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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

17 MAURICIO CHAMAT, individually and
18 on behalf of all others similarly situated,
19 Plaintiff,

20 v.

21
22 INVENTURE FOODS, INC., TERRY E.
23 MCDANIEL, MACON BRYCE
24 EDMONSON, ASHTON D. ASENSIO,
25 PAUL J. LAPADAT, TIMOTHY A.
26 COLE, and JOEL D. STEWART,
27 Defendants.

CIVIL ACTION NO. _____

**COMPLAINT FOR VIOLATION OF
FEDERAL SECURITIES LAWS**

1 Plaintiff Mauricio Chamat (“Plaintiff”), by his attorneys, alleges upon information
2 and belief, except for his own acts, which are alleged on knowledge, as follows:

3
4 **NATURE AND SUMMARY OF THE ACTION**

5 1. Plaintiff, a stockholder of Inventure Foods, Inc. (“Inventure” or the
6 “Company”), brings this action against the members of Inventure’s Board of Directors
7 collectively, the “Board” or the “Individual Defendants,” as further defined below) for
8 violations of Section 14(d)(4), and Rule 14D-9 promulgated thereunder by the U.S.
9 Securities and Exchange Commission (the “SEC”), and 20(a). Specifically, Defendants
10 solicit the tendering of stockholder shares in connection with the sale of the Company to
11 Utz Quality Foods, LLC (“Utz”) through a recommendation statement that omits material
12 facts necessary to make the statements therein not false or misleading. Stockholders need
13 this material information to decide whether to tender their shares or pursue their appraisal
14 rights.
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18 2. On October 25, 2017, the Company and Utz entered into a definitive
19 agreement (“Merger Agreement”) under which Utz will acquire all of the outstanding
20 common shares of Inventure in an all-cash tender offer (the “Proposed Transaction”). If
21 consummated, Inventure stockholders will receive \$4.00 in cash per common share of
22 Inventure. The Proposed Transaction has a value of approximately \$165 million
23
24

25 3. On November 15, 2017, Utz filed a Form TO-T Tender Offer Statement
26 announcing the commencement of its tender offer, set to expire at one minute after 11:59
27 P.M. New York City Time on December 13, 2017 (the “Tender Offer”).
28

1 4. Also on November 15, 2017, Defendants issued materially incomplete and
2 misleading disclosures in the Schedule 14D-9 Solicitation/Recommendation Statement (the
3 “Recommendation Statement”) filed with the United States Securities and Exchange
4 Commission (“SEC”) in connection with the Proposed Transaction. The Recommendation
5 Statement is deficient and misleading in that it fails to provide adequate disclosure of all
6 material information related to the Proposed Transaction. The failure to adequately disclose
7 such material information constitutes a violation of §§ 14(d)(4) and 20(a) of the Exchange
8 Act as stockholders need such information in order to make a fully-informed decision
9 regarding tendering their shares in connection with the Proposed Transaction about
10 whether to tender their shares.
11

12
13
14 5. For these reasons and as set forth in detail herein, the Individual Defendants
15 have violated federal securities laws. Accordingly, Plaintiff seeks to enjoin the Proposed
16 Transaction or, in the event the Proposed Transaction is consummated, recover damages
17 resulting from the Individual Defendants’ violations of these laws. Judicial intervention is
18 warranted here to rectify existing and future irreparable harm to the Company’s
19 stockholders
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21

22 **I. JURISDICTION AND VENUE**

23 6. This Court has subject matter jurisdiction under 28 U.S.C. § 1331–32,
24 pursuant to 15 U.S.C. § 78aa (federal question jurisdiction), as Plaintiff alleges violations
25 of Sections 14(d)(4), and 20(a) of the Exchange Act and Rule 14d-9 promulgated
26 thereunder.
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1 7. The Court has personal jurisdiction over each of the Defendants because each
2 either is a corporation that is incorporated under the laws of, conducts business in and
3 maintains operations in this District or is an individual who either is present in this District
4 for jurisdictional purposes or has sufficient minimum contacts with this District as to
5 render the exercise of jurisdiction by this Court permissible under traditional notions of fair
6 play and substantial justice.
7

8
9 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because: (a) one
10 or more of the Defendants either resides in or maintains executive offices here; (b) a
11 substantial portion of the transactions and wrongs complained of herein occurred here; and
12 (c) Defendants have received substantial compensation and other transfers of money here
13 by doing business here and engaging in activities having an effect here.
14

15 **II. PARTIES**
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17 9. Plaintiff is, and has been at all relevant times, the owner of Inventure
18 common stock.

19 10. Inventure is a Delaware corporation that manufactures and markets snack
20 foods under a variety of Company-owned and licensed brand names. The Company
21 maintains its principal executive offices at 5415 East High Street, Suite 350, Phoenix,
22 Arizona, 85054. Inventure common stock trades on the Nasdaq under the ticker symbol
23 “SNAK.”
24

25
26 11. Defendant Ashton D. Asensio (“Asensio”) has served as a director of the
27 Company since February 2006.
28

1 12. Defendant Timothy A. Cole (“Cole”) has served as a director of the
2 Company since May 2014 and as Interim Chairman of the Board since January 2017.

3 13. Defendant Macon Bryce Edmonson (“Edmonson”) has served as a director of
4 the Company since July 2006.

5 14. Defendant Terry E. McDaniel (“McDaniel”) has served as a director and the
6 CEO of the Company since May 2008.

7 15. Defendant Paul J. Lapadat (“Lapadat”) has served as a director of the
8 Company since May 2013.

9 16. Defendant Joel D. Stewart (“Stewart”) has served as a director of the
10 Company since January 31, 2017.

11 17. Non-party Utz is a privately-held Delaware limited liability company that
12 markets, manufactures, and distributes salty snacks in national and international markets.
13 Utz maintains its principal executive offices at 900 High Street, Hanover, Pennsylvania,
14 17331.

15 18. Non-Party Heron Sub, Inc. is a Delaware corporation and wholly-owned
16 subsidiary of Utz formed for the purpose of effectuating the Proposed Transaction.

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22 **III. FURTHER SUBSTANTIVE ALLEGATIONS**

23 19. On October 26, 2017, the Company and Utz issued a joint press release
24 announcing the Proposed Transaction. The Press Release read in relevant part:

25
26 PHOENIX and HANOVER, Pa., Oct. 26, 2017 (GLOBE NEWSWIRE) --
27 Inventure Foods, Inc. (NASDAQ:SNAK) ("Inventure Foods" or the
28 "Company"), a leading specialty food marketer and manufacturer, and Utz

1 Quality Foods, LLC ("Utz"), the largest privately-held and family-managed
2 branded salty snack manufacturer and marketer in the United States, today
3 announced they entered into a merger agreement pursuant to which Utz has
4 agreed to acquire all of the Company's outstanding shares of common stock
in an all-cash transaction.

5 Under the terms of the merger agreement, an indirect subsidiary of Utz will
6 commence a tender offer to acquire all of the outstanding shares of the
7 Company's common stock at a price of \$4.00 per share in cash, for a total
8 purchase price of approximately \$165 million, including the assumption of
9 approximately \$75 million of debt and debt-like items, net of cash,
10 approximately \$8 million of the Company's estimated closing costs and
11 approximately \$3 million due to equity award holders. The acquisition is
12 structured as an all-cash tender offer for all of the outstanding shares of
Inventure Foods common stock, to be followed by a merger in which each
remaining untendered share of Inventure Foods will be converted into the
right to receive the same \$4.00 per share cash price paid in the tender offer.

13 The transaction, which was unanimously approved by the Boards of both
14 Inventure Foods and Utz, is subject to the tender of more than 50 percent of
15 the fully diluted shares of Inventure Foods common stock, the receipt of
16 certain regulatory approvals and other customary closing conditions. The
17 transaction is not subject to a financing contingency and is expected to close
by the end of the fourth quarter of 2017. The tender offer is expected to
commence within ten business days.

18 "This transaction is the result of diligent analysis and thoughtful strategic
19 deliberations by our Board of Directors and the result of the strategic and
20 financial review we initiated in July 2016," stated Terry McDaniel, Chief
21 Executive Officer of Inventure Foods. "Our Board, with the advice of
22 independent advisors, determined that this transaction will deliver immediate
and certain cash value to our stockholders and new opportunities for our
snack brands."

23 "We are tremendously excited about the opportunity to acquire Inventure
24 Foods," said Dylan Lissette, Chief Executive Officer of Utz Quality Foods.
25 "The Company's specialty snack food products and brands, as well as its
26 geographic footprint, customer relationships and distribution strengths, are
27 highly complementary to our business and we look forward to continuing
28 Inventure's strong heritage of innovation in both healthy and indulgent
snacking. We have also been extremely impressed with the team at Inventure,
and look forward to working together going forward."

1
2 As previously announced, on September 29, 2017, the Company entered into
3 a Limited Waiver and Sixth Amendment to Credit Agreement (the "Sixth
4 Amendment") with BSP Agency, LLC, as agent ("BSP"), and the lenders (the
5 "Lenders") from time to time a party to the Credit Agreement (defined
6 below), which further amended the Credit Agreement, dated as of November
7 18, 2015, among the Borrowers a party thereto, the Lenders, and BSP (as
8 amended from time to time, the "Credit Agreement"). Under the terms of the
9 Sixth Amendment, the Lenders agreed to, among other things, (i) a further
10 extension from September 30, 2017 to October 31, 2017 of the temporary
11 waiver of the requirement under the Credit Agreement to deliver audited
12 financial statements without a going concern opinion, and (ii) a temporary
13 waiver until October 31, 2017 of the financial covenants with which the
14 Company was required to comply under the Credit Agreement.

15
16 As a result of this transaction, BSP and the other Lenders have agreed to
17 further extend the temporary waivers from October 31, 2017 to January 15,
18 2018 pursuant to a Limited Waiver, Consent and Seventh Amendment to
19 Credit Agreement (the "Seventh Amendment"), in order to give the Company
20 sufficient time to complete the proposed transaction. Without this further
21 extension of the temporary waivers beyond October 31st, the Company
22 would have been in default of the EBITDA financial covenants under the
23 Credit Agreement and the requirement to deliver audited financial statements
24 without a going concern opinion. Pursuant to the Seventh Amendment, the
25 Lenders have agreed to loan the Company up to an additional \$5 million,
26 which the Company may require to satisfy its expected operating expenses
27 through December 31, 2017.

28
29 The Company is represented in this transaction by its financial advisor,
30 Rothschild, and its legal counsel, DLA Piper LLP (US). Inventure retained
31 Rothschild as its financial advisor in connection with a formal process to
32 conduct a "strategic and financial review" of the Company in July 2016. Utz
33 Quality Foods is represented in this transaction by its financial advisor,
34 Stephens Inc., and its legal counsel, Cozen O'Connor.

35 **IV. THE RECOMMENDATION STATEMENT MISLEADS INVENTURE** 36 **STOCKHOLDERS BY OMITTING MATERIAL INFORMATION**

37
38 20. On November 26, 2017, Inventure filed the materially misleading and
incomplete Recommendation Statement with the SEC. Designed to convince stockholders

1 to tender their shares in favor of the Proposed Transaction, the Recommendation Statement
2 is rendered misleading by the omission of critical information concerning the Company's
3 expected future value as a standalone entity as evidenced by the Company's financial
4 projections, the financial analysis underlying the fairness opinion provided by Rothschild,
5 Inc.. ("Rothschild"), and the process ultimately leading to the Merger Agreement.
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8 ***Material Omissions Concerning the Company's Financial Projections***

9 21. First, the Recommendation Statement discloses non-GAAP accounting
10 metrics for projected Adjusted EBITDA over the years 2018-2022. However, providing
11 this non-GAAP metrics without disclosing the line item metrics used to calculate it, or
12 otherwise reconciling the non-GAAP projections to GAAP measures, makes the provided
13 disclosures materially incomplete and misleading.
14

15 22. The Recommendation Statement fails to disclose the line items underlying
16 Adjusted EBITDA necessary to reconcile EBITDA to GAAP measures, including interest.
17

18 23. The Recommendation Statement must disclose the necessary line items to
19 reconcile these non-GAAP measures to well-understood GAAP financial metrics. Non-
20 GAAP measures have no universally understood definition and vary widely between
21 companies depending on the needs of management in promoting their own effect on
22 Company performance.
23

24 24. Because of the non-standardized and potentially manipulative nature of non-
25 GAAP measures, when a company discloses information in a Recommendation Statement
26 that includes non-GAAP financial measures, the Company must also disclose comparable
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1 GAAP measures and a quantitative reconciliation of forward-looking information. 17
2 C.F.R. § 244.100.

3
4 25. The Company routinely discloses the line items necessary to reconcile non-
5 GAAP measures to GAAP in its quarterly and yearly financial reports. For example, in the
6 Form 10-Q filed by the Company on November 9, 2017, the Company discloses line items
7 necessary to reconcile Adjusted SG&A expenses to SG&A expenses.
8

9 26. Without disclosure of these reconciling metrics, the Recommendation
10 Statement violates SEC regulations and materially misleads Inventure stockholders.

11 27. Furthermore, the Recommendation Statement omits management's
12 projections of unlevered, after-tax free cash flows, as used by Rothschild in performing an
13 *Illustrative Discounted Cash Flow Analysis*, as well as the definition of unlevered, after-tax
14 free cash flows used by Rothschild.
15

16 28. These projections were provided to Rothschild, and used by Rothschild, for
17 the purpose of creating a fairness opinion that could then be used in soliciting stockholder
18 approval of the Proposed Transaction. Because these analyses were presented to the
19 Inventure stockholders as evidence of the fairness of the Proposed Transaction, the
20 omission of the financial projections materially misleads those same stockholders as to the
21 accuracy and value of the analyses.
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25 ***Material Omissions Concerning Rothschild's Financial Analyses***

26 29. The Recommendation Statement describes Rothschild's fairness opinion and
27 the various valuation analyses it performed in support of its opinion. However, the
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1 description of Rothschild's fairness opinion and analyses fails to include key inputs and
2 assumptions underlying these analyses. Without this information, as described below,
3 Inventure's stockholders are unable to fully understand these analyses and, thus, are unable
4 to determine what weight, if any, to place on Rothschild's fairness opinion in determining
5 how to cast their vote on the Proposed Transaction. This omitted information, if disclosed,
6 would significantly alter the total mix of information available to Inventure's stockholders.
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9 30. With respect to Rothschild's *Selected Precedent Transactions Analysis*, the
10 Recommendation Statement fails to disclose the individual multiples for each of the
11 selected transactions analyzed by Rothschild, as well as any benchmarking analyses
12 Rothschild performed for Inventure in relation to the target companies. Without such
13 information, Inventure's stockholders are unable to determine how the multiples used in
14 determining Inventure's value compare to the other companies. As a result, stockholders
15 are unable to assess whether Inventure utilized unreasonably low multiples thereby
16 rendering the implied share price ranges set forth in the analyses misleading.
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19 31. With respect to Rothschild's *Selected Public Company Analysis*, the
20 Recommendation Statement fails to disclose the individual multiples for each of the
21 selected companies analyzed by Rothschild. Without such information, Inventure's
22 stockholders are unable to determine how the multiples used in determining Inventure's
23 value compare to the other companies. As a result, stockholders are unable to assess
24 whether Inventure utilized unreasonably low multiples thereby rendering the implied share
25 price ranges set forth in the analyses misleading.
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1 32. With respect to Rothschild's *Illustrative Discounted Cash Flow Analysis*, the
2 Recommendation Statement fails to disclose the following key components used in their
3 analysis: (i) Inventure's terminal values; (ii) the inputs and assumptions underlying the
4 calculation of the LTM terminal multiples of 11.0x to 13.0x used for Inventure; and (iii)
5 the inputs and assumptions underlying the calculation of the discount rate range of 13.5%
6 to 15.5% used for Inventure.
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9 ***Material Omissions Regarding the Continued Compensation of Company***
10 ***Management***

11 33. As disclosed in the Recommendation Statement, Steve Weinberger, the
12 Company's Chief Financial Officer, will cease to be employed at the time of the Merger's
13 consummation. However, Utz will then enter into a consulting agreement with Weinberger
14 for four to six months, paying him a monthly consulting fee equal to his current monthly
15 salary with the Company.
16

17 34. However, the Recommendation Statement does not disclose the details of any
18 employment-related discussions and negotiations that occurred between Utz and Inventure
19 executive officers, including who participated in all such communications, when they
20 occurred, and their content. The Recommendation Statement further fails to disclose
21 whether any of Utz's prior proposals or indications of interest mentioned arrangements
22 with Company management.
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25 35. Communications regarding post-transaction employment and merger-related
26 benefits during the negotiation of the underlying transaction must be disclosed to
27 stockholders. This information is necessary for stockholders to understand potential
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1 conflicts of interest of management and the Board, as that information provides
2 illumination concerning motivations that would prevent fiduciaries from acting solely in
3 the best interests of the Company's stockholders.
4

5 36. As Chief Financial Officer, Weinberger was responsible for the financial
6 projections provided to Rothschild to underlie its fairness opinion, and therefore held the
7 utmost influence over the Board's approval of the Proposed Transaction.
8

9 37. The omission of this information renders the statements in the "Background
10 of the Offer and Merger" sections of the Recommendation Statement false and/or
11 materially misleading in contravention of the Exchange Act.
12

13 38. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent
14 the irreparable injury that Company stockholders will continue to suffer absent judicial
15 intervention.
16

17 **CLAIMS FOR RELIEF**

18 **COUNT I**

19
20 **Claims Against All Defendants for Violations of § 14(d)(4) of the
21 Securities Exchange Act of 1934 and SEC Rule 14d-9 (17 C.F.R. § 240.14d-9)**

22 39. Plaintiff incorporates each and every allegation set forth above as if fully
23 set forth herein.

24 40. Defendants have caused the Recommendation Statement to be issued with
25 the intention of soliciting stockholder support of the Proposed Transaction.
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1 41. Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated
2 thereunder require full and complete disclosure in connection with tender offers.

3 42. The Recommendation Statement violates § 14(d)(4) and Rule 14d-9
4 because it omits material facts, including those set forth above, which render the
5 Recommendation Statement false and/or misleading.
6

7 43. Defendants knowingly or with deliberate recklessness omitted the
8 material information identified above from the Recommendation Statement, causing
9 certain statements therein to be materially incomplete and therefore misleading.
10 Indeed, while defendants undoubtedly had access to and/or reviewed the omitted
11 material information in connection with approving the Proposed Transaction, they
12 allowed it to be omitted from the Recommendation Statement, rendering certain
13 portions of the Recommendation Statement materially incomplete and therefore
14 misleading.
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18 44. The misrepresentations and omissions in the Recommendation Statement
19 are material to Plaintiff, and Plaintiff will be deprived of their entitlement to make a
20 fully informed decision if such misrepresentations and omissions are not corrected prior
21 to the expiration of the tender offer.
22

23 45. The omissions and incomplete and misleading statements in the
24 Recommendation Statement are material in that a reasonable stockholder would
25 consider them important in deciding whether to tender their shares or seek appraisal. In
26 addition, a reasonable investor would view the information identified above which has
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1 been omitted from the Recommendation Statement as altering the “total mix” of
2 information made available to stockholders.

3
4 **COUNT II**

5 **Against the Individual Defendants for**
6 **Violations of § 20(a) of the 1934 Act**

7 46. Plaintiff repeats and realleges the preceding allegations as if fully set
8 forth herein.

10 47. The Individual Defendants acted as controlling persons of Inventure
11 within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of
12 their positions as officers and/or directors of Inventure and participation in and/or
13 awareness of the Company’s operations and/or intimate knowledge of the false
14 statements contained in the Recommendation Statement, they had the power to
15 influence and control and did influence and control, directly or indirectly, the decision
16 making of the Company, including the content and dissemination of the various
17 statements that plaintiff contends are false and misleading.

19 48. Each of the Individual Defendants was provided with or had unlimited
20 access to copies of the Recommendation Statement alleged by Plaintiff to be
21 misleading prior to and/or shortly after these statements were issued and had the ability
22 to prevent the issuance of the statements or cause them to be corrected.

23 49. In particular, each of the Individual Defendants had direct and
24 supervisory involvement in the day-to-day operations of the Company, and, therefore,
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1 is presumed to have had the power to control and influence the particular transactions
2 giving rise to the violations as alleged herein, and exercised the same. The
3 Recommendation Statement contains the unanimous recommendation of the Individual
4 Defendants to approve the Proposed Transaction. They were thus directly involved in
5 the making of the Recommendation Statement.
6

7 50. By virtue of the foregoing, the Individual Defendants violated Section
8 20(a) of the 1934 Act.
9

10 51. As set forth above, the Individual Defendants had the ability to exercise
11 control over and did control a person or persons who have each violated Section 14(d)
12 of the 1934 Act and Rule 14d-9, by their acts and omissions as alleged herein. By
13 virtue of their positions as controlling persons, these defendants are liable pursuant to
14 Section 20(a) of the 1934 Act. As a direct and proximate result of defendants' conduct,
15 Plaintiff is threatened with irreparable harm.
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18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff demands judgment against defendants jointly and
20 severally, as follows:
21

- 22 (A) declaring that the Recommendation Statement is materially false or
23 misleading;
24 (B) enjoining, preliminarily and permanently, the Proposed Transaction;
25 (C) in the event that the transaction is consummated before the entry of this
26 Court's final judgment, rescinding it or awarding Plaintiff rescissory damages;
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1 (D) directing that Defendants account to Plaintiff and the other members of
2 the Class for all damages caused by them and account for all profits and any special
3 benefits obtained as a result of their breaches of their fiduciary duties.
4

5 (E) awarding Plaintiff the costs of this action, including a reasonable
6 allowance for the fees and expenses of Plaintiff's attorneys and experts; and
7

8 (F) granting Plaintiff such further relief as the Court deems just and proper.
9

JURY DEMAND

10 Plaintiff demands a trial by jury.

11 **DATED** this 22nd day of 11/22/2017.
12

WARD, KEENAN & BARRETT, P.C.

s/Gerald Barrett

Gerald Barrett

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Attorneys for Plaintiff

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): **Mauricio Chamat**

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

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**Inventure Foods, Inc. ; Terry E. McDaniel ; Timothy
Defendant(s): Cole ; Ashton D. Asensio ; Macon Bryce Edmonson ;
Paul J. Lapadat ; Joel D. Stewart**

County of Residence: Maricopa

Defendant's Atty(s):

Washington, DC 20007
202-524-4290

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **850 Securities/Commodities/Exchange**

VI. Cause of Action: **Securities Exchange Act of 1934, Violation of Federal Securities Law**

VII. Requested in Complaint

Class Action: **Yes**
Dollar Demand:
Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: s/Gerald Barrett

Date: 11/22/2017

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.