

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

CLEAN WATER OPPORTUNITIES, INC.	*	CIVIL ACTION NO. 16-cv-00227
D/B/A ENGINEERED POLYURETHANE	*	
PATCHING SYSTEMS	*	JUDGE JOHN W. deGRAVELLES
	*	
VERSUS	*	MAG. ERIN WILDER-DOOMES
	*	
THE WILLAMETTE VALLEY	*	JURY TRIAL REQUESTED
COMPANY	*	
	*	

**MEMORANDUM IN OPPOSITION TO
MOTION TO DISMISS THE AMENDED AND RESTATED COMPLAINT**

MAY IT PLEASE THE COURT:

Plaintiff, Clean Water Opportunities, Inc., d/b/a Engineered Polyurethane Patching Systems (“EPPS”), submits the following opposition to the Motion to Dismiss the Amended and Restated Complaint filed by Defendant, The Willamette Valley Company (“Willamette”). As discussed below, EPPS has amended its original Complaint¹ in accordance with this Court’s direction in its March 30, 2017 Ruling and Order² on Willamette’s first motion to dismiss,³ and it submits that it has now met its burden under F.R.C.P. 12(b)(6) of stating federal and state antitrust claims; therefore, Defendant’s motion should be denied

I. FACTUAL AND PROCEDURAL BACKGROUND

As set forth by EPPS in its Amended and Restated Complaint (“Amended Complaint”), for well over 20 years Willamette has shown a pattern of eliminating its competitors, including a

¹ Doc. 1.

² Doc. 33.

³ Doc. 5.

prior business owned by David Edwards, from the “patch”⁴ market so as to obtain and/or maintain a monopoly on same.⁵ In 2014, EPPS, a new company formed by Mr. Edwards to manufacture patch, obtained its first customer,⁶ but within less than one year, Willamette had succeeded in driving EPPS out of business by using predatory pricing tactics, so, once again, Willamette held a complete monopoly on patch.⁷

As a result, EPPS filed this litigation against Willamette on April 11, 2016. Thereafter, Willamette filed a motion to dismiss, which this Court granted, but it also gave EPPS the opportunity to amend with respect to some of its claims. Specifically, this Court stated that EPPS could amend to address the barriers to entry in the patch market,⁸ the substitutes (or lack thereof) for patch,⁹ and the geographic market for patch.¹⁰ The Court also invited EPPS to amend, to the extent it felt necessary, to specifically allege how Willamette’s conduct was unlawful.¹¹ The Court further ruled that EPPS needed to allege that Willamette’s conduct was the “but for” cause of its sale of assets to Willamette.¹² Lastly, EPPS was granted leave to amend to state a “general violation of Section 2 of the Sherman Act”¹³ and Louisiana antitrust claims.¹⁴ As shown below, EPPS has amended to address all this Court’s concerns, and it submits that it has set forth viable claims for relief.

⁴ Patch is a two-part polyurethane wood filler used to fill holes left in plywood after knots are routed out. Complaint, ¶¶ 4 – 5.

⁵ Doc. 34, ¶¶ 26 – 31.

⁶ *Id.* at ¶¶ 31 – 32.

⁷ *Id.* at ¶¶ 34 – 49.

⁸ Doc. 33, pp. 4 – 5.

⁹ *Id.* at 6.

¹⁰ *Id.* at 7.

¹¹ *Id.* at 8 – 9.

¹² *Id.* at 11 – 12.

¹³ *Id.* at 13.

¹⁴ *Id.* at 14.

II. STANDARD OF REVIEW

To survive a Rule 12(b)(6) motion, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)(quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). However, the plaintiff’s well-pleaded allegations of facts must be accepted as true, and a court must “construe the complaint in a light favorable to that plaintiff.” *BRFHH Shreveport, LLC v. Willis Knighton Med. Ctr.*, 2016 WL 1271075, at *5 (W.D.La. 2016)(quoting *In re Great Lakes Dredge & Dock Co.*, 624 F.3d 201, 210 (5th Cir. 2010)).

A claim is “facially plausible” when a plaintiff pleads facts that permit the court to “reasonably infer a defendant is liable for the alleged misconduct.” *Id.* (citations omitted). “So long as it raises a plausible right of recovery and puts the defendant on notice of the plaintiff’s claim and grounds upon which it rests, however, the complaint **does not need to specify detailed factual allegations.**” *Id.* at 15 (citing *Twombly*, 550 U.S. at 555)(emphasis added).

Moreover,

in antitrust cases, where “the proof is largely in the hands of the alleged conspirators,” dismissals prior to giving the plaintiff ample opportunity for discovery should be granted very sparingly.

Blanchard & Co. v. Barrick Gold Corp., 2003 WL 22071173, at *3 (E.D.La. 2003)(quoting *Hosp. Bldg. Co. v. Trustees of Rex Hosp.*, 425 U.S. 738, 746 (1976))(citations omitted).

While Defendant asserts that under *Twombly*, “[f]actual allegations that are merely consistent with an antitrust violation ‘stop[] short of the line between possibility and plausibility of ‘entitle[ment] to relief’ and are insufficient,”¹⁵ that is inaccurate. What *Twombly* actually states is as follows:

¹⁵ Doc. 40-1, p. 5 (citing *Twombly*, 550 U.S. at 556).

We hold that stating such a [section 1] claim requires a complaint with enough factual matter (taken as true) to suggest that an agreement was made. Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. And, of course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and “that a recovery is very remote and unlikely.” . . .

A statement of parallel conduct, even conduct consciously undertaken, needs some setting suggesting the agreement necessary to make out a § 1 claim; without that further circumstance pointing toward a meeting of the minds, an account of a defendant’s commercial efforts stays in neutral territory. **An allegation of parallel conduct** is thus much like a naked assertion of conspiracy in a § 1 complaint: it gets the complaint close to stating a claim, but **without some further factual enhancement** it stops short of the line between possibility and plausibility of “entitle[ment] to relief.”

Twombly, 550 U.S. 554 – 57 (citations omitted)(emphasis added). As shown below, EPPS’ Amended Complaint contains much “factual enhancement” of its allegations of antitrust activities and thus sets forth plausible claims for relief.

III. ANALYSIS AND ARGUMENT

A. Predatory Pricing Claims

Defendant first argues that EPPS has failed to state a predatory pricing claim under the Sherman Act because it “has not plausibly alleged that Willamette’s prices were ‘predatory’”¹⁶ and that it has not alleged barriers to entry that would allow Willamette to recoup its losses from the predatory pricing.¹⁷ Nevertheless, neither of these arguments has any merit.

The Sherman Act, 15 U.S.C. § 2, makes it illegal to “monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce”

The purpose of the [Sherman] Act is not to protect businesses from the working of the market; it is to protect the public from the failure of the market. The law

¹⁶ Doc. 40-1, p. 7.

¹⁷ *Id.* at 10.

directs itself not against conduct which is competitive, even severely so, but against conduct which **unfairly tends to destroy competition itself**. It does so not out of solicitude for private concerns but out of concern for the public interest.

Spectrum Sports, Inc. v. McQuillan, 506 U.S. 447, 458 (1993)(citations omitted)(emphasis added). Predatory pricing claims under the Sherman Act arise when an entity forgoes “present revenues” to drive a competitor out of the market with the hope of recouping its losses through higher prices in the future. *Felder's Collision Parts, Inc. v. All Star Advert. Agency, Inc.*, 777 F.3d 756, 759 (5th Cir.), *cert. denied*, 136 S. Ct. 39 (2015).

I. Pricing Versus Costs

Willamette now argues for the first time that EPPS has not “plausibly alleged” that Willamette’s prices were “predatory,”¹⁸ which it defines as “below its incremental or average variable cost.”¹⁹ EPPS must point out, once again, that the present motion is one to dismiss pursuant to Rule 12(b)(6), and its factual allegations must be accepted as true. Additionally, at this juncture, prior to any discovery having been undertaken, EPPS is not required specify “detailed factual allegations.” *BRFHH Shreveport, LLC*, 2016 WL 1271075, at *15. It simply must allege “enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement.” *Twombly*, 550 U.S. at 545.

This being said, EPPS certainly did allege that Willamette was selling patch below its average variable costs,²⁰ and it set forth facts supporting this allegation. EPPS clearly does not have access to all Willamette’s financial information, so it cannot set forth detailed factual allegations as to the costs that go into Willamette’s production of patch, nor does it have to at this stage of litigation.

¹⁸ Doc. 40-1, p. 7.

¹⁹ *Id.* at 9.

²⁰ Doc. 34, ¶¶ 40, 50, 54.

Furthermore, and perhaps more importantly, Willamette is incorrect when it states that an above-cost price is not actionable under antitrust laws.²¹ This Court must be cognizant of the fact that Willamette has **not denied** that it has a 100-percent monopoly on patch in the subject geographic market.²² The cases relied on by Willamette do not involve 100-percent monopolists and consequently are legally and factually distinguishable. EPPS submits that Willamette's actions, and its allegations in its Amended Complaint, must be considered in light of the market power that having 100 percent of the market share gives Willamette.

In that vein, one court has thoroughly explained why a monopolist can be guilty of predatory pricing **even though its prices do not fall below its production costs**. In *Transamerica Computer Co. v. Int'l Bus. Machines Corp.*, 698 F.2d 1377, 1388 (9th Cir. 1983), the court found that “cost-price relations should not be the exclusive method of proving predation.” It expounded as follows:

First, this court has already recognized that prices exceeding average total cost might nevertheless be predatory in some circumstances. The specific example we discussed was “limit pricing,” in which a monopolist sets prices above average total cost but below the short-term profit-maximizing level so as to discourage new entrants and thereby maximize profits over the long run. *See* 3 P. Areeda & D. Turner, *supra* ¶ 714b. We explained that “limit pricing by a monopolist might, on a record which presented the issue, be held an impermissible predatory practice.” *CalComp*, 613 F.2d at 743. A similar pricing strategy would be for a monopolist to make *temporary* reductions to a level above average total cost but below the profit-maximizing price whenever a new entrant appears ready to enter the market. One or two such reductions could discourage potential entrants in a market that requires sizable initial investments, leaving the monopolist free to raise his prices to monopoly levels. *See* 3 P. Areeda & D. Turner, *supra* ¶ 714c. Such a pricing strategy, like limit pricing, could well be found predatory.

²¹ Doc. 40-1, p. 10.

²² Willamette has inappropriately attached as Exhibit A to its motion what purports to be a list of APA-approved synthetic material suppliers. As discussed below, per Rule 12(d), this Court should not consider matters outside the pleadings. Nevertheless, if it were to consider this list, EPPS submits that discovery will show that one alleged supplier, Polyone, does not have the listed product, Denflex RX-33178-C, anywhere on its website and likely does not produce it any longer, and furthermore, St. Louis, Missouri, is not in the subject geographic market. The second supplier listed, Technical Industrial Sales, is not in the subject geographic area and does not make patch, only wood putty.

Id. at 1387 (emphasis in original). The court also talked about how the “uncertainty and imprecision inherent in determining ‘costs’ counsel against basing conclusive presumptions on the relation between prices and costs.” *Id.* It stated that to assess those relations for the products of a multi-product firm would require allocating known and estimated costs and revenues among various products. *Id.* Thus, it would be “unwise to rely *exclusively* on such figures.” *Id.* (emphasis in original).

The court concluded with what can only be described as cautionary language which perfectly applies to Willamette and its monopoly on patch:

Finally, we should hesitate to create a “free zone” in which monopolists can exploit their power without fear of scrutiny by the law. A rule based exclusively on cost forecloses consideration of other important factors, such as intent, market power, market structure, and long-run behavior in evaluating the predatory impact of a pricing decision.

Id.

Notably, the Fifth Circuit has also recognized the tactic of “limit pricing,” which it describes as setting one’s price at a level “just below that which a prospective entrant to the market would need to charge in order to sustain a successful entry” *Phototron Corp. v. Eastman Kodak Co.*, 842 F.2d 95, 101 (5th Cir. 1988).

As noted in *Dimmitt Agri Industries, Inc. v. CPC Intern, Inc.*, 679 F.2d 516 (5th Cir. 1982), this practice clearly evinces monopolistic intent. In *Dimmitt*, the plaintiffs introduced clear evidence that “the company was out to exclude other competitors from the market.” 679 F.2d at 524.

Id.

Thus, even if this Court were to find EPPS’ allegations that Willamette was selling patch below its average variable cost “implausible,” that would not automatically exclude a predatory pricing claim. Instead, this Court would have to examine Willamette’s intent, market power, market structure, and long-run behavior in deciding whether its prices were predatory, and such

an analysis is not only inappropriate at the 12(b)(6) stage, it is impossible. Accordingly, EPPS submits that for purposes of Willamette's motion to dismiss, it has sufficiently alleged that Willamette's prices were predatory.

2. Barriers to Entry

Willamette also argues that EPPS' predatory pricing claim cannot go forward because it has not sufficiently alleged barriers to entry. In its ruling on Willamette's first Rule 12(b)(6) motion, this Court agreed that EPPS had not sufficiently discussed the barriers to entry in the patch market; therefore, EPPS added many details showing the difficulties of gaining entrance into the patch market.²³ In response, Willamette claims that these "nine paragraphs" simply show the steps to get into the market, and they do not demonstrate that these steps are barriers that affect a new entrant any more than they affect Willamette. With all due respect, this argument is disingenuous because EPPS has alleged that Willamette has been in the patch market since 1990,²⁴ therefore, it is firmly established and does not have to take any of the steps described by EPPS to gain entry in the market.

For example, EPPS discussed that the application and metering equipment must be built from scratch.²⁵ EPPS stated that Willamette will not allow "others," not just competitors as claimed by Willamette in its motion, to purchase its equipment; therefore, that excludes even the possibility that another mill could buy the equipment and allow a patch seller to solely supply the patch itself. Therefore, anyone who wants to supply patch **must** build the equipment, too.

Further, Willamette states that since Mr. Edwards and two other companies, C. Dale Bates and Georgia Pacific, entered in the market in the past, then there must not be barriers to entry. EPPS would hardly call the entry of his companies and two others in the span of 25 years

²³ Doc. 34, ¶¶ 17 – 25.

²⁴ *Id.* at ¶ 26.

²⁵ *Id.* at ¶ 17.

to be “repeated past entry” which would demonstrate low barriers to entry as claimed by Defendant.²⁶ Willamette also states that EPPS did not allege that Mr. Edwards’ entry required “intellectual property, unique expertise, or anything else not available to other potential entrants.”²⁷ To the contrary, EPPS did describe the complexities of developing the chemical formulation of patch as well as the mechanical engineering of the equipment. The fact that Mr. Edwards was able to enter the market inherently shows that he had the expertise to do so. Regardless, if need be, EPPS will certainly amend to include details as to Mr. Edwards’ expertise, skills, and background to show why he was uniquely equipped to enter the patch business.

Finally, Willamette simply disbelieves EPPS’ allegations that the “steps” to enter the patch market are significant barriers. Though Defendant refuses to accept EPPS’ allegations on the barriers to entry as true, this Court must do so. Accepting the allegations as true, it is clear that there are significant barriers to entry in the patch market which means that Willamette will be able to recoup its losses from its predatory pricing by preying on its customers who have no other source of patch.

B. Antitrust Market

I. Product Market

Willamette next argues that EPPS has not adequately alleged the product market because it has not discussed “reasonably interchangeable substitute products.”²⁸ Because this Court previously agreed that EPPS had not adequately discussed why there are no substitutes for patch

²⁶ Doc. 40-1, pp. 12 – 13. EPPS also states that discovery will show that market conditions were different in 1990 when he first entered the market than they are today due to Willamette’s monopolistic behavior. Further, discovery will show that since EPPS was forced out of the market over two years ago, not one patch supplier has entered the market.

²⁷ *Id.* at 12.

²⁸ Doc. 40-1, p. 15.

when it comes to high-volume sanded plywood production, EPPS addressed same in its Amended Complaint.²⁹ Once again, Willamette simply refuses to believe what EPPS alleged as to why there are no substitutes for patch when it comes to **high volume**, *i.e.*, 6 to 12 panels per minute,³⁰ production of sanded plywood. Certainly, though, this Court must accept EPPS' allegations as true.

Further, Willamette's argument as to why it believes there are substitutes for patch in the context of high volume production of sanded plywood (as unbelievable as that argument is) does not belong in a Rule 12(b)(6) motion. If Willamette wants to explain to this Court why it believes there are substitutes for patch, then it can do so at trial or on a motion for summary judgment with experts who can explain why epoxies and putties can supposedly be used to fill knot holes during the high volume production of sanded plywood. And then, of course, EPPS is entitled to present evidence contradicting Willamette's assertions. Regardless, it is clear that Willamette's arguments are ones on the merits, not on a preliminary motion to dismiss.

Finally, the fact that Willamette has attached documents outside the pleadings belies its position that it is merely arguing a 12(b)(6) motion. Rule 12(d) provides as follows:

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion **must** be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(emphasis added). Willamette claims that under *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 - 99 (5th Cir. 2000), "this Court can consider the APA materials setting forth standards for synthetic repair because they were 'referred to in the plaintiff's complaint and are central to [its] claim.'"³¹ First, Willamette's quote is misleading. In *Collins*, the plaintiffs "did

²⁹ Doc. 34, ¶¶ 8 - 11.

³⁰ Doc. 34, ¶ 5.

³¹ Doc. 40-1, p. 15, n. 12.

not object in the district court to this inclusion [of outside documents] and do not question it on appeal.” *Id.* at 498. The Fifth Circuit went on to say that “[i]n so attaching, the defendant merely assists the plaintiff in establishing the basis of the suit, and the court in making the elementary determination of whether a claim has been stated.” *Id.* at 499.

A later Fifth Circuit case noted that the “fact that the plaintiffs did not object to, or appeal, the district court’s consideration of those documents was central to this Court’s approval of that practice.” *Scanlan v. Texas A&M Univ.*, 343 F.3d 533, 536 (5th Cir. 2003). So, the more appropriate takeaway from *Collins* is that “uncontested documents referred to in the pleadings may be considered by the Court without converting the motion to one for summary judgment” *Chauvin v. State Farm Fire & Cas. Co.*, 450 F. Supp. 2d 660, 662 – 63 (E.D.La. 2006), *aff’d*, 495 F.3d 232 (5th Cir. 2007).

This being said, Willamette’s Exhibit A purports to be a 2010 list of APA-approved synthetic suppliers which supposedly shows that epoxy is a substitute for patch. Nowhere in its Amended Complaint did EPPS refer to same, nor is this document “central” to EPPS’ claims. EPPS thus strongly objects to Willamette’s reliance on and this Court’s consideration of this document, and it would ask that this document be stricken from Willamette’s motion.³²

Willamette’s Exhibit B purports to be APA standards which allegedly show that wood putty and epoxy can be used as substitutes for patch. While EPPS did refer to the APA’s requirements for sanded plywood, it did not refer to this document, the document itself is not central to its claims, and this is not the type of document that is appropriate for review on a Rule 12(b)(6) motion. This highly technical document should not be considered without having further testimony as to such issues as, for example, the dry time of putty required prior to

³² Further, EPPS has already noted why it believes that discovery will show that this document has no relevance or significance to its antitrust claims.

sanding, the chemical properties of putty, and how those effect its use in the **high volume** production of sanded plywood. Accordingly, EPPS strongly objects to Willamette's use of this document in support of its motion to dismiss, and EPPS would request that the document be stricken from Willamette's motion.

In short, EPPS has factually alleged why there are no reasonably interchangeable substitutes for patch when it comes to the high volume production of sanded plywood, which is the use at issue in EPPS' complaint. Thus, Willamette's argument that it has not sufficiently alleged the product market is meritless.

2. Geographic Market

Willamette goes on to argue that EPPS has defined the geographic market by simply "drawing big circles around its or Willamette's production facilities, instead of applying the proper legal standard" ³³ Because this Court ruled that EPPS did not sufficiently allege the geographic market in its original Complaint, it amended to factually explain why it defined the market as having a 500-mile radius, or 6-hour drive time, around Baton Rouge, Louisiana. ³⁴ As EPPS alleged, the geographic market for patch is determined by two things. First, long transportation times degrade patch and shorten its shelf-life due to its physical characteristics as a dispersed suspension with about two-thirds by weight being solid material. Second, a patch supplier must be available **at all times** to go the customer's mill to service the patch application equipment. Thus, it would not be economically feasible, nor would it make sense product-wise, to have a mill located across the country from a patch supplier. Accordingly, the geographic market is a function of the distance between a patch supplier and its customers.

³³ Doc. 40-1, p. 18.

³⁴ Doc. 34, ¶¶ 12 – 15.

Instead of accepting EPPS' allegations as to the geographic market as true, Willamette accuses EPPS of "drawing big circles" to define the product market. EPPS submits that because it answered this Court's questions on the geographic market, it has satisfied this element of setting forth an antitrust market, and Willamette's motion to dismiss should be denied.

C. Sale of Assets to Willamette

Willamette concluded, without any discussion, that because EPPS has not set forth a predatory pricing claim, then it has no claim for relief with respect to its sale of assets to Willamette.³⁵ In its prior ruling, this Court stated that EPPS needed to allege that Willamette's conduct was the "but for" cause of its sale to Willamette.³⁶ Thus, EPPS set forth factual allegations evidencing that it was, indeed, Willamette's anticompetitive activities that led to the sale of its assets well below fair market value.³⁷ Hence, EPPS states that its acquisition by Willamette establishes a claim for relief under 15 U.S.C. § 15. *See BRFHSH Shreveport, LLC*, 2016 WL 1271075, at *9 (acquisitions of viable competitors alone may establish the anticompetitive conduct element of a 15 U.S.C. § 15 claim).

D. General Sherman Act and Louisiana Antitrust Claims

Finally, Willamette concludes that EPPS "catch all" Sherman Act claim and Louisiana antitrust claims must be dismissed because it has set forth no other Sherman Act claims. EPPS notes, though, that its Count 1 claim that Willamette has "unlawfully monopolized the Patch product and technology market" is not simply a "catch all" claim. As explained by the Supreme Court,

the offense of monopoly . . . has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that

³⁵ Doc. 40-1, pp. 18 – 19.

³⁶ Doc. 33, pp. 11 – 12.

³⁷ Doc. 34, ¶¶ 45 – 48, 67 – 69.

power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.

United States v. Grinnell Corp., 384 U.S. 563, 570–71 (1966). Thus, EPPS’ Count 1 claim is separate and apart from its predatory pricing claim and its illegal acquisition claim. EPPS submits that this claim should be allowed to stand on its own regardless of the other claims as it is obvious, and has not been denied by Willamette, that it maintains a pure monopoly over patch in the subject geographic market.

Finally, “violations of federal antitrust law can support a claim that Louisiana’s antitrust law has been violated” if the federal violations have been adequately pled. *Felder’s Collision Parts, Inc. v. Gen. Motors Co.*, 960 F. Supp. 2d 617, 638 (M.D.La. 2013). Thus, for the same reasons that EPPS’ federal antitrust claims should be allowed to proceed, so should its parallel Louisiana antitrust claims.

IV. CONCLUSION

As shown above, EPPS has made sufficient allegations in its Amended and Restated Complaint to state an antitrust claim for relief that is plausible on its face. Therefore, Willamette’s motion to dismiss should be denied, and it should be allowed to proceed with its claims against Willamette.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of June, 2017, a copy of the foregoing Memorandum in Opposition to the Motion to Dismiss the Amended and Restated Complaint was electronically filed 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.

/s/ Stacy R. Palowsky