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8 Counsel for Plaintiff

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 \_\_\_\_\_, Individually and on behalf of  
12 all others similarly situated,

13 Plaintiff,

14 v.

15 OMEGA PROTEIN CORPORATION,  
16 BRET D. SCHOLTES, and ANDREW C.  
17 JOHANNESSEN,

18 Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR  
VIOLATION OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

19  
20 Plaintiff \_\_\_\_\_, (“Plaintiff”), individually and on behalf of all other  
21 persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s  
22 complaint against Defendants (defined below), alleges the following based upon  
23 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and  
24 belief as to all other matters, based upon, inter alia, the investigation conducted by  
25 and through Plaintiff’s attorneys, which included, among other things, a review of  
26 the defendants’ public documents, conference calls and announcements made by  
27 defendants, United States Securities and Exchange Commission (“SEC”) filings,  
28

1 wire and press releases published by and regarding Omega Protein Corporation  
2 (“Omega” or the “Company”), analysts’ reports and advisories about the Company,  
3 and information readily obtainable on the Internet. Plaintiff believes that substantial  
4 evidentiary support will exist for the allegations set forth herein after a reasonable  
5 opportunity for discovery.

#### 6 **NATURE OF THE ACTION**

7 1. This is a federal securities class action on behalf of a class consisting of  
8 all persons and entities, other than Defendants, who purchased or otherwise acquired  
9 the publicly traded securities of Omega between August 3, 2016 and March 1, 2017,  
10 both dates inclusive (the “Class Period”). Plaintiff seeks to recover compensable  
11 damages caused by Defendants’ violations of the federal securities laws and to pursue  
12 remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the  
13 “Exchange Act”) and Rule 10b-5 promulgated thereunder.

#### 14 **JURISDICTION AND VENUE**

15 2. The claims asserted herein arise under and pursuant to §§10(b) and 20(a)  
16 of the Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5 promulgated  
17 thereunder by the SEC (17 C.F.R. §240.10b-5).

18 3. This Court has jurisdiction over the subject matter of this action under  
19 28 U.S.C. §1331 and §27 of the Exchange Act.

20 4. Venue is proper in this District pursuant to §27 of the Exchange Act (15  
21 U.S.C. §78aa) and 28 U.S.C. §1391(b) as Defendants conduct business, maintain  
22 offices in this District, and a significant portion of the Defendants’ actions, and the  
23 subsequent damages, took place within this District.

24 5. In connection with the acts, conduct and other wrongs alleged in this  
25 Complaint, Defendants, directly or indirectly, used the means and instrumentalities of  
26 interstate commerce, including but not limited to, the United States mail, interstate  
27 telephone communications and the facilities of the national securities exchange.

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## PARTIES

6. Plaintiff, as set forth in the accompanying Certification, purchased Omega securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosure.

7. Defendant Omega develops, produces, and delivers products to enhance the nutritional integrity of foods, dietary supplements, and animal feeds worldwide. The Company is incorporated in Nevada and its principal executive offices are located at 2105 City West Blvd., Suite 500, Houston, Texas. Omega also maintains offices and warehouses in Irvine, California. The Company's common stock is traded on the New York Stock Exchange ("NYSE") under the ticker symbol "OME."

8. Defendant Bret D. Scholtes ("Scholtes") has been the Chief Executive Officer ("CEO") and President of Omega since January 1, 2012.

9. Defendant Andrew C. Johannesen ("Johannesen") has been the Chief Financial Officer ("CFO") and an Executive Vice President of Omega since January 1, 2012.

10. Defendants Scholtes and Johannesen are sometimes referred to herein as the "Individual Defendants."

11. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;
- (c) was privy to confidential proprietary information concerning the Company and its business and operations;
- (d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;

- 1 (e) was directly or indirectly involved in the oversight or implementation of  
2 the Company's internal controls;
- 3 (f) was aware of or recklessly disregarded the fact that the false and  
4 misleading statements were being issued concerning the Company;  
5 and/or
- 6 (g) approved or ratified these statements in violation of the federal securities  
7 laws.

8 12. The Company is liable for the acts of the Individual Defendants and its  
9 employees under the doctrine of *respondeat superior* and common law principles of  
10 agency because all of the wrongful acts complained of herein were carried out within  
11 the scope of their employment.

12 13. The scienter of the Individual Defendants and other employees and  
13 agents of the Company is similarly imputed to the Company under *respondeat*  
14 *superior* and agency principles.

15 14. The Company and the Individual Defendants are referred to herein,  
16 collectively, as the "Defendants."

17 **SUBSTANTIVE ALLEGATIONS**

18 **Background**

19 15. In June 2013, Omega Protein, Inc. ("Omega Inc."), Omega's principal  
20 subsidiary, entered into a plea agreement (the "Virginia Plea Agreement") with the  
21 United States Attorney's Office for the Eastern District of Virginia to resolve a  
22 government investigation related to the fishing vessels and operations of its  
23 Reedville, Virginia facility.

24 16. Consistent with the terms of the Virginia Plea Agreement, Omega Inc.  
25 pled guilty in the United States District Court for the Eastern District of Virginia (the  
26 "Virginia Court") to two felony counts under the Clean Water Act, paid a fine of \$5.5  
27 million, made a \$2.0 million contribution to an environmental fund, and was  
28 sentenced to a three year probation term that was originally scheduled to end in June

1 2016, but which was extended by the Virginia Court in December 2016 for two years  
2 due to the issues associated with the second plea agreement described below.  
3 Accordingly, the probation term for the Virginia Plea Agreement will terminate in  
4 June 2018.

### 5 **Materially False and Misleading Statements**

6 17. On August 3, 2016, during aftermarket hours, the Company filed a Form  
7 10-Q for the quarter ended June 30, 2016 (the “2Q 2016 10-Q”) with the SEC, which  
8 provided the Company’s second quarter 2016 financial results and position and stated  
9 that the company’s disclosure controls and procedures were effective as of June 30,  
10 2016. The 2Q 2016 10-Q also disclosed that “[t]here were no changes in the  
11 Company’s internal control over financial reporting during the period covered by this  
12 report that have materially affected, or are reasonably likely to materially affect, the  
13 Company’s internal control over financial reporting.” The 2Q 2016 10-Q was signed  
14 by Defendant Johannesen. The 2Q 2016 10-Q contained signed certifications  
15 pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) by Defendants Scholtes and  
16 Johannesen attesting to the accuracy of financial reporting, the disclosure of any  
17 material changes to the Company’s internal controls over financial reporting, and the  
18 disclosure of all fraud.

19 18. On November 2, 2016, the Company filed a Form 10-Q for the quarter  
20 ended September 30, 2016 (the “3Q 2016 10-Q”) with the SEC, which provided the  
21 Company’s third quarter 2016 financial results and position and stated that the  
22 company’s disclosure controls and procedures were effective as of September 30,  
23 2016. The 3Q 2016 10-Q also disclosed that “[t]here were no changes in the  
24 Company’s internal control over financial reporting during the period covered by this  
25 report that have materially affected, or are reasonably likely to materially affect, the  
26 Company’s internal control over financial reporting.” The 3Q 2016 10-Q was signed  
27 by Defendant Johannesen. The 3Q 2016 10-Q contained signed SOX certifications by  
28 Defendants Scholtes and Johannesen attesting to the accuracy of financial reporting,

1 the disclosure of any material changes to the Company’s internal controls over  
2 financial reporting, and the disclosure of all fraud.

3 19. On December 16, 2016, Omega filed a Form 8-K with the SEC  
4 announcing that its subsidiary, Omega Inc., agreed to plead guilty to two felony  
5 counts under the Clean Water Act pursuant to a plea agreement with the United States  
6 Attorney’s Office for the Western District of Louisiana , stating in pertinent part:

7  
8 **Item 1.01. Entry into a Material Definitive Agreement.**

9 On December 15, 2016, Omega Protein, Inc. (“Subsidiary”), a  
10 subsidiary of Omega Protein Corporation (the “Company”), entered  
11 into a plea agreement (the “Plea Agreement”) with the United States  
12 Attorney’s Office for the Western District of Louisiana to resolve the  
13 previously disclosed government investigation related to the  
14 Subsidiary’s Abbeville, Louisiana operations. The Plea Agreement is  
15 attached hereto as Exhibit 10.1. Under the Plea Agreement, the  
16 Subsidiary agreed to plead guilty to two felony counts under the Clean  
17 Water Act. The Plea Agreement provides that the parties will jointly  
18 recommend a sentence consisting of (i) a \$1.0 million fine, (ii) a 3-  
19 year probationary period for the Subsidiary, and (iii) a payment by the  
20 Subsidiary of \$200,000 for community service. The Company will not  
be able to claim the cost of the fine or the community service  
contribution as business expenses for tax purposes. The Plea  
Agreement is subject to the approval of the U.S. District Court for the  
Western District of Louisiana (“Louisiana Court”).

21 **Item 8.01 Other Events**

22  
23 On December 5, 2016, the U.S. District Court for the Eastern  
24 District of Virginia (“Virginia Court”) held a hearing on a previously  
25 disclosed motion filed by the U.S. Attorney for the Eastern District of  
26 Virginia to revoke the Subsidiary’s probation relating to a June 2013  
27 plea agreement because of the issues resolved by the Plea Agreement  
28 described above. At that hearing, the Virginia Court imposed an  
additional 2 year probation period on the Subsidiary to run from June  
4, 2016 to June 4, 2018. Assuming the approval of the Plea  
Agreement by the Louisiana Court, the remainder of this two year

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probation period will run concurrently with the three year probation period set forth in the Plea Agreement.

20. The statements referenced in ¶¶ 17 - 19 above were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company’s business, operational and financial results, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) the SEC is requesting information in connection with an investigation relating to Omega’s subsidiary’s compliance with its probation terms and Omega’s protection of whistleblower employees; (2) consequently, it is possible that the foregoing matter could result in a material adverse effect on Omega’s business, reputation, results of operation and financial condition; and (3) as a result, Defendants’ statements about Omega’s business, operations and prospects were materially false and misleading and/or lacked a reasonable bases at all relevant times.

**The Truth Emerges**

21. On March 1, 2017, during aftermarket hours, Omega filed a Form 10-K for the fiscal year ended December 31, 2016 with the SEC, revealing that in December 2016, it “received a subpoena from the SEC requesting information in connection with an investigation relating to a Company subsidiary’s compliance with its probation terms and the Company’s protection of whistleblower employees.” Omega further revealed that “it is possible that the foregoing matter could result in a material adverse effect on the Company’s business, reputation, results of operation and financial condition.”

22. On this news, shares of Omega fell \$6.25 per share or over 23.81% from its previous closing price to close at \$20.00 per share on March 2, 2017, damaging investors.



1           28. Common questions of law and fact exist as to all members of the Class  
2 and predominate over any questions solely affecting individual members of the Class.

3 Among the questions of law and fact common to the Class are:

- 4           a. whether the federal securities laws were violated by Defendants' acts as  
5           alleged herein;
- 6           b. whether statements made by Defendants to the investing public during  
7           the Class Period misrepresented material facts about the financial  
8           condition, business, operations, and management of the Company;
- 9           c. whether Defendants' public statements to the investing public during the  
10          Class Period omitted material facts necessary to make the statements  
11          made, in light of the circumstances under which they were made, not  
12          misleading;
- 13          d. whether the Individual Defendants caused the Company to issue false  
14          and misleading SEC filings and public statements during the Class  
15          Period;
- 16          e. whether Defendants acted knowingly or recklessly in issuing false and  
17          misleading SEC filings and public statements during the Class Period;
- 18          f. whether the prices of Omega securities during the Class Period were  
19          artificially inflated because of the Defendants' conduct complained of  
20          herein; and
- 21          g. whether the members of the Class have sustained damages and, if so,  
22          what is the proper measure of damages.

23           29. A class action is superior to all other available methods for the fair and  
24 efficient adjudication of this controversy since joinder of all members is  
25 impracticable. Furthermore, as the damages suffered by individual Class members  
26 may be relatively small, the expense and burden of individual litigation make it  
27 impossible for members of the Class to individually redress the wrongs done to them.  
28 There will be no difficulty in the management of this action as a class action.



1           34. This Count is asserted against the Company and the Individual  
2 Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b),  
3 and Rule 10b-5 promulgated thereunder by the SEC.

4           35. During the Class Period, the Company and the Individual Defendants,  
5 individually and in concert, directly or indirectly, disseminated or approved the false  
6 statements specified above, which they knew or deliberately disregarded were  
7 misleading in that they contained misrepresentations and failed to disclose material  
8 facts necessary in order to make the statements made, in light of the circumstances  
9 under which they were made, not misleading.

10           36. The Company and the Individual Defendants violated §10(b) of the 1934  
11 Act and Rule 10b-5 in that they: employed devices, schemes and artifices to defraud;  
12 made untrue statements of material facts or omitted to state material facts necessary  
13 in order to make the statements made, in light of the circumstances under which they  
14 were made, not misleading; or engaged in acts, practices and a course of business that  
15 operated as a fraud or deceit upon plaintiff and others similarly situated in connection  
16 with their purchases of Omega securities during the Class Period.

17           37. The Company and the Individual Defendants acted with scienter in that  
18 they knew that the public documents and statements issued or disseminated in the  
19 name of the Company were materially false and misleading; knew that such  
20 statements or documents would be issued or disseminated to the investing public; and  
21 knowingly and substantially participated, or acquiesced in the issuance or  
22 dissemination of such statements or documents as primary violations of the securities  
23 laws. These defendants by virtue of their receipt of information reflecting the true  
24 facts of the Company, their control over, and/or receipt and/or modification of the  
25 Company's allegedly materially misleading statements, and/or their associations with  
26 the Company which made them privy to confidential proprietary information  
27 concerning the Company, participated in the fraudulent scheme alleged herein.

28

1           38. Individual Defendants, who are the senior officers and/or directors of  
2 the Company, had actual knowledge of the material omissions and/or the falsity of  
3 the material statements set forth above, and intended to deceive Plaintiff and the other  
4 members of the Class, or, in the alternative, acted with reckless disregard for the truth  
5 when they failed to ascertain and disclose the true facts in the statements made by  
6 them or other personnel of the Company to members of the investing public,  
7 including Plaintiff and the Class.

8           39. As a result of the foregoing, the market price of Omega securities were  
9 artificially inflated during the Class Period. In ignorance of the falsity of the  
10 Company's and the Individual Defendants' statements, Plaintiff and the other  
11 members of the Class relied on the statements described above and/or the integrity of  
12 the market price of Omega securities during the Class Period in purchasing Omega  
13 securities at prices that were artificially inflated as a result of the Company's and the  
14 Individual Defendants' false and misleading statements.

15           40. Had Plaintiff and the other members of the Class been aware that the  
16 market price of Omega securities had been artificially and falsely inflated by the  
17 Company's and the Individual Defendants' misleading statements and by the material  
18 adverse information which the Company's and the Individual Defendants did not  
19 disclose, they would not have purchased Omega securities at the artificially inflated  
20 prices that they did, or at all.

21           41. As a result of the wrongful conduct alleged herein, Plaintiff and other  
22 members of the Class have suffered damages in an amount to be established at trial.

23           42. By reason of the foregoing, the Company and the Individual Defendants  
24 have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder  
25 and are liable to the Plaintiff and the other members of the Class for substantial  
26 damages which they suffered in connection with their purchases of Omega securities  
27 during the Class Period.

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**COUNT II**

**Violation of Section 20(a) of The Exchange Act  
Against The Individual Defendants**

43. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

44. During the Class Period, the Individual Defendants participated in the operation and management of the Company, and conducted and participated, directly and indirectly, in the conduct of the Company's business affairs. Because of their senior positions, they knew the adverse non-public information regarding the Company's business practices.

45. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to the Company's financial condition and results of operations, and to correct promptly any public statements issued by the Company which had become materially false or misleading.

46. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which the Company disseminated in the marketplace during the Class Period. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause the Company to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of the Company within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Omega securities.

47. Each of the Individual Defendants, therefore, acted as a controlling person of the Company. By reason of their senior management positions and/or being directors of the Company, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, the Company to engage in the

1 unlawful acts and conduct complained of herein. Each of the Individual Defendants  
2 exercised control over the general operations of the Company and possessed the  
3 power to control the specific activities which comprise the primary violations about  
4 which Plaintiff and the other members of the Class complaint.

5 48. By reason of the above conduct, the Individual Defendants are liable  
6 pursuant to Section 20(a) of the Exchange Act for the violations committed by the  
7 Company.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

10 A. Determining that the instant action may be maintained as a class action  
11 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the  
12 Class representative;

13 B. Requiring Defendants to pay damages sustained by Plaintiff and the  
14 Class by reason of the acts and transactions alleged herein;

15 C. Awarding Plaintiff and the other members of the Class prejudgment and  
16 post-judgment interest, as well as their reasonable attorneys' fees, expert fees and  
17 other costs; and

18 D. Awarding such other and further relief as this Court may deem just and  
19 proper.

20 **DEMAND FOR TRIAL BY JURY**

21 Plaintiff hereby demands a trial by jury.

22 Dated: March \_\_, 2017

Respectfully submitted,

23 **THE ROSEN LAW FIRM, P.A.**

24  
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