and few individuals other than WVCO employees have the knowledge necessary to construct the equipment.

18.

Another barrier to entry is having a Patch gun. This piece of equipment is the most critical part of the application system. The equipment consists of a two-part hand held valve with a flush port that is pneumatically operated. In a Patch line process, the stop-start time is from 1 to 15 seconds. WVCO does not make its Patch guns commercially available to non-customers, nor is a unit that will function on a Patch application commercially available anywhere. The acquisition of mixing tubes is another barrier to entry in that there are only two companies that have the equipment to make them, and in order to purchase the mixing tubes at a low enough price to compete with WVCO, a Patch supplier would have to purchase a minimum of 10,000.

19.

A third barrier to entry is developing a commercially viable Patch "A" product. The particular formulation's function is non-standard in the polyurethane industry. To enter the market, one would have to develop its own formula. In order to do so, one would have to develop a non-foam formula that has to be fast flowing, have a set-up time of 8 to 35 seconds, have excellent adhesion, be shrink and VOC free, have hardness measuring minimum 60 durometer-A scale within a five minute of set point, ready to be cut, sanded, and be capable of having a nail driven through it without chipping or cracking. These performance parameters are established by the APA, but the APA does not give any information on how to meet them.

20.

Another barrier to entry is the B component or iso-methyl diphenyl diisocyanate (or "ISO"). Although this is an off-the-shelf product available from different sources, there are hundreds of variance, and a Patch supplier would have to determine and locate the exact one that works. Once that is done, the complexities of handling ISO make it an economic barrier. This class of chemical has to be kept under a nitrogen blanket in storage or packaging, and any exposure to moisture will start a polymeric reaction causing crystals to form thereby clogging and shutting down equipment. Even doing so much as removing the lid and replacing it can allow in sufficient moisture to cause crystals to form. Thus, the options are to ship it prepackaged and sell it at cost or spend thousands of dollars to set up handling.

21.

A further barrier to entry is developing a supply chain for bulk purchase of the raw material to make the Patch. In addition to having to set up storage and handling for the bulk material purchases so competitive pricing can be obtained, some of the better choices in raw materials are essentially unavailable because WVCO uses them.

22.

Yet another barrier to entry is the requirement that a Patch supplier have APA approval to run in a mill, and this approval is only given after a potential supplier tests its Patch and equipment in a mill.

23.

To gain APA approval, a Patch supplier would first have to convince a mill to allow it (against WVCO's pressure) to come into the mill and set up and run its equipment for the mill to use Patch on its line. The test would be done on a plywood panel specifically routed for the test and would then be sanded, cut, and shipped by the mill to the APA for testing. The potential supplier would then have to take apart all its equipment, clean it all, and discard the remainder of the A and B Patch that had just been used. This not only costs the potential supplier time and money, but it also costs the mill money in terms of a lost day of production and extra work for the mill's employees; therefore, no mill would allow a potential supplier to come in and test its material unless the mill was planning to use the supplier.

24.

If the APA grants approval based on the test run, the Patch supplier would only have approval to run in that particular mill. The entire testing and approval process, which takes approximately six weeks, would have to be completed a second and third time at different mills before a Patch supplier could receive industry-wide approval.

25.

Lastly, and perhaps most importantly, a significant barrier to entry is the fact that WVCO has a 100 percent monopoly on the market, and its mere suggestion to a customer that if it uses a competitor's brand then WVCO will no longer provide Patch to a customer will, in virtually all cases, prohibit a Patch customer from using a new supplier.

FACTUAL BACKGROUND

26.

In 1990, the principal owner of EPPS, David E. Edwards ("Edwards"), entered into the business of supplying polyurethane plywood Patch to plywood mills that manufacture specialty grade plywood, *i.e.*, "B" or "A" grade. The market for Edwards' company, EML Enterprises, was primarily in the Texas, Arkansas, Louisiana, Mississippi, and Alabama region. At that time, WVCO was in the same market and had competition from other entities such as Georgia Pacific Chemical and Champion Wood Products. Georgia Pacific, based in Atlanta, Georgia, focused on Georgia Pacific mills in the Eastern market area, and Champion, believed to have been based in Memphis, Tennessee, serviced a regional area around Memphis. In the mid-1990s, WVCO purchased Georgia Pacific's chemical division's patent on Patch and thus removed Georgia

Pacific from the market. Upon information and belief, in the mid-1990s, WVCO acquired Champion Wood Products, and by 1997 or 1998, WVCO and Edwards' company were the only competitors in the defined geographic Patch market.

27.

In July 2000, Edwards' company, EML Enterprises, was selling Patch out of its plant in Port Allen, Louisiana, and enjoying approximately 10 to 15 percent of the market share for this product in this region.

28.

At that time, WVCO bought Edwards' company, and as part of that agreement, Edwards agreed not to compete with WVCO for 10 years. This established WVCO's nationwide monopoly for the first time.

29.

Upon information and belief, WVCO then either started to raise the price and/or the market (plywood mills) became concerned about the monopoly and likely encouraged C. Dale Bates Company, who was already selling its products to the wood industry, to enter the Patch market. Thus, about nine months after the establishing the monopoly, WVCO had a competitor; however, due to the complexities of the barriers put up by WVCO to ward off new entrants into WVCO's monopoly, Bates was only a viable competitor for approximately one year before WVCO bought it out.

30.

Approximately three years after the non-compete agreement with WVCO concluded, Edwards began to develop and sell Patch in the market through his new company, EPPS, as he observed that the cost of producing Patch components seemed to have risen only 50 percent during the interim that he was not in the business while WVCO had raised the selling price of Patch approximately 250 percent. Thus, WVCO recouped many times over the cost incurred in creating the monopoly the first and the second times, and it set a precedent of what WVCO would do in the future should it become necessary to drive out any new competitors.

31.

Further, Edwards realized that WVCO had become the sole seller of Patch, and he determined that the industry would probably embrace a second source in competition with WVCO. Edwards also realized that the equipment WVCO had designed in the early 1990s to apply Patch had never been upgraded. Edwards realized there was new technology available in this area, and he was confident that he could make improvements to the equipment used to apply Patch and that he would be able to outperform WVCO in both production efficiency and the quality of the end result. Edwards realized that because WVCO had had little to no competition during the previous ten to twelve years, it had had no incentive to improve its application equipment. If WVCO had upgraded its equipment, it would have had to discard the outdated equipment; however, because WVCO had complete monopoly power for the prior decade, it enjoyed the economic advantage of keeping its original equipment in service.

<u>EPPS' ENTRY INTO THE PATCH MARKET</u>

32.

In July 2014, EPPS entered into a production contract with MARTCO, a plywood manufacturing company located in Chopin, Louisiana. Pursuant to this contract, EPPS provided the Patch and application equipment for one of two production lines at the MARTCO plant. At the time, EPPS was selling "A" Patch for $15 per gallon while its competition, WVCO, had been selling the same product to MARTCO for $17 per gallon. Plaintiff estimates its initial sales to

MARTCO for the one production line constituted approximately 10% of Patch sold in the relevant geographic market.

33.

MARTCO advised EPPS that based upon its lower price, it would allow EPPS to take over the second Patch production line if WVCO did not lower its prices. EPPS encouraged MARTCO to allow it to sell Patch on both lines and offered MARTCO a five-year contract for "A" Patch at $12.90 per gallon. By picking up the second Patch line, EPPS could have raised its market share to approximately 20% in the relevant geographic market.

34.

Faced with real competition for the first time in more than a decade, WVCO desired to remove EPPS from the marketplace and to re-establish the monopoly it had on the Patch market. Accordingly, representatives of WVCO offered to MARTCO a substantial discount on all the items WVCO sold to MARTCO, other than Patch, including products that WVCO sold to MARTCO plants that did not even use Patch. The sole purpose of this discount was to undercut EPPS, force it from competition, and regain its monopoly in the Patch market.

35.

The discounts WVCO offered to MARTCO included a variety of other products sold by WVCO and also used throughout the wood processing industry. These products were not sold by EPPS and included, but were not limited to, edge seal, stencil ink, glue extender, and sanding belts. The discounts offered were contingent on a requirement that MARTCO purchase all its Patch from WVCO.

36.

The sole purpose of the discount packaging agreement offered by WVCO was to avoid competition on the merits for the sale of Patch. Based upon WVCO's market power, MARTCO had little choice but to accept the discount packaging agreement.

37.

It is reasonably believed and is averred that a similar discount agreement was offered to and accepted by Hood Industries, another manufacturer purchasing Patch and with whom EPPS had been in discussions regarding becoming the Patch supplier as discussed below.

38.

EPPS attempted to likewise offer a discount to MARTCO but was advised that the WVCO collective discount across the board was much greater than anything EPPS was able to offer. When it became clear in the meeting between EPPS and MARTCO that EPPS would no longer be in business after losing its only customer and would not be available later to offer competitive pricing on Patch, MARTCO assured Edwards that it had protected itself "long term." Of course, since WVCO enjoys a monopoly and market power for the product, it is in a position to charge MARTCO any price it wishes for its Patch so that, in reality, MARTCO is in no way protected in the "long term." Additionally, since WVCO enjoys a monopoly, it recoups any loss incurred by giving discounts to MARTCO by the fact that its Patch is priced artificially high to all its Patch customers.

39.

As a result of the substantial discounts WVCO offered, MARTCO was required to terminate its relationship with EPPS and advised EPPS to pick up and remove all its application equipment by April 23, 2015. At no time during the period of July 2014 through April 23, 2015, had MARTCO indicated there was any problem with the quality of the product, performance of the application equipment, or the service EPPS was providing to MARTCO. In fact, EPPS was advised by MARTCO personnel that all aspects of its product and performance far exceeded expectations. Indeed, the only intervening act that resulted in EPPS' termination was the substantial discount WVCO gave on all products sold to MARTCO. This discount by WVCO caused EPPS to lose its market share and returned WVCO to 100 percent market share of Patch sales in the relevant geographic market.

40.

EPPS reasonably believes and avers that when the substantial discounts on all items sold by WVCO to MARTCO are considered, MARTCO was buying its Patch at a price below WVCO's variable costs to produce it. While WVCO did not discount the Patch itself, it used the substantial discount on all its other products to disguise the fact that it was selling Patch at below its variable costs in order to remove its sole competitor from the market.

EPPS' ATTEMPT TO EXPAND IN THE MARKET

41.

In early 2015, prior to being driven out of the Patch market by WVCO, EPPS' business with MARTCO had been going well, and EPPS had planned to expand its market to other customers. Specifically, in February of 2015, EPPS had contacted Hood Industries and was invited to its plant to conduct a test run. The test run went well, and EPPS was looking for approval to begin selling Patch to Hood Industries.

42.

In early April 2015, though, communications from Hood Industries suddenly ceased. Edwards began making inquiries as to what had happened, and he was advised by a representative of Hood Industries on April 14, 2015, that it had been offered and accepted a discount by WVCO.

43.

So, although EPPS had performed well in the test run at Hood Industries, and Hood Industries seemed very receptive to purchasing Patch from EPPS, the discussions abruptly broke off after WVCO offered substantial discounts to Hood Industries.

44.

It is reasonably believed and averred that WVCO offered substantial discounts to Hood Industries, as it did to MARTCO, with the condition that Hood only purchase Patch from WVCO in order to prevent EPPS from becoming a competitor at the Hood Industries plant. It is also reasonably believed and averred that this occurred with Coastal Plywood in Florida as well since all Edwards' discussions with Coastal about supplying Patch to it were halted by Coastal around the same time.

SALE OF EPPS' ASSETS TO WVCO

45.

After its business relationship with MARTCO was terminated and after its attempts to enter into sales agreements with Hood Industries and Coastal Plywood were blocked, it was not financially viable for EPPS to continue business.

46.

Edwards then contacted the CEO of WVCO, John Harrison ("Harrison"), to ask him if he was aware that his company had taken action to put EPPS out of business. Although Harrison claimed he had no knowledge of any of the particulars of MARTCO's decision to stop using

EPPS, he advised he would check into it. Subsequently, Harrison offered to purchase all EPPS' equipment and to enter into a non-compete/consulting agreement with Edwards.

47.

Faced with insolvency because of WVCO's actions, EPPS had no choice but to enter into an agreement for the sale of its business assets on June 17, 2015. A consulting and non-competition agreement was reluctantly entered into between Edwards and WVCO on the same date.

48.

WVCO entered into the agreement to purchase EPPS' assets for the purpose of maintaining its illegal monopoly well into the future.

49.

After EPPS was forced out of the marketplace, WVCO again established 100 percent of the product market for Patch in the defined geographic market.

50.

With its market power, WVCO can and will recoup its interim loss from below cost discounts and its cost associated with purchasing EPPS' assets, with its future pricing of Patch.

INJURY TO COMPETITION

51.

Because WVCO has a monopoly on the Patch market, it is able to sell Patch "A" at approximately $17 per gallon. When WVCO had competition in the market, its competitive price for Patch "A" was approximately $7 per gallon. Based on inflation, the competitive price for Patch "A" today should be approximately $10 per gallon. Accordingly, without any competition whatsoever, WVCO is able to overcharge approximately $7 per gallon for Patch "A."

52.

The plywood mills are required to overpay for Patch, but then they pass the price on to plywood retailers and ultimately to consumers who pay millions of dollars attributable just to the $7 per gallon overcharge by WVCO. Accordingly, WVCO's monopoly causes substantial damage to the competitive process and substantial harm to the ultimate consumers.

UNLAWFUL ACTS COMMITTED BY WVCO

53.

The conduct of WVCO undertaken to maintain its monopoly constitutes unlawful activity under the law. Specifically exclusionary conduct, WVCO unlawfully offered benefits (discounted products) to its customers with the condition that the recipient of the benefit would not do business with EPPS in order that WVCO could reestablish and maintain its monopoly in the Patch market.

54.

Additionally, it is averred that the discounts WVCO did give to MARTCO and did offer to Hood were substantial and represented a benefit below WVCO's cost to produce Patch but with the probability that by maintaining its monopoly position, WVCO would recoup its loss in short order.

55.

Additionally, it is averred that WVCO, with its market power, advised or implied to several of its customers who were interested in doing business with EPPS that WVCO would not do business with the customer if it purchased any Patch from EPPS. The sole purpose of these overt or implied threats was to maintain its monopoly status.

FIRST CLAIM FOR RELIEF

(Sherman: Illegally Establishing or Maintaining a Monopoly)

56.

Plaintiff, EPPS, reavers and realleges all the allegations in the paragraphs above as if set forth fully herein.

57.

By such acts, practices, and conduct, WVCO has unlawfully monopolized the Patch product and technology market in violation of §2 of the Sherman Act, 15 U.S.C. §2.

58.

As a result of the aforementioned violation of §2 of the Sherman Act, 15 U.S.C. §2, Plaintiff has suffered significant monetary injury by reason of the acts, practices, and conduct of WVCO alleged above.

59.

Plaintiff is entitled to all damages related to Defendant's violation of the Sherman Act, including judgment for treble damages, attorney fees, and costs incurred in the prosecution of this matter.

SECOND CLAIM FOR RELIEF

(Sherman: Predatory Pricing to Maintain a Monopoly)

60.

Plaintiff reavers and realleges all the allegations of the above paragraphs as if set forth fully herein.

61.

Defendant, WVCO, has engaged in predatory pricing in order to achieve and/or maintain its monopoly in the Patch product market within the geographic market defined above. The acts of Defendant in engaging in such conduct are in violation of §2 of the Sherman Act, 15 U.S.C. §2. Moreover, there is a substantial probability that Defendant will recoup its below cost pricing in the future.

62.

As a result of the acts of Defendant in engaging in the predatory pricing as described above, Plaintiff has been substantially injured in its business. Plaintiff seeks monetary judgment for all monetary losses. Additionally, Plaintiff seeks judgment for treble damages, attorney fees, and costs incurred in the prosecution of this matter.

THIRD CLAIM FOR RELIEF

(Merger or Acquisition to Establish or Maintain a Monopoly)

63.

EPPS reavers and realleges all the allegations of the above paragraphs as if set forth fully herein.

64.

The actions of WVCO in purchasing the assets of EPPS and requiring Edwards to enter into a non-compete agreement constitutes a violation of §2 of the Sherman Act, 15 U.S.C. §2, and §§4 and 7 of the Clayton Act, 15 U.S.C. §§15 and 18. As a result of WVCO's acts, Plaintiff has been substantially damaged and seeks a monetary judgment for such damages. Additionally, Plaintiff seeks judgment for treble damages, attorney fees, and costs incurred in the prosecution of this matter.

FOURTH CLAIM FOR RELIEF

(Louisiana Antitrust: Illegally Establishing or Maintaining a Monopoly; Illegal Restraint of Trade)

65.

Plaintiff reavers and realleges all the allegations of the above paragraphs as if set forth fully herein.

66.

The aforementioned acts of Defendant constitute a violation of the Louisiana Antitrust Statute, La. R.S. 51:122, 51:123, and 51:124(A), as the acts of the Defendant attempt to obtain and/or maintain a monopoly illegally in violation of the Act. As a result of WVCO's acts, Plaintiff has been substantially damaged and seeks a monetary judgment for such damages. Additionally, Plaintiff seeks judgment for treble damages, attorney fees, and costs incurred in the prosecution of this matter pursuant to La. R.S. 51:137.

STANDING AND DAMAGES

67.

The acts of Defendant as alleged above were the sole cause of Plaintiff's being forced out of business in the relevant geographic market. The acts of WVCO were undertaken intentionally for the purpose of driving a competitor from the marketplace for the market product, Patch. Defendant's unlawful acts not only caused injury to competition but also were the cause of Plaintiff's monetary damages.

68.

EPPS' monetary damages include loss of past and future income and profit. Additionally, Plaintiff was injured when it had to sell its assets to WVCO solely because of the exclusionary conduct WVCO willfully entered into which caused the anticompetitive effect of removing all competition in the Patch market. EPPS' improved equipment was "one of a kind," and the fair market value of such exclusive technology in an arms' length transaction would have been several times higher than WVCO was willing to pay in the "forced" transaction.

69.

This loss was compounded by the fact that the equipment was specially designed and built for a singular purpose, *i.e.*, applying Patch; therefore, for EPPS, who had every intention of being in the Patch business for many years to come, no price for its equipment could compensate it for the forced liquidation. On the other hand, for the monopolist, WVCO, which had no other interest in said equipment, other than to exclude competition, the equipment was worthless. During the onsite evaluation of the equipment, one of WVCO's employees remarked that this was just another bunch of stuff to be thrown out in the field. Furthermore, by removing EPPS' improved equipment from the marketplace, WVCO avoided having to update its equipment.

70.

Plaintiff has done everything in its power to mitigate its loss, including selling its assets to WVCO.

71.

Plaintiff, EPPS, prays there be trial by jury on all issues.

WHEREFORE, Plaintiff, Clean Water Opportunities, Inc. d/b/a Engineered Polyurethane Patching System, prays that this Complaint be filed into the record and be made a part thereof and that Defendant, The Willamette Valley Company, be duly cited to appear and answer same, and after all legal delays and due proceedings are had, there be judgment rendered herein in favor of Plaintiff and against Defendant for a money judgment for all damages proven, duly trebled under established law, together with legal interest thereon from date of suit (as to all state law claims) or from date of service of suit (as to all federal law claims), together with attorney fees, all costs of these proceedings, and other such relief as the Court deems just and proper. Plaintiff requests there be trial by jury on all issues.

Respectfully submitted,

/s/ Joseph R. Ward, Jr.
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CERTIFICATE OF SERVICE

I do hereby certify that on April 27, 2017, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all those who are on the list to receive electronic mail notices for this case.

/s/ Joseph R. Ward, Jr.
JOSEPH R. WARD, JR.