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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 D&S Fraley Revocable Living Trust,
13 on behalf of itself and all others
14 similarly situated,

15 Plaintiff,

16 vs.

17 Inventure Foods, Inc., Ashton D.
18 Asensio, Timothy A. Cole, Macon
19 Bryce Edmonson, Paul J. Lapadat,
20 Terry McDaniel, and Joel D. Stewart,

21 Defendants.

Case No.:

CLASS ACTION

- CLASS ACTION COMPLAINT FOR:**
(1) Violation of § 14(d) of the Securities Exchange Act of 1934
(2) Violation of § 14(e) of the Securities Exchange Act of 1934
(3) Violation of § 20(a) of the Securities Exchange Act of 1934
(4) Breach of Fiduciary Duties

DEMAND FOR JURY TRIAL

22 Plaintiff D&S Fraley Revocable Living Trust (“Plaintiff”), by its attorneys, on
23 behalf of itself and those similarly situated, files this action against the defendants, and
24 alleges upon information and belief, except for those allegations that pertain to it, which
25 are alleged upon personal knowledge, as follows:

SUMMARY OF THE ACTION

26 1. Plaintiff brings this stockholder class action on behalf of itself and all other
27 public stockholders of Inventure Foods, Inc. (“Inventure” or the “Company”), against
28 Inventure, and the Company’s Board of Directors (the “Board” or the “Individual

1 Defendants”)(collectively with the Company, the “Defendants”), for violations of
2 Sections 14(d), 14(e) and 20(a) of the Securities and Exchange Act of 1934 (the
3 “Exchange Act”), and for breaches of fiduciary duty as a result of Defendants’ efforts to
4 sell the Company to Utz Quality Foods, LLC (“Parent”) and Heron Sub, Inc (the “Merger
5 Sub” and collectively with Parent, “Utz”) as a result of an unfair process for an unfair
6 price, and to enjoin a Tender Offer currently scheduled to expire on December 13, 2017
7 in which Utz will acquire each outstanding share of Inventure common stock for \$4.00
8 per share in cash, with a total valuation of approximately \$165 million (the “Proposed
9 Acquisition”).

10 2. The terms of the Proposed Acquisition were memorialized in a October 25,
11 2017 filing with the Securities and Exchange Commission (“SEC”) on Form 8-K
12 attaching the definitive Agreement and Plan of Merger (the “Merger Agreement”).

13 3. On November 15, 2017, Inventure filed a Solicitation/Recommendation
14 Statement on Schedule 14D-9 (the “14D-9”) with the Securities and Exchange
15 Commission (the “SEC”) in support of the Proposed Acquisition.

16 4. Defendants breached their fiduciary duties to the Company’s stockholders
17 by agreeing to the Proposed Acquisition which undervalues Inventure and is the result of
18 a flawed sales process. Post-closure, Inventure stockholders will be frozen out of seeing
19 the return on their investment of any and all future profitability of Inventure.
20

21 5. Further, pursuant to the terms of the Merger Agreement, upon the
22 consummation of the Proposed Acquisition, Company Board Members and executive
23 officers will be able to exchange large, illiquid blocks of Company stock for massive
24 payouts, in addition to receiving cash in exchange for all outstanding and unvested
25 options and/or other types of restricted stock units. Moreover, certain Directors and other
26 insiders will also be the recipients of lucrative change-in-control agreements, triggered
27 upon the termination of their employment as a consequence of the consummation of the
28

1 Proposed Acquisition. Such large paydays upon the consummation of the Proposed
2 Acquisition, have clearly tainted the motivations of the Board in approving it.

3 6. Finally, in violation of sections 14(d), 14(e) and 20(a) of the Securities and
4 Exchange Act of 1934 (the “Exchange Act”) and their fiduciary duties, Defendants
5 caused to be filed the materially deficient 14D-9 on November 15, 2017 with the SEC in
6 an effort to solicit stockholders to tender their Inventure shares in favor of the Proposed
7 Acquisition. The 14D-9 is materially deficient and deprives Inventure stockholders of
8 the information they need to make an intelligent, informed and rational decision of
9 whether to tender their shares in favor of the Proposed Acquisition. As detailed below,
10 the 14D-9 omits and/or misrepresents material information concerning, among other
11 things: (a) the Company’s financial projections; and (b) the data and inputs underlying
12 the financial valuation analyses that purport to support the fairness opinions provided by
13 the Company’s financial advisor, Rothschild, Inc. (“Rothschild”).
14

15 7. Absent judicial intervention, the merger will be consummated, resulting in
16 irreparable injury to Plaintiff and the Class. This action seeks to enjoin the Proposed
17 Acquisition or, in the event the Proposed Acquisition is consummated, to recover
18 damages resulting from violation of the federal securities laws by Defendants.

19 **PARTIES**

20 8. Plaintiff is a revocable living trust organized under the laws of the State of
21 Oregon. Trustee for the Plaintiff, Donald L. Fraley, is a citizen of the State of Oregon.
22 Plaintiff is, and at all times relevant hereto, has been an Inventure stockholder.

23 9. Defendant Inventure manufactures and markets healthy/natural and
24 indulgent specialty snack food products in the United States and internationally. It
25 operates in two segments, Frozen Products and Snack Products. The Company’s
26 healthy/natural food products include Rader Farms frozen berries; Boulder Canyon kettle
27 cooked potato chips; other snack and food items; Willamette Valley Fruit Company
28 frozen berries; Fresh Frozen brand frozen vegetables; biscuits and other frozen snacks;

1 Jamba branded blend-and-serve smoothie kits; Seattle's Best Coffee Frozen Coffee
2 Blends branded blend-and-serve frozen coffee beverage; Sin In A Tin chocolate pate and
3 other frozen desserts; and private label frozen fruits and healthy/natural snacks. The
4 Company's indulgent specialty snack food products include snack food under the T.G.I.
5 Friday's, Nathan's Famous, and Vidalia brands; kettle cooked potato chips under the
6 Poore Brothers and Bob's Texas Style brands; and Tato Skins brand potato snacks. The
7 Company also manufactures private label snack chip products for various grocery chains
8 and natural stores, and co-pack products for other snack manufacturers. It markets its
9 products through various channels, including grocery stores, natural food stores, mass
10 merchandisers, drug and convenience stores, and club stores, as well as company-owned
11 and third-party warehouses, direct store delivery, distribution centers, and other facilities.
12 Inventure common stock is publicly traded on the NasdaqGS under the ticker symbol
13 "SNAK". Inventure is a Delaware corporation with its principal executive offices located
14 at 5415 east High Street, Suite 350, Phoenix, AZ 85054.

15
16 10. Defendant Ashton D. Asensio ("Asensio") has been a Director of the
17 Company at all relevant times.

18 11. Defendant Timothy A. Cole ("Cole") has been a director of the Company
19 at all relevant times, and currently serves as the interim Chairman of the Board.

20 12. Defendant Macon Bryce Edmonson ("Edmonson") has been a director of
21 the Company at all relevant times.

22 13. Defendant Pal J. Lapadat ("Lapadat") has been a director of the
23 Company at all relevant times.

24 14. Defendant Terry McDaniel ("McDaniel ") has been a director of the
25 Company at all relevant times, and currently serves as the Chief Executive Officer
26 ("CEO") of the Company.

27 15. Defendant Joel D. Stewart ("Stewart") has been a director of the Company
28 at all relevant times.

1 16. Defendants Asensio, Cole, Edmonson, Lapadat, McDaniel, and Stewart,
2 identified in ¶¶ 10 - 15 are collectively referred to as the “Individual Defendants.”

3 17. Non-party Parent is a Delaware Limited Liability Company with its
4 principal executive offices located at 900 High St., Hanover, PA 17331. Parent
5 manufactures and markets snack foods in the United States and internationally. It offers
6 potato chips, pretzels, cheese snacks, corn products, and popcorns. Parent offers its
7 products through grocery stores, mass-merchants, club stores, convenience stores, drug
8 stores, and other channels.

9 18. Non-party Merger Sub is a Delaware corporation and a direct wholly-
10 owned subsidiary of Parent.

11 **JURISDICTION AND VENUE**

12 19. This Court has subject matter jurisdiction pursuant to Section 27 of the
13 Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as
14 Plaintiff alleges violations of Sections 14(d), 14(e) and Section 20(a) of the Exchange
15 Act. This action is not a collusive one to confer jurisdiction on a court of the United
16 States, which it would not otherwise have.

17 20. Personal jurisdiction exists over each defendant either because the
18 defendant conducts business in or maintains operations in this District, or is an individual
19 who is either present in this District for jurisdictional purposes or has sufficient minimum
20 contacts with this District as to render the exercise of jurisdiction over defendant by this
21 Court permissible under traditional notions of fair play and substantial justice.

22 21. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because
23 Inventure’s principal place of business is located in this District, and each of the
24 Individual Defendants, as Company officers or directors, has extensive contacts within
25 this District.
26
27
28

CLASS ACTION ALLEGATIONS

1
2 22. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23,
3 individually and on behalf of the stockholders of Inventure common stock who are being
4 and will be harmed by Defendants’ actions described herein (the “Class”). The Class
5 specifically excludes Defendants herein, and any person, firm, trust, corporation or other
6 entity related to, or affiliated with, any of the Defendants.

7 23. This action is properly maintainable as a class action because:

- 8 a. The Class is so numerous that joinder of all members is
9 impracticable. As of November 6, 2017, there were more than 19
10 million common shares of Inventure stock outstanding. The actual
11 number of public stockholders of Inventure will be ascertained
12 through discovery;
- 13 b. There are questions of law and fact which are common to the Class,
14 including *inter alia*, the following:
- 15 i. Whether Defendants have violated the federal securities laws;
- 16 ii. Whether Defendants made material misrepresentations and/or
17 omitted material facts in the 14D-9; and
- 18 iii. Whether Plaintiff and the other members of the Class have
19 and will continue to suffer irreparable injury if the Proposed
20 Acquisition is consummated.
- 21 c. Plaintiff is an adequate representative of the Class, has retained
22 competent counsel experienced in litigation of this nature and will
23 fairly and adequately protect the interests of the Class;
- 24 d. Plaintiff’s claims are typical of the claims of the other members of
25 the Class and Plaintiff does not have any interests adverse to the
26 Class;
27
28

1 e. The prosecution of separate actions by individual members of the
2 Class would create a risk of inconsistent or varying adjudications
3 with respect to individual members of the Class which would
4 establish incompatible standards of conduct for the party opposing
5 the Class;

6 f. Plaintiff anticipates that there will be no difficulty in the
7 management of this litigation and, thus, a class action is superior to
8 other available methods for the fair and efficient adjudication of this
9 controversy; and

10 g. Defendants have acted on grounds generally applicable to the Class
11 with respect to the matters complained of herein, thereby making
12 appropriate the relief sought herein with respect to the Class as a
13 whole.
14

15 **THE INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES**

16 24. By reason of the Individual Defendants' positions with the Company as
17 officers and/or directors, said individuals are in a fiduciary relationship with Inventure
18 and owe the Company the duties of due care, loyalty, and good faith.

19 25. By virtue of their positions as directors and/or officers of Inventure, the
20 Individual Defendants, at all relevant times, had the power to control and influence, and
21 did control and influence and cause Inventure to engage in the practices complained of
22 herein.

23 26. Each of the Individual Defendants are required to act with due care, loyalty,
24 good faith and in the best interests of the Company. To diligently comply with these
25 duties, directors of a corporation must:

- 26 a. act with the requisite diligence and due care that is reasonable under
27 the circumstances;
28 b. act in the best interest of the company;

- 1 c. use reasonable means to obtain material information relating to a
- 2 given action or decision;
- 3 d. refrain from acts involving conflicts of interest between the
- 4 fulfillment of their roles in the company and the fulfillment of any
- 5 other roles or their personal affairs;
- 6 e. avoid competing against the company or exploiting any business
- 7 opportunities of the company for their own benefit, or the benefit of
- 8 others; and
- 9 f. disclose to the Company all information and documents relating to
- 10 the company's affairs that they received by virtue of their positions
- 11 in the company.

12 27. In accordance with their duties of loyalty and good faith, the Individual
13 Defendants, as directors and/or officers of Inventure, are obligated to refrain from:

- 14 a. participating in any transaction where the directors' or officers'
- 15 loyalties are divided;
- 16 b. participating in any transaction where the directors or officers are
- 17 entitled to receive personal financial benefit not equally shared by
- 18 the Company or its public stockholders; and/or
- 19 c. unjustly enriching themselves at the expense or to the detriment of
- 20 the Company or its stockholders.

21
22 28. Plaintiff alleges herein that the Individual Defendants, separately and
23 together, in connection with the Proposed Acquisition, violated, and are violating, the
24 fiduciary duties they owe to Inventure, Plaintiff and the other public stockholders of
25 Inventure, including their duties of loyalty, good faith, and due care.

26 29. As a result of the Individual Defendants' divided loyalties, Plaintiff and
27 Class members will not receive adequate, fair or maximum value for their Inventure
28 common stock in the Proposed Transaction.

SUBSTANTIVE ALLEGATIONS

Company Background

30. Inventure manufactures and markets healthy/natural and indulgent specialty snack food products in the United States and internationally. It operates in two segments, Frozen Products and Snack Products.

31. The Company's healthy/natural food products include Rader Farms frozen berries; Boulder Canyon kettle cooked potato chips; other snack and food items; Willamette Valley Fruit Company frozen berries; Fresh Frozen brand frozen vegetables; biscuits and other frozen snacks; Jamba branded blend-and-serve smoothie kits; Seattle's Best Coffee Frozen Coffee Blends branded blend-and-serve frozen coffee beverage; Sin In A Tin chocolate pate and other frozen desserts; and private label frozen fruits and healthy/natural snacks.

32. The Company's indulgent specialty snack food products include snack food under the T.G.I. Friday's, Nathan's Famous, and Vidalia brands; kettle cooked potato chips under the Poore Brothers and Bob's Texas Style brands; and Tato Skins brand potato snacks.

33. The Company also manufactures private label snack chip products for various grocery chains and natural stores, and co-pack products for other snack manufacturers.

34. It markets its products through various channels, including grocery stores, natural food stores, mass merchandisers, drug and convenience stores, and club stores, as well as company-owned and third-party warehouses, direct store delivery, distribution centers, and other facilities.

35. Inventure's most recent financial performance press release before the announcement of the proposed Acquisition indicated sustained and solid financial performance. For example, in an August 9, 2017, press release announcing its 2017 Q2 financial results, the Company noted such highlights as (i) an increase in snack segment

1 net revenues of 11.6%; (ii) an increase in the Boulder Canyon brand net revenues of
2 11.2% and a similar 9.4% increase in net revenues for the Boulder Canyon snack section;
3 (iii) and a massive increase in snack private label net revenues of 34.5%.

4 36. Speaking on these tremendous results, Defendant and CEO McDaniel
5 stated, “Our second quarter financial results reflect another sequential quarterly
6 improvement in our operating and financial results and we are pleased with our continued
7 progress.” McDaniel continued by noting the strength of the Company with the
8 following, “The second quarter benefited from positive demand for our snack products as
9 evidenced by the strength of the Boulder Canyon brand and premium private label sales
10 growth, as well as an increase in both our snack and frozen segment gross profit margin
11 as compared to the prior year.”

12 37. These positive financial results are not an anomaly, but rather, are
13 indicative of a trend of continued financial success by Inventure. Looking further back,
14 one can see evidence for this typical success. For example, in a May 11, 2017 press
15 release announcing the Company’s 2017 Q1 financial results, Inventure reported such
16 highlights as (i) an increase in snack segment net revenue of 5.1%; (ii) an increase in the
17 Boulder Canyon brand net revenues of 15.3% and a similar 11.5% increase in net
18 revenues for the Boulder Canyon snack section; and a huge increase in snack private
19 label net revenues of 22.8%

20
21 38. Again, these results saw Defendant McDaniel praising the Company’s
22 outstanding fiscal performance, stressing the “progress we made during the first quarter
23 across key operational and financial areas of our business” and noting that the Company
24 is focused on continuing to execute initiatives in the frozen and snack segments to
25 “generate increased sales and profitability.”

26 39. Despite this upward trajectory and continually increasing financial results,
27 the Individual Defendants have caused Inventure to enter into the Proposed Acquisition,
28

1 thereby depriving Plaintiff and other public stockholders of the Company the opportunity
2 to reap the benefits of Inventure’s present and future success

3 ***The Flawed Sales Process***

4 40. The process deployed by the Individual Defendants was flawed and
5 inadequate, and conducted out of the self-interest of the Individual Defendants.

6 41. Most notably the sales process initiated by the Company was hamstrung
7 from the beginning by the Company’s decision to allow bidders to bid on and purchase a
8 division of the Company piecemeal rather than seeking bids only for an acquisition of the
9 Company as a whole. As a result, the Proxy states that the initial result of this scheme
10 was that “no initial bid by any interested third party contemplated an acquisition of the
11 entire Company.”

12 42. This thread continued throughout the entire sales process, with nearly all
13 potentially interested third parties caveating their bids on the prior sale or non-inclusion
14 of certain divisions of the Company, and with most bids contemplating purchases
15 structured as sales of assets rather than an acquisition of Company stock. In fact, the
16 Proposed Acquisition, was originally bid as a purchase of the Company’s remaining
17 assets after two of its divisions had already been sold off to different buyers.
18

19 43. Moreover, this plan caused the sales process to drag on for a significant
20 amount of time, resulting in several rounds of bidding that pushed the consideration
21 offered lower and lower. The length of the process as a result of this plan also caused
22 issues with the Company’s lines of revolving credit, necessitating several amendments to
23 agreements with financial institutions during the course of the sales process, and likely
24 further negatively impacting the consideration offered by interested third parties.

25 44. Additionally, it seems that Utz had initiated contact with the Company in
26 July of 2015 to explore strategic alternatives, more than a year prior to the start of the
27 formal sales process in August of 2016. At that time, the two companies entered into a
28 mutual non-disclosure agreement (“NDA”) regarding a potential transaction. The 14D-9

1 is silent however, as to the exact nature of this NDA, if it contained any standstill
2 provisions, and if so, their nature and under what circumstances the standstill would fall
3 away. Furthermore, the 14D-9 is silent as to whether the later NDA entered into by Utz
4 in August of 2016 was identical to the one entered into in July of 2015, and if as a result
5 of the previous NDA and discussions therein, if Utz retained any competitive advantage
6 in the sales process.

7 45. Moreover, the 14D-9 is not clear as to the nature of the standstill provisions
8 contained in the NDAs distributed to the contacted third parties as part of the sales
9 process, and under what conditions, if any, they would fall away.

10 46. It is also not clear, what, if any, power the so-called independent
11 “Transaction Committee” of the Board actually had to make determinations regarding the
12 sales process. The 14D-9 describes the Transaction Committee’s powers in ambiguous
13 terms that do not adequately define if it actual had any power to make decisions related to
14 the sales process, or if it was simply an advisory role with no real effect on the process.

15 47. Finally, it appears that the Board of Directors was in a state of flux
16 throughout the entire sales process, with two former Directors resigning during the
17 process, including the former Chairman of the Board David L. Meyers, who originally
18 chaired the Transaction Committee. Moreover, Defendant Stewart, who was appointed to
19 fill the vacancy left by Meyers, took the role at the behest of Luther King Capital
20 Management Corporation (“Luther King”) after it filed a Schedule 13D in January 2017
21 announcing it had acquired 11% of outstanding Company stock.

22
23 ***The Proposed Transaction***

24 48. On October 26, 2017, Inventure and Utz issued a joint press release
25 announcing the Proposed Transaction. The press release stated, in relevant part:

26 PHOENIX, AZ and HANOVER, PA, October 26, 2017
27 (GLOBE NEWSWIRE) — Inventure Foods, Inc. (NASDAQ:
28 SNAK) (“Inventure Foods” or the “Company”), a leading
specialty food marketer and manufacturer, and Utz Quality

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

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

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

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

“We are tremendously excited about the opportunity to
acquire Inventure Foods,” said Dylan Lissette, Chief
Executive Officer of Utz Quality Foods. “The Company’s
specialty snack food products and brands, as well as its
geographic footprint, customer relationships and distribution

1 strengths, are highly complementary to our business and we
2 look forward to continuing Inventure’s strong heritage of
3 innovation in both healthy and indulgent snacking. We have
4 also been extremely impressed with the team at Inventure,
and look forward to working together going forward.”

5 As previously announced, on September 29, 2017, the
6 Company entered into a Limited Waiver and Sixth
7 Amendment to Credit Agreement (the “Sixth Amendment”)
8 with BSP Agency, LLC, as agent (“BSP”), and the lenders
9 (the “Lenders”) from time to time a party to the Credit
10 Agreement (defined below), which further amended the
11 Credit Agreement, dated as of November 18, 2015, among
12 the Borrowers a party thereto, the Lenders, and BSP (as
13 amended from time to time, the “Credit Agreement”). Under
14 the terms of the Sixth Amendment, the Lenders agreed to,
15 among other things, (i) a further extension from September
16 30, 2017 to October 31, 2017 of the temporary waiver of the
17 requirement under the Credit Agreement to deliver audited
18 financial statements without a going concern opinion, and (ii)
19 a temporary waiver until October 31, 2017 of the financial
20 covenants with which the Company was required to comply
21 under the Credit Agreement.

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

The Company is represented in this transaction by its
financial advisor, Rothschild, and its legal counsel, DLA
Piper LLP (US). Inventure retained Rothschild as its
financial advisor in connection with a formal process to
conduct a “strategic and financial review” of the Company in

1 July 2016. Utz Quality Foods is represented in this
2 transaction by its financial advisor, Stephens Inc., and its
3 legal counsel, Cozen O'Connor”

4 ***The Inadequate Merger Consideration***

5 49. Significantly, analyst expectations, synergies with Utz, and the Company’s
6 financial prospects and opportunities for future growth establish the inadequacy of the
7 merger consideration.

8 50. First, the compensation afforded under the Proposed Acquisition to
9 Company stockholders significantly undervalues the Company. The proposed valuation
10 does not adequately reflect the intrinsic value of the Company. Moreover, the valuation
11 does not adequately take into consideration how the Company is performing, considering
12 key net profit increases in many of its divisions reported in the recent quarters.

13 51. Notably, evidence of the extremely low value of the merger consideration is
14 seen when it is compared with the value of Company stock less on October 12, 2017,
15 than two weeks ago, when it was valued as high as \$5.43 per share. This drop in less
16 than a fourteen day time frame represents a loss to Plaintiff and other Company
17 stockholders of ***more than 26.33%***. In addition, with Company stock valued as high as
18 \$10.15 per share within the past year, the consideration in the Proposed Acquisition
19 represents a loss to Company stockholders of ***more than 60.59%*** on their investments.

20 52. Next, analyst coverage indicates a high target above the deal price, with
21 analysts setting a consensus price target for Inventure at \$8.00 as recently as January
22 2017, ***or 100% the value being proffered in the Proposed Acquisition.***

23 53. Additionally, Inventure’s future success is extremely likely, given the
24 consistent increases in its net sales, and execution of its strategic plans as evidenced in its
25 last two quarters of financial reports. Obviously, the opportunity to invest in such a
26 company on the rise is a great coup for Utz, however it undercuts the foresight and
27 investment of Plaintiff and all other public stockholders who have done the same.

28

1 54. In addition, the synergistic benefits to Utz cannot be ignored, and will bring
2 a large windfall to Parent, as admitted by Utz CEO Dylan Lissette, Inventure’s “specialty
3 snack food products and brands, as well as its geographic footprint, customer
4 relationships and distribution strengths, are highly complementary to our business...”
5 One would expect that such immense synergistic benefits would command a higher price,
6 however the Company has clearly orchestrated the sales process to give Utz a bargain at
7 the expense of Plaintiff and other public stockholders.

8 55. Moreover, post-closure, Inventure stockholders will be completely cashed
9 out from any and all ownership interest in the Company, forever foreclosing them from
10 receiving any future benefit in their investment as Inventure continues on its upward
11 financial trajectory.

12 56. It is clear from these statements and the facts set forth herein that this deal
13 is designed to maximize benefits for Utz at the expense of Inventure and Inventure
14 stockholders, which clearly indicates that Inventure stockholders were not an overriding
15 concern in the formation of the Proposed Acquisition.

16 ***Preclusive Deal Mechanisms***

17 57. The Merger Agreement contains certain provisions that unduly benefit Utz
18 by making an alternative transaction either prohibitively expensive or otherwise
19 impossible. Significantly, the Merger Agreement contains a termination fee provision
20 that requires Inventure to pay up to \$5 million to Utz if the Merger Agreement is
21 terminated under certain circumstances. Moreover, under one circumstance, Inventure
22 must pay this termination fee even if it consummates any Company Takeover Proposal
23 (as defined in the Merger Agreement) *within 9 months following the termination* of the
24 Merger Agreement. The termination fee will make the Company that much more
25 expensive to acquire for potential purchasers. The termination fee in combination with
26 other preclusive deal protection devices will all but ensure that no competing offer will be
27 forthcoming.

28

1 58. The Merger Agreement also contains a “No Solicitation” provision that
2 restricts Inventure from considering alternative acquisition proposals by, *inter alia*,
3 constraining Inventure’s ability to solicit or communicate with potential acquirers or
4 consider their proposals. Specifically, the provision prohibits the Company from directly
5 or indirectly soliciting, initiating, proposing or inducing any alternative proposal, but
6 permits the Board to consider an unsolicited bona fide “*written Company Takeover*
7 *Proposal*” if it constitutes or is reasonably calculated to lead to a “*Company Superior*
8 *Proposal*” as defined in the Merger Agreement.

9 59. Moreover, the Agreement further reduces the possibility of a topping offer
10 from an unsolicited purchaser. Here, the Individual Defendants agreed to provide Utz
11 information in order to match any other offer, thus providing Utz access to the unsolicited
12 bidder’s financial information and giving Utz the ability to top the superior offer. Thus, a
13 rival bidder is not likely to emerge with the cards stacked so much in favor of Utz.

14 60. These provisions, individually and collectively, materially and improperly
15 impede the Board’s ability to fulfill its fiduciary duties with respect to fully and fairly
16 investigating and pursuing other reasonable and more valuable proposals and alternatives
17 in the best interests of the Company and its public stockholders.

18 61. Accordingly, the Company’s true value is compromised by the
19 consideration offered in the Proposed Acquisition.

20 ***Potential Conflicts of Interest***

21 62. Inventure insiders are the primary beneficiaries of the Proposed
22 Transaction, not the Company’s public stockholders. The Board and the Company’s
23 executive officers are conflicted because they will have secured unique benefits for
24 themselves from the Proposed Transaction not available to Plaintiff and the public
25 stockholders of Inventure.

26 63. Certain insiders stand to receive massive financial benefits as a result of the
27 Proposed Acquisition. Notably, Company insiders currently own large, illiquid portions
28

1 of Company stock that will be exchanged for cash upon the consummation of the
 2 Proposed Acquisition as follows:

Name	Number of Shares	Cash Consideration Payable in Respect of Shares (\$)
Executive Officers:		
Terry McDaniel	430,383	1,721,532
Steve Weinberger	165,022	660,088
E. Brian Foster	18,600	74,400
Steven Sklar	52,225	208,900
Non-Employee Directors:		
Ashton D. Asensio	33,602	134,408
Timothy A. Cole	10,619	42,476
Macon Bryce Edmonson	46,804	187,216
Paul J. Lapadat	20,119	80,476
Joel D. Stewart	4,000	16,000
All of our current directors and executive officers as a group	781,374	3,125,496

13 64. Furthermore, upon the consummation of the Proposed Acquisition, each
 14 outstanding Company option, will be canceled and converted into the right to receive
 15 from the surviving corporation as cash equal to the product of (i) the number of vested
 16 Shares subject to such Option immediately prior to the Effective Time (including those
 17 whose vesting accelerates as of the Effective Time), and (ii) the excess, if any, of the
 18 Offer Price over the exercise or base price per share of Shares subject to such Option
 19 immediately prior to the Effective Time.

20 65. In addition upon the consummation of the Proposed Acquisition each
 21 restricted stock unit (“RSU”) or performance share units (“PSU”) to purchase Company
 22 stock will vest and be cancelled in exchange for cash, without interest and less any
 23 applicable withholding taxes, equal to the product of (i) the number of vested Shares
 24 subject to such PSU or RSU immediately prior to the Effective Time (including those
 25 whose vesting accelerates as of the Effective Time), and (ii) the Offer Price.

26 66. The below table outlines the large cash payouts to Company insiders in
 27 exchange for Company equity awards that will result from the consummation of the
 28 Proposed Acquisition:

Name	Shares subject to Options to be Cashed Out⁽¹⁾ (#)	Value of Cashed-Out Options⁽²⁾ (\$)	Shares subject to RSUs to be Cashed Out⁽³⁾ (#)	Value of Cashed-Out RSUs⁽⁴⁾ (\$)	Shares subject to PSUs to be Cashed-Out⁽⁵⁾ (#)	Value of Cashed-Out PSUs⁽⁶⁾ (\$)	Total Value (\$)
<i>Executive Officers:</i>							
Terry McDaniel	22,540	90,160	126,268	505,702	85,671	342,686	938,548
Steve Weinberger	11,730	46,920	45,453	181,812	30,840	123,358	352,090
E. Brian Foster	550	2,200	29,748	118,992	20,184	80,736	201,928
Steven Sklar	62,025	248,100	33,102	132,408	23,163	92,650	473,158
<i>Non-Employee Directors:</i>							
Ashton D. Asensio	700	2,800	9,435	37,740	—	—	40,540
Timothy A. Cole	—	—	9,435	37,740	—	—	37,740
Macon Bryce Edmonson	—	—	9,435	37,740	—	—	37,740
Paul J. Lapadat	—	—	9,435	37,740	—	—	37,740
Joel D. Stewart	—	—	—	—	—	—	—

67. Moreover, certain employment agreements with several Inventure officers or directors are entitled to severance packages should their employment be terminated under certain circumstances. These ‘golden parachute’ packages are significant, and will grant each director or officer entitled to them at the very least, hundreds of thousands of dollars, compensation not shared by Inventure’s common stockholders.

68. The following table sets forth the Golden Parachute compensation for certain Inventure directors and officers, as well as their estimated value payable:

Name	Cash (\$)⁽¹⁾	Equity (\$)⁽²⁾	Pension/NQDC⁽³⁾	Perquisites/Benefits⁽⁴⁾	Tax Reimbursement⁽⁵⁾	Total (\$)
Terry McDaniel	643,377	938,548	—	—	—	1,581,925
Steve Weinberger	381,816	352,090	—	—	—	733,906
E. Brian Foster	33,283	201,928	—	—	—	235,211
Steven Sklar	33,280	473,158	—	—	—	506,438

69. Finally, at least one Company insider, Chief Financial Officer Steve Weinberger, will be retained by the surviving corporation post-close of the Proposed Acquisition in a consulting role, with a monthly consulting fee equal to nearly thirty thousand dollars. This tremendous payday for the Company CFO is not shared amongst Plaintiff and other public stockholders of the Company.

1 70. It is no wonder that, in light of the extremely lucrative profits for
2 themselves, the Board allowed the Company to be sold far under its proper value in order
3 to secure a quick sale.

4 71. Thus, while the Proposed Acquisition is not in the best interests of
5 Inventure's stockholders, it will produce lucrative benefits for the Company's officers
6 and directors.

7 ***The Materially Misleading and/or Incomplete 14D-9***

8 72. On November 15, 2017, Inventure filed with the SEC a materially
9 misleading and incomplete 14D-9 that failed to provide the Company's stockholders with
10 material information and/or provides them with materially misleading information critical
11 to the total mix of information available to the Company's stockholders concerning the
12 financial and procedural fairness of the Proposed Acquisition.

13 *Omissions and/or Material Misrepresentations Concerning the Sales Process*
14 *leading up to the Proposed Acquisition*

15 73. Specifically, the 14D-9 fails to provide material information concerning the
16 process conducted by the Company and the events leading up to the Proposed
17 Acquisition. In particular, the Proxy fails to disclose:

- 18 a. The 14D-9 fails to disclose whether the July 2015 NDA entered into by
19 the Company and Utz contained a standstill and/or "don't ask, don't
20 waive" provision, and if so, the specific nature of that provision
21 including under what circumstances that provision would fall away.
22 The 14D-9 also fails to disclose if this NDA continued to have effect
23 after the entry of Utz and the Company into another NDA in August of
24 2016, and what differences, if any, existed between the two NDAs;
- 25 b. The 14D-9 fails to disclose what information was provided by the
26 Company to Utz during the July 2015 discussions regarding a potential
27 strategic transaction, and if that information allowed Utz to have an
28 unfair advantage over other third-party bidders during the sales process;

1 c. The 14D-9 fails to disclose the specific nature of the standstill
2 provisions included in the NDAs sent to the potentially interested third
3 parties in August 2016, including whether they contained “don’t ask,
4 don’t waive” provisions that are or were preventing those counterparties
5 from submitting superior offers to acquire the Company. Without this
6 information, stockholders may have the mistaken belief that, if these
7 potentially interested parties wished to come forward with a superior
8 offer, they are or were permitted to do so, when in fact they are or were
9 contractually prohibited from doing so;

10 d. The 14D-9 fails to disclose if Luther King, or Defendant Stewart on its
11 behalf, made any demands or had input regarding the conduct of the
12 sales process, either before or after the filing of the Schedule 13D on
13 January 23, 2017; and

14 e. The specific nature of any employment contracts for current
15 members of Company Management or the Board of Directors to retain
16 their employment after the consummation of the Proposed Acquisition.

17 Omissions and/or Material Misrepresentations Concerning Inventure’s Financial
18 Projections

19 74. The 14D-9 fails to provide material information concerning financial
20 projections provided by Inventure’s management and relied upon by Rothschild in its
21 analyses. Courts have uniformly stated that “projections ... are probably among the most
22 highly-prized disclosures by investors. Investors can come up with their own estimates
23 of discount rates or [] market multiples. What they cannot hope to do is replicate
24 management’s inside view of the company’s prospects.” *In re Netsmart Techs., Inc.*
25 *S’holders Litig.*, 924 A.2d 171, 201-203 (Del. Ch. 2007).

26 75. The 14D-9 provides projections for only three line items, Projected Net
27 Sales, Projected Gross Profit and Projected Adjusted EBITDA. It fails to include any
28

1 free cash flow projections, which the 14D-9 explicitly states were used by Rothschild in
2 its DCF Analysis. It also fails to include at least the following line items:

- 3 a. Taxes (or tax rate);
- 4 b. Capital expenditures;
- 5 c. Changes in net working capital;
- 6 d. Stock-based compensation expense;
- 7 e. EBITDA;
- 8 f. Interest Expense;
- 9 g. Non-recurring items;
- 10 h. Depreciation and amortization;
- 11 i. Earnings;
- 12 j. Net operating profit; and
- 13 k. Free cash flows

14
15 76. Significantly, the 14D-9 fails to provide a reconciliation of all non-GAAP
16 to GAAP financial metrics. When a company discloses information in a proxy that
17 includes non-GAAP financial metrics, such as Adjusted EBITDA, the company must also
18 disclose comparable GAAP metrics and a quantitative reconciliation of the non-GAAP
19 metrics to GAAP metrics. See 17 C.F.R. § 244.100 (requiring that the disclosure of
20 material non-GAAP financial measures be accompanied by an identification and
21 presentation of the most directly comparable GAAP measure, and a reconciliation of the
22 non-GAAP measure to the comparable GAAP measure by a clearly understandable
23 method). Indeed, the SEC has repeatedly emphasized that disclosure of unreconciled
24 non-GAAP projections is inherently misleading, and has heightened its scrutiny of the
25 use of such projections.

26 77. Without accurate projection data presented in the 14D-9, Plaintiff and other
27 stockholders of Inventure are unable to properly evaluate the Company's true worth, the
28

1 accuracy of Rothschild's financial analyses, or make an informed decision whether to
2 tender their Company stock in the Proposed Acquisition.

3 Omissions and/or Material Misrepresentations Concerning the Financial Analyses
4 by Rothschild

5 78. In the 14D-9, Rothschild describes its respective fairness opinion and the
6 various valuation analyses performed to render such opinion. However, the descriptions
7 fail to include necessary underlying data, support for conclusions, or the existence of, or
8 basis for, underlying assumptions. Without this information, one cannot replicate the
9 analyses, confirm the valuations or evaluate the fairness opinions.

10 79. For example, the 14D-9 does not disclose material details concerning the
11 analyses performed by Rothschild in connection with the Proposed Acquisition, including
12 (among other things):

13 a. Selected Public Company Analysis

14 The Proxy fails to disclose the following: (i) whether Rothschild
15 performed any benchmarking analysis for the selected companies;
16 and (ii) the individual multiples for each of the selected companies
17 utilized in the analysis

18 b. Selected Precedent Transactions Analysis

19 The Proxy fails to disclose the following: (i) whether Rothschild
20 performed any benchmarking analysis for the selected transactions;
21 (ii) the individual multiples for each of the selected transactions
22 utilized in the analysis; and (iii) the transaction values for the
23 transactions utilized in the analysis.

24 c. Illustrative Discounted Cash Flow Analysis

25 The Proxy fails to disclose the following: (i) the individual inputs
26 and assumptions utilized by Rothschild to derive the discount rate
27 range of 13.5%-15.5%; (ii) the WACC derived by Rothschild; (iii)
28 the net debt of the Company as of December 29, 2017; (iv) the

1 definition of the cash flows used for Inventure in this analysis; and
2 (v) did Rothschild incorporate Inventure's NOLs into this analysis.

3 d. NOL Tax Savings Analysis

4 The Proxy fails to disclose the following: (i) the WACC derived by
5 Rothschild as of October 25, 2017; (ii) the basis for the assumption
6 of 3% taxable income growth from the fiscal year of 2023 forward
7 until the net operating loss balance is fully utilized; (iii) did
8 Rothschild incorporate Inventure's NOLs into the DCF analysis and,
9 if so, why.

10 80. Without the omitted information identified above, Inventure's public
11 stockholders are missing critical information necessary to evaluate whether the proposed
12 consideration truly maximizes stockholder value and serves their interests. Moreover,
13 without the key financial information and related disclosures, Inventure's public
14 stockholders cannot gauge the reliability of the fairness opinion and the Board's
15 determination that the Proposed Acquisition is in their best interests.

16 **FIRST COUNT**

17 **Claim for Breach of Fiduciary Duties**

18 **(Against the Individual Defendants)**

19 81. Plaintiff repeats all previous allegations as if set forth in full herein.

20 82. The Individual Defendants have violated their fiduciary duties of care,
21 loyalty and good faith owed to Plaintiff and the Company's public stockholders.
22

23 83. By the acts, transactions and courses of conduct alleged herein, Defendants,
24 individually and acting as a part of a common plan, are attempting to unfairly deprive
25 Plaintiff and other members of the Class of the true value of their investment in
26 Inventure.

27 84. As demonstrated by the allegations above, the Individual Defendants failed
28 to exercise the care required, and breached their duties of loyalty and good faith owed to

1 the stockholders of Inventure by entering into the Proposed Transaction through a flawed
2 and unfair process and failing to take steps to maximize the value of Inventure to its
3 public stockholders.

4 85. Indeed, Defendants have accepted an offer to sell Inventure at a price that
5 fails to reflect the true value of the Company, thus depriving stockholders of the
6 reasonable, fair and adequate value of their shares.

7 86. Moreover, the Individual Defendants breached their duty of due care and
8 candor by failing to disclose to Plaintiff and the Class all material information necessary
9 for them to make an informed vote on whether to approve the Merger.

10 87. The Individual Defendants dominate and control the business and corporate
11 affairs of Inventure, and are in possession of private corporate information concerning
12 Inventure's assets, business and future prospects. Thus, there exists an imbalance and
13 disparity of knowledge and economic power between them and the public stockholders of
14 Inventure which makes it inherently unfair for them to benefit their own interests to the
15 exclusion of maximizing stockholder value.

16 88. By reason of the foregoing acts, practices and course of conduct, the
17 Individual Defendants have failed to exercise due care and diligence in the exercise of
18 their fiduciary obligations toward Plaintiff and the other members of the Class.

19 89. As a result of the actions of the Individual Defendants, Plaintiff and the
20 Class will suffer irreparable injury in that they have not and will not receive their fair
21 portion of the value of Inventure's assets and have been and will be prevented from
22 obtaining a fair price for their common stock.

23 90. Unless the Individual Defendants are enjoined by the Court, they will
24 continue to breach their fiduciary duties owed to Plaintiff and the members of the Class,
25 all to the irreparable harm of the Class.

26 91. Plaintiff and the members of the Class have no adequate remedy at law.
27 Only through the exercise of this Court's equitable powers can Plaintiff and the Class be
28

1 fully protected from the immediate and irreparable injury which Defendants' actions
2 threaten to inflict.

3 **SECOND COUNT**

4 **Violations of Section 14(e) of the Exchange Act**

5 **(Against All Defendants)**

6 92. Plaintiff repeats all previous allegations as if set forth in full herein.

7 93. Defendants have disseminated the 14D-9 with the intention of soliciting
8 stockholders to tender their shares in favor of the Proposed Acquisition.

9 94. Section 14(e) of the Exchange Act provides that in the solicitation of shares
10 in a tender offer, “[i]t shall be unlawful for any person to make any untrue statement of a
11 material fact or omit to state any material fact necessary in order to make the statements
12 made, in the light of the circumstances under which they are made, not misleading[.]”

13 95. The 14D-9 was prepared in violation of Section 14(e) because it is
14 materially misleading in numerous respects and omits material facts, including those set
15 forth above. Moreover, in the exercise of reasonable care, Defendants knew or should
16 have known that the 14D-9 is materially misleading and omits material facts that are
17 necessary to render them non-misleading.

18 96. The Individual Defendants had actual knowledge or should have known of
19 the misrepresentations and omissions of material facts set forth herein.

20 97. The Individual Defendants were at least negligent in filing a 14D-9 that was
21 materially misleading and/or omitted material facts necessary to make the 14D-9 not
22 misleading.

23 98. The misrepresentations and omissions in the 14D-9 are material to Plaintiff
24 and the Class, and Plaintiff and the Class will be deprived of its entitlement to decide
25 whether to tender its shares on the basis of complete information if such
26 misrepresentations and omissions are not corrected prior to the expiration of the tender
27 offer period regarding the Proposed Acquisition.
28

THIRD COUNT

Violations of Section 20(a) of the Exchange Act

(Against all Individual Defendants)

99. Plaintiff repeats all previous allegations as if set forth in full herein.

100. The Individual Defendants were privy to non-public information concerning the Company and its business and operations via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board meetings and committees thereof and via reports and other information provided to them in connection therewith. Because of their possession of such information, the Individual Defendants knew or should have known that the 14D-9 was materially misleading to Company stockholders.

101. The Individual Defendants were involved in drafting, producing, reviewing and/or disseminating the materially false and misleading statements complained of herein. The Individual Defendants were aware or should have been aware that materially false and misleading statements were being issued by the Company in the 14D-9 and nevertheless approved, ratified and/or failed to correct those statements, in violation of federal securities laws. The Individual Defendants were able to, and did, control the contents of the 14D-9. The Individual Defendants were provided with copies of, reviewed and approved, and/or signed the 14D-9 before its issuance and had the ability or opportunity to prevent its issuance or to cause it to be corrected.

102. The Individual Defendants also were able to, and did, directly or indirectly, control the conduct of Inventure's business, the information contained in its filings with the SEC, and its public statements. Because of their positions and access to material non-public information available to them but not the public, the Individual Defendants knew or should have known that the misrepresentations specified herein had not been properly disclosed to and were being concealed from the Company's stockholders and that the 14D-9 was misleading. As a result, the Individual Defendants are responsible for the

1 accuracy of the 14D-9 and are therefore responsible and liable for the misrepresentations
2 contained herein.

3 103. The Individual Defendants acted as controlling persons of Inventure within
4 the meaning of Section 20(a) of the Exchange Act. By reason of their position with the
5 Company, the Individual Defendants had the power and authority to cause Inventure to
6 engage in the wrongful conduct complained of herein. The Individual Defendants
7 controlled Inventure and all of its employees. As alleged above, Inventure is a primary
8 violator of Section 14 of the Exchange Act and SEC Rule 14d-9. By reason of their
9 conduct, the Individual Defendants are liable pursuant to section 20(a) of the Exchange
10 Act.

11 WHEREFORE, Plaintiff demands injunctive relief, in its favor and in favor of the
12 Class, and against the Defendants, as follows:

13 A. Ordering that this action may be maintained as a class action and certifying
14 Plaintiff as the Class representatives and Plaintiff's counsel as Class counsel;

15 B. Enjoining the Proposed Acquisition;

16 C. In the event Defendants consummate the Proposed Acquisition, rescinding
17 it and setting it aside or awarding rescissory damages to Plaintiff and the Class;

18 D. Declaring and decreeing that the Merger Agreement was agreed to in
19 breach of the fiduciary duties of the Individual Defendants and is therefore unlawful and
20 unenforceable;

21 E. Directing the Individual Defendants to exercise their fiduciary duties to
22 commence a sale process that is reasonably designed to secure the best possible
23 consideration for Inventure and obtain a transaction which is in the best interests of
24 Inventure and its stockholders;

25 F. Directing defendants to account to Plaintiff and the Class for damages
26 sustained because of the wrongs complained of herein;
27
28

1 G. Awarding Plaintiff the costs of this action, including reasonable allowance
2 for Plaintiff's attorneys' and experts' fees; and

3 H. Granting such other and further relief as this Court may deem just and
4 proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands a jury on all issues which can be heard by a jury.

7 DATED this 21st day of November, 2017

8
9 **DECONCINI McDONALD YETWIN & LACY,**
10 **P.C.**

11 By: /s/ Gary F. Urman

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28

PLAINTIFF'S CERTIFICATION

I, Donald L. Fraley, Trustee for the D&S Fraley RLT, ("Plaintiff") declare under penalty of perjury, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed the complaint and authorized the commencement of an action on Plaintiff's behalf.

2. Plaintiff did not purchase the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this private action.

3. Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.

4. Plaintiff's transactions in Inventure Foods, Inc. (Nasdaq: SNAK) of securities during the Class Period specified in the Complaint are as follows (use additional sheet if necessary):

<u>Date</u>	<u># of Shares Purchased</u>	<u># of Shares Sold</u>	<u>Price</u>
12/20/2005	1000	-0-	\$2.70

5. During the three years prior to the date of this Certificate, Plaintiff has not sought to serve or served as a representative party for a class in an action filed under the federal securities laws. [Or, Plaintiff has served as a class representative in the action(s) listed as follows:]

6. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th day of November __, 2017.

Sign Name: *Donald L. Fraley* TTE
 Print Name: Donald L. Fraley
 Address: 2920 NE Connors Ave. #223
 State, Zip Code: Bend, OR 97701
 County: Deschutes

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): D&S Fraley Revocable
Living Trust

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

County of Residence: Outside the State of Arizona

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Gary F. Urman (Ian Smith)
DeConcini McDonald Yetwin & Lacy, P.C.
2525 E. Broadway, Suite 200
Tucson, Arizona 85716
(520) 322-5000**

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: Sections 14(a) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78n(d)(4), 78n(e), 78t(a)

VII. Requested in Complaint

Class Action: **Yes**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: /s/ Gary F. Urman

Date: 11/20/2017

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.

Revised: 01/2014