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6 **IN THE UNITED STATES DISTRICT COURT**

7 **IN AND FOR THE STATE OF ARIZONA**

8 Glenn Schoenfeld, Individually and on
Behalf of All Others Similarly Situated,

9 Plaintiff,

10 vs.

11 Inventure Foods, Inc., Terry McDaniel,
12 Timothy Cole, Ashton Asensio, Paul
13 Lapadat, Macon Edmonson, and Joel
Stewart,

14 Defendants.

NO.

CLASS ACTION

**COMPLAINT FOR VIOLATION OF
THE SECURITIES EXCHANGE ACT
OF 1934**

DEMAND FOR JURY TRIAL

15
16 Plaintiff Glenn Schoenfeld (“Plaintiff”), on behalf of himself and all others similarly
17 situated, by and through his attorneys, alleges the following upon information and belief,
18 including investigation of counsel and review of publicly-available information, except as
19 to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge:

20 **NATURE OF THE ACTION**

21 1. This is a class action brought by Plaintiff on behalf of himself and all other
22 similarly situated public stockholders of Inventure Foods, Inc. (“Inventure” or the
23 “Company”) against Inventure, Terry McDaniel, Timothy Cole, Ashton Asensio, Paul
24 Lapadat, Macon Edmonson, and Joel Stewart, the members of the Inventure’s board of
25 directors (collectively referred to as the “Board” or the “Individual Defendants,” and,
26

1 together with Inventure, the “Defendants”) for their violations of Sections 14(d)(4), 14(e),
2 and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§
3 78n(d)(4), 78n(e), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule
4 14d-9, 17 C.F.R. §240.14d-9(d) (“Rule 14d-9”) and to enjoin the expiration of a tender
5 offer (the “Tender Offer”) on a proposed transaction, pursuant to which Inventure will
6 be acquired by Utz Quality Foods, LLC (“Utz”), through Heron Sub, Inc. (“Acquisition
7 Sub”), a wholly-owned subsidiary of Utz (the “Proposed Transaction”).

8 2. On October 26, 2017, Inventure and Utz issued a joint press release
9 announcing that they had entered into a definitive agreement (the “Merger Agreement”).
10 Pursuant to the terms of the Merger Agreement, Acquisition Sub will commence a cash
11 tender offer to acquire all of the issued outstanding shares of Inventure common stock for
12 \$4.00 per share (the “Offer Price”). The Proposed Transaction is valued at approximately
13 \$165 million.

14 3. On November 15, 2017, in order to convince Inventure stockholders to tender
15 their shares, the Board authorized the filing of a materially incomplete and misleading
16 Schedule 14D-9 Solicitation/Recommendation Statement (the “Recommendation
17 Statement”) with the Securities and Exchange Commission (“SEC”). In particular, the
18 Recommendation Statement contains materially incomplete and misleading information
19 concerning: (i) financial projections for the Company; (ii) the valuation analyses performed
20 by the Company’s financial advisor, Rothschild Inc. (“Rothschild”), in support of their
21 fairness opinions; and (iii) the background process leading to the Proposed Transaction.

22 4. As discussed below, the Offer Price appears inadequate, and the process by
23 which Defendants consummated the Proposed Transaction is fundamentally unfair to
24 Plaintiff and the other common shareholders of Inventure. Indeed, Inventure’s closing price
25
26

1 on the day the Merger Agreement was executed amounts to a *10% premium* over the Offer
2 Price.

3 5. The Tender Offer is set to expire on December 13, 2017 at 11:59 PM, New
4 York City time (the “Expiration Date”). It is imperative that the material information that
5 has been omitted from the Recommendation Statement is disclosed to the Company’s
6 stockholders prior to the forthcoming Expiration Date so they can properly determine
7 whether to tender their shares.

8 6. For the reasons, and as set forth in detail herein, Plaintiff seeks to enjoy the
9 Defendants from closing the Tender Offer or taking any steps to consummate the Proposed
10 Transaction, unless and until the material information discussed below is disclosed to
11 Inventure stockholders, or in the event the Proposed Transaction is consummated, to
12 recover damages resulting from Defendants’ violations of the Exchange Act.

13 **JURISDICTION AND VENUE**

14 7. This Court has subject matter jurisdiction pursuant to Section 27 of the
15 Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as
16 Plaintiff alleges violations of 14(d)(4), 14(e) and 20(a) of the Exchange Act and SEC Rule
17 14d-9 promulgated thereunder pursuant to Section 27 of the Exchange Act, 15 U.S.C. §
18 78aa.

19 8. This Court has jurisdiction over the Defendants because each Defendant is
20 either a corporation that conducts business in and maintains operations within this District,
21 or is an individual with sufficient minimum contacts with this District so as to make the
22 exercise of jurisdiction by this Court permissible under traditional notions of fair play and
23 substantial justice.

24 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
25 Plaintiff’s claims arose in this District, where a substantial portion of the actionable conduct
26

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1 took place, where most of the documents are electronically stored, and where the evidence
2 exists. Inventure is incorporated in Delaware and is headquartered in this District.
3 Moreover, each of the Individual Defendants, as Company officers or directors, either
4 resides in this District or has extensive contacts within this District.

5 **PARTIES**

6 10. Plaintiff is, and has been at all times relevant hereto, a common stockholder
7 of Inventure.

8 11. Defendant Inventure is a Delaware corporation with its principal executive
9 offices located at 5415 East High Street, Suite 350, Phoenix, Arizona 85054. The Company
10 is a marketer and manufacturer of specialty food brands in better-for-you and indulgent
11 categories under a variety of Company owned and licensed brand names, including Boulder
12 Canyon Foods™, TGI Fridays™, Nathan’s Famous®, Vidalia Brands®, Poore Brothers®,
13 and Tato Skins®, Bob’s Texas Style®. Inventure common stock is traded on the NASDAQ
14 under the ticker symbol “SNAK.”

15 12. Defendant Terry McDaniel (“McDaniel”) has served as a director, the
16 President, and the Chief Executive Officer of the Company since 2008.

17 13. Defendant Timothy Cole (“Cole”) has served as a director of the Company
18 and the Interim Chairman of the Board since 2017.

19 14. Defendant Ashton Asensio (“Asensio”) has served as a director of the
20 Company since 2006.

21 15. Defendant Paul Lapadat (“Lapadat”) has served as a director of the Company
22 since 2013.

23 16. Defendant Macon Edmonson (“Edmonson”) has served as a director of the
24 Company since 2006.

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1 17. Defendant Joel Stewart (“Stewart”) has served as a director of the Company
2 since 2017.

3 18. The defendants identified in paragraphs 11 through 16 are collectively
4 referred to herein as the “Individual Defendants” and/or the “Board,” collectively with
5 Inventure the “Defendants.”

6 **OTHER RELEVANT ENTITIES**

7 19. Utz is the largest privately-held and family-managed branded salty snack
8 company in the United States, producing a full line of products including potato chips,
9 pretzels, cheese snacks, corn chips, tortillas, veggie stix/straws, popcorn, onion rings, pork
10 skins, and more.

11 20. Acquisition Sub is an indirect wholly-owned subsidiary of Utz.

12 **CLASS ACTION ALLEGATIONS**

13 21. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of
14 himself and the other public stockholders of Inventure (the “Class”). Excluded from the
15 Class are Defendants herein and any person, firm, trust, corporation, or other entity related
16 to or affiliated with any Defendant.

17 22. This action is properly maintainable as a class action because:

- 18 (a) the Class is so numerous that joinder of all members is impracticable.
19 As of November 6, 2017, there were 19.83 million shares of Inventure
20 common stock outstanding, held by hundreds to thousands of
21 individuals and entities scattered throughout the country. The actual
22 number of public stockholders of Inventure will be ascertained through
23 discovery;

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- (b) There are questions of law and fact that are common to the Class that predominate over any questions affecting only individual members, including the following:
 - i. whether Defendants have misrepresented or omitted material information concerning the Proposed Transaction in the Recommendation Statement, in violation of Sections 14(d)(4) and 14(e) of the Exchange Act;
 - ii. whether the Individual Defendants have violated Section 20(a) of the Exchange Act; and
 - iii. whether Plaintiff and other members of the Class will suffer irreparable harm if compelled to tender their shares based on the materially incomplete and misleading Recommendation Statement.
- (c) Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class;
- (d) Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class;
- (e) the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class;
- (f) Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making

1 appropriate the relief sought herein with respect to the Class as a
2 whole; and

3 (g) a class action is superior to other available methods for fairly and
4 efficiently adjudicating the controversy.

5 **SUBSTANTIVE ALLEGATIONS**

6 **I. Company Background and Financial Outlook**

7 23. Inventure is a marketer and manufacturer of specialty food brands in better-
8 for-you and indulgent categories under a variety of Company owned and licensed brand
9 names, including Boulder Canyon Foods™, TGI Fridays™, Nathan's Famous®, Vidalia
10 Brands®, Poore Brothers®, and Tato Skins®, Bob's Texas Style®.

11 24. The Company operate in two segments: frozen products and snack products.
12 The frozen products segment includes frozen fruits, fruit and vegetable blends, beverages,
13 side dishes, and desserts for sale primarily to grocery stores, club stores, and mass
14 merchandisers. All products sold under the frozen products segment are considered part of
15 the healthy/natural food category. The snack products segment includes potato chips, kettle
16 chips, potato crisps, potato skins, pellet snacks, sheeted dough products, popcorn, and
17 extruded products for sale primarily to snack food distributors and retailers. The products
18 sold under the Company's snack products segment include products considered part of the
19 indulgent specialty snack food category, as well as products considered part of the
20 healthy/natural food category.

21 25. The Offer Price offered to Inventure's shareholders in the Proposed
22 Transaction is unfair and inadequate because, among other things, the intrinsic value of the
23 Company's common stock is materially in excess of the amount offered for those securities
24 in the proposed acquisition given the Company's prospects for future growth and earnings.

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1 The Proposed Transaction will deny Class Members their right to fully share equitably in
2 the true value of the Company.

3 26. For example, on May 8, 2017, Inventure announced its first quarter 2017
4 financial results. For the quarter, the Company reported net revenue of approximately \$50
5 million for the first quarter. The Company's snack segment net sales were up 5.1% to
6 \$26.2 million, which was an increase of \$1.3 million as compared to the prior year period.¹
7 Defendant McDaniel commented on the favorable results from the Company's snack
8 segment, stating:

9 We believe the snack segment is well positioned for incremental
10 increase to net revenue and gross margin improvement during
11 2017.

12 [***]

13 We are beginning to generate improved results across our
14 business by evidence of the key areas of progress in the first
15 quarter. The first quarter's EBITDA shows significant
16 improvement as compared to the last two quarters of 2017. Our
17 management team and board of directors remain committed to
18 increasing value for our shareholders as we move forward with
19 our ongoing strategic and financial review.

20 27. The Company's snack segment success continued into the second quarter of
21 2017. On August 5, 2017, the Company announced its second quarter 2017 financial
22 results and reported that the snacks segment net revenue increased 11.6% year-over-year to
23 \$30.7 million for the second quarter.

24 28. Steve Weinberger, the Company's Chief Financial Officer ("CFO"),
25 commented on the favorable results:

26 ¹ *Inventure Foods' (SNAK) CEO Terry McDaniel on Q1 2017 Results – Earnings Call Transcript*, SeekingAlpha (May 11, 2017), available at: <https://seekingalpha.com/article/4072482-inventure-foods-snak-ceo-terry-mcdaniel-q1-2017-results-earnings-call-transcript?part=single>.

1 As Terry mentioned consolidated gross profit increased 290
2 basis 19.7% compared to 16.8% for the same period last year.
3 Again sequentially second quarter gross profit improved 250
4 basis points from 17.2% for the first quarter of this year. We
5 saw gross profit improvement from both of our businesses
6 versus last year 150 basis point improvements in snack and a
7 330 basis point improvement in frozen.

8 We're finally back to where we need to be on the snack
9 business. Our capacity issues are all result and we're back at
10 normal promotional levels. Adjusted net income from
11 continuing operations was a positive \$37,000 or \$0.00 per
12 diluted share which represents the sequential quarterly
13 improvement from Q1 of this year where we reported a net loss
14 of \$2.6 million or an adjusted loss of \$0.13 per diluted share.

15 Adjusted EBITDA was \$4 million for the quarter compared to
16 \$3.7 million for the second quarter last year and sequentially
17 it was an increase of \$2.4 million versus the adjusted EBITDA in
18 Q1 of this year. Adjusted SG&A expenses were flat to prior
19 year but as a percentage of net revenues increased about 170
20 basis points attributable primarily to an increase in professional
21 fees due to other legal expenses.

22 We continue to take steps to improve our balance sheet. During
23 2017 we reduced our debt by about \$25 million primarily
24 associated with the sale of our fresh frozen business. We
25 continue to work closely with our lenders as we continue our
26 strategic review and are very pleased with their level of support
which resulted in a new bank amendment under our term loan
that extends all financial governance and waivers in addition to
providing additional liquidity. In summary we continue to make
progress with business performance and our strategic review.²

29. Furthermore, the valuation analyses conducted by Rothschild in its fairness
opinion, indicate that the value of Inventure's stock has substantially greater potential than
as represented by the Offer Price. For example, Rothschild's *Selected Precedent*

² *Inventure Foods' (SNAK) CEO Terry McDaniel on Q2 2017 Results – Earnings Call Transcript*, SeekingAlpha (August 5, 2017), available at:
<https://seekingalpha.com/article/4096962-inventure-foods-snak-ceo-terry-mcdaniel-q2-2017-results-earnings-call-transcript?part=single>.

1 *Transactions Analysis* indicates a per share value range of \$5.75 for the Company, under
2 the LTM sales analysis, which illustrates that each share of Inventure stock has an inherent
3 premium of ***approximately 143%*** over the \$4.00 Offer Price, and a per share value range of
4 \$5.25 for the Company, under the FY2017E sales analysis, which illustrates that each share
5 of Inventure stock has an inherent premium of ***approximately 132%*** over the Offer Price.

6 30. As seen, Rothschild's financial analyses highlight just how grossly inadequate
7 the Offer Price is because, among other things, the intrinsic value of the Company's
8 common stock is materially in excess of the amount offered for those securities in the
9 proposed acquisition given the Company's prospects for future growth and earnings. The
10 Proposed Transaction will deny Class Members their right to fully share equitably in the
11 true value of the Company.

12 **II. The Proposed Transaction**

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

15 **Inventure Foods, Inc. to be Acquired by Utz Quality Foods, 16 LLC**

17 PHOENIX, AZ and HANOVER, PA, October 26, 2017
(GLOBE NEWSWIRE) — Inventure Foods, Inc. (NASDAQ:
18 SNAK) ("Inventure Foods" or the "Company"), a leading
specialty food marketer and manufacturer, and Utz Quality
19 Foods, LLC ("Utz"), the largest privately-held and family-
managed branded salty snack manufacturer and marketer in the
20 United States, today announced they entered into a merger
agreement pursuant to which Utz has agreed to acquire all of the
21 Company's outstanding shares of common stock in an all-cash
22 transaction.

23 Under the terms of the merger agreement, an indirect
24 subsidiary of Utz will commence a tender offer to acquire all of
the outstanding shares of the Company's common stock at a
25 price of \$4.00 per share in cash, for a total purchase price of
approximately \$165 million, including the assumption of
26

1 approximately \$75 million of debt and debt-like items, net of
2 cash, approximately \$8 million of the Company's estimated
3 closing costs and approximately \$3 million due to equity award
4 holders. The acquisition is structured as an all-cash tender offer
5 for all of the outstanding shares of Inventure Foods common
6 stock, to be followed by a merger in which each remaining
7 untendered share of Inventure Foods will be converted into the
8 right to receive the same \$4.00 per share cash price paid in the
9 tender offer.

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

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

26 "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 strengths, are highly
complementary to our business and we look forward to
continuing 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."

As previously announced, on September 29, 2017, the
Company entered into a Limited Waiver and Sixth Amendment
to Credit Agreement (the "Sixth Amendment") with BSP
Agency, LLC, as agent ("BSP"), and the lenders (the

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

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

18 The Company is represented in this transaction by its financial
19 advisor, Rothschild, and its legal counsel, DLA Piper LLP (US).
20 Inventure retained Rothschild as its financial advisor in
21 connection with a formal process to conduct a “strategic and
22 financial review” of the Company in July 2016. Utz Quality
23 Foods is represented in this transaction by its financial advisor,
24 Stephens Inc., and its legal counsel, Cozen O’Connor.

23 **About Inventure Foods, Inc.**

24 With manufacturing facilities in Arizona and Indiana, Inventure
25 Foods, Inc. (Nasdaq:SNAK) is a marketer and manufacturer of
26 specialty food brands in better-for-you and indulgent categories
under a variety of Company owned and licensed brand names,

1 including Boulder Canyon Foods™, TGI Fridays™, Nathan’s
 2 Famous®, Vidalia Brands®, Poore Brothers®, and Tato
 3 Skins®, Bob’s Texas Style®. For further information about
 Inventure Foods, please visit www.inventurefoods.com.

4 **About Utz Quality Foods, LLC**

5 Founded in 1921, Utz® Quality Foods, LLC is the largest
 6 privately-held and family-managed branded salty snack
 7 company in the United States, producing a full line of products
 8 including potato chips, pretzels, cheese snacks, corn chips,
 9 tortillas, veggie stix/straws, popcorn, onion rings, pork skins
 10 and more. Its brands, which include Utz®, Golden Flake®,
 11 Zapp’s®, “Dirty”® Potato Chips, Good Health®, Bachman®,
 12 Bachman Jax®, Wachusett® and Snikiddy® among others, are
 distributed nationally and internationally through grocery, mass-
 merchant, club stores, convenience stores, drug stores and other
 channels. Based in Hanover, PA, Utz operates 10 facilities
 located in Pennsylvania, Colorado, Louisiana, Massachusetts
 and Alabama.³

13 **III. The Merger Agreement’s Deal Protection Provisions Deter Superior Offers**

14 32. To ensure that the Proposed Transaction is consummated, the Individual
 15 Defendants locked up the deal by agreeing to unfair “deal-protection” provisions in the
 16 Merger Agreement, effectively rendering the Proposed Transaction a *fait accompli*. For
 17 example, the Board agreed to: (i) a “no-shop” provision that prevents the Company from
 18 negotiating with or providing confidential Company information to competing bidders
 19 except under extremely limited circumstances; (ii) notify Utz no later than one (1)
 20 business day after receipt of a takeover proposal and provide Utz with the identity of the
 21 person making the takeover proposal and the material terms and conditions thereof; (iii) a
 22 “matching rights” provision that allows Utz four (4) business days to match any competing
 23 proposal in the unlikely event that one emerges; and (iv) a \$5 million termination fee to be

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 25 ³ Inventure Foods, Inc., Current Report (Form 8-K), at Exhibit 99.1 (Press Release, dated
 26 October 26, 2017) (Oct. 26, 2017).

1 paid to Utz if the Board agrees to accept a competing proposal. These provisions unfairly
2 impede the Company's public shareholders from receiving a superior offer.

3 **IV. The Recommendation Statement Contains Material Misstatements or**
4 **Omissions**

5 33. On November 15, 2017, the Defendants filed a materially incomplete and
6 misleading Recommendation Statement with the SEC and disseminated it to Inventure's
7 stockholders. The Recommendation Statement misrepresents or omits material information
8 that is necessary for the Company's stockholders to make an informed decision whether to
9 tender their shares in connection with the Tender Offer.

10 34. Specifically, as set forth below, the Recommendation Statement fails to
11 provide Company stockholders with material information or provides them with materially
12 misleading information concerning: (i) financial projections for the Company; (ii) the
13 valuation analyses performed by the Company's financial advisor, Rothschild, in support of
14 their fairness opinions; and (iii) the background process leading to the Proposed
15 Transaction.

16 ***Material Omissions Concerning Inventure's Financial Projections***

17 35. First, with respect to *Certain Unaudited Prospective Financial Information of*
18 *Investure Foods*, the Recommendation Statement fails to provide material information
19 concerning management's projections that were relied upon by the Board in recommending
20 that Company shareholders vote in favor of the Proposed Transaction.

21 36. The Recommendation Statement provides several non-GAAP financial
22 metrics, including Adjusted EBITDA and Unlevered Free Cash Flows,⁴ but fails to disclose
23

24 ⁴ Unlevered free cash flows are used to determine a company's enterprise value. The
25 unlevered free cash flow allows investors to ascertain the operating value of a company
26 independent of its capital structure. This provides a greater degree of analytical flexibility
and allows for a clearer picture of the value of the company overall. For this reason,

1 the line-item projections for the specific metrics, adjustments and/or inputs that are used to
2 calculate these Non-GAAP financial measures or provide a reconciliation of the Non-
3 GAAP measures to their most directly comparable GAAP financial measure, such as Net
4 Income. Recommendation Statement 48.

5 37. The omissions from the above-referenced projections renders the financial
6 projections included on pages 47 through 50 of the Recommendation Statement materially
7 incomplete and misleading. If a recommendation statement discloses financial projections
8 and valuation information, such projections must be complete and accurate. The question
9 here is not the duty to speak, but liability for not having spoken enough. With regard to
10 future events, uncertain figures, and other so-called soft information, a company may
11 choose silence or speech elaborated by the factual basis as then known—but it may not
12 choose half-truths.

13 38. At the very least, the Company must disclose the line item projections for the
14 financial metrics that were used to calculate the non-GAAP measures. Such projections are
15 necessary to make the non-GAAP projections included in the Recommendation Statement
16 not misleading.

17 39. Moreover, Inventure regularly provides the line items used to calculate non-
18 GAAP financial measures and/or reconciles non-GAAP financial measures to their most
19 comparable GAAP measure in their earnings press releases prepared for investors. For
20 example, the Company performed *both* a reconciliation of Adjusted EBITDA to its most
21 comparable GAAP financial measure, Net Income, in addition to the line items used to
22 calculate Adjusted EBITDA in its Third Quarter 2017 Financial Results, published on
23 November 7, 2017:

24
25 _____
26 unlevered free cash flows are routinely used to value a company, especially in merger
contexts.

	Quarter Ended		Nine Months Ended	
	September 30, 2017	September 24, 2016	September 30, 2017	September 24, 2016
Reconciliation - EBITDA from continuing operations:				
Reported net loss from continuing operations	\$ (5,472)	\$ (1,731)	\$ (11,653)	\$ (4,937)
Add back: Interest	1,839	1,376	5,221	4,010
Add back: Income tax expense(benefit)	10	(1,298)	31	(2,783)
Add back: Depreciation	773	820	2,340	2,351
Add back: Amortization of intangible assets	-	-	-	-
EBITDA from continuing operations	(2,850)	(833)	(4,061)	(1,359)
Adjustments:				
Add: Strategic review professional fees	745	-	1,797	-
Less: Gain on escrow settlement	-	-	(1,236)	-
Adjusted EBITDA from continuing operations	\$ (2,105)	\$ (833)	\$ (3,500)	\$ (1,359)

40. Furthermore, as seen above, there is a considerable difference between the non-GAAP financial measures utilized by the Company and their most comparable GAAP measure.

41. As a result, Defendants must provide Inventure shareholders with a reconciliation table of the non-GAAP measures to their most comparable GAAP measure or the line items used to calculate the non-GAAP financial measures disclosed in the Recommendation Statement in order to make the projections included on pages 47 through 50 of the Recommendation Statement not materially incomplete and misleading.

Material Omissions Concerning Rothschild's Financial Analyses

42. The Recommendation Statement describes Rothchild's fairness opinion and the various valuation analyses it performed in support of its opinion. However, the description of Rothschild's fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, Inventure's public stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Rothschild's fairness opinion in determining whether to tender their shares in favor of the Proposed Transaction. This

1 omitted information, if disclosed, would significantly alter the total mix of information
2 available to Inventure's stockholders.

3 43. With respect to Rothschild's *Illustrative Discounted Cash Flow Analysis*, the
4 Recommendation Statement fails to disclose: (i) the Company's standalone, unlevered,
5 after-tax free cash flows that it was expected to generate from the beginning of FY2017
6 through the end of FY2018; (ii) the Company's range of estimated terminal values; (iii) the
7 inputs and assumptions used to calculate the last-twelve-months (LTM) terminal multiples
8 range of 11.0x to 13.0x; (iv) the inputs and assumptions used to calculate the range of
9 discount rates of 13.5% to 15.5%; (v) the Company's range of implied enterprise values
10 (EVs); and (vi) the Company's net debt (calculated as debt less cash and cash equivalents,
11 in each case estimated as of December 29, 2017). Recommendation Statement 44-45.

12 44. These key inputs are material to Inventure's common stockholders, and their
13 omission renders the summary of Rothchild's *Illustrative Discounted Cash Flow Analysis*
14 incomplete and misleading. As a highly-respected professor explained in one of the most
15 thorough law review articles regarding the fundamental flaws with the valuation analyses
16 bankers perform in support of fairness opinions, in a discounted cash flow analysis a banker
17 takes management's forecasts, and then makes several key choices "each of which can
18 significantly affect the final valuation." Steven M. Davidoff, *Fairness Opinions*, 55 Am.
19 U.L. Rev. 1557, 1576 (2006). Such choices include "the appropriate discount rate, and the
20 terminal value..." *Id.* As Professor Davidoff explains:

21 *There is substantial leeway to determine each of these, and any*
22 *change can markedly affect the discounted cash flow value. For*
23 *example, a change in the discount rate by one percent on a*
24 *stream of cash flows in the billions of dollars can change the*
25 *discounted cash flow value by tens if not hundreds of millions of*
26 *dollars.... This issue arises not only with a discounted cash flow*
analysis, but with each of the other valuation techniques. This
dazzling variability makes it difficult to rely, compare, or
*analyze the valuations underlying a fairness opinion **unless full***

1 *disclosure is made of the various inputs in the valuation*
2 *process, the weight assigned for each, and the rationale*
3 *underlying these choices.* The substantial discretion and lack of
4 guidelines and standards also makes the process vulnerable to
5 manipulation to arrive at the “right” answer for fairness. This
6 raises a further dilemma in light of the conflicted nature of the
7 investment banks who often provide these opinions.

8 *Id.* at 1577-78.

9 45. With respect to Rothchild’s *Selected Precedent Transactions Analysis*, the
10 Recommendation Statement fails to disclose the individual multiples Rothchild calculated
11 for each of the transactions utilized. The omission of these multiples renders the summary
12 of this analysis and the implied per share equity value ranges materially misleading. A fair
13 summary of the *Selected Precedent Transactions Analysis* requires the disclosure of the
14 individual multiples for each transaction; merely providing the range that a banker applied
15 is insufficient, as Inventure shareholders are unable to assess whether the banker applied
16 appropriate multiples, or, instead, applied unreasonably low multiples in order to drive
17 down the implied share per price ranges.

18 46. Similar to the Rothchild’s *Selected Precedent Transactions Analysis*, the
19 *Selected Company Analysis* also fails to disclose the individual multiples Rothchild
20 calculated for each of the companies utilized. For the reasons mentioned above, omission
21 of these multiples renders the summary of this analysis and implied per share equity value
22 ranges materially misleading.

23 47. Similar to Rothchild’s *Illustrative Discounted Cash Flow Analysis*, the *NOL*
24 *Tax Savings Analysis* fails to disclose: (i) the inputs and assumptions used to calculate the
25 discount rates of 14.5%; and (ii) the Company’s gross federal net operating loss balance as
26 of October 25, 2017. Recommendation Statement 45.

1 ***Material Omissions Concerning Insiders' Potential Conflicts of Interest***

2 48. The Recommendation Statement also materially misleads stockholders as to
3 the potential conflicts of interest faced by Inventure management and the Board.

4 49. The Recommendation Statement sets forth:

5 It is expected that the employment of Steve Weinberger, the
6 Chief Financial Officer of Inventure Foods, will terminate as of
7 the Effective Time. [Utz] ***expects that the Surviving***
8 ***Corporation will enter into a consulting agreement with Mr.***
9 ***Weinberger following the closing of the Merger*** pursuant to
10 which Mr. Weinberger would provide transition services to the
11 Surviving Corporation for a period of four to six months after
the closing of the Merger. Under such arrangement, Mr.
Weinberger would be paid a monthly consulting fee equal to
\$27,500, which is his current monthly base salary with
Inventure.

12 Recommendation Statement at 37. Yet, the Recommendation Statement completely fails to
13 set forth any information concerning communications regarding post-transaction
14 employment, the parties who participated in such conversation, and when such discussions
15 took place.

16 50. Communications regarding post-transaction employment and merger-related
17 benefits during the negotiation of the underlying transaction must be disclosed to
18 stockholders. This information is necessary for stockholders to understand potential
19 conflicts of interest of management and the Board, as that information provides illumination
20 concerning motivations that would prevent fiduciaries from acting solely in the best
21 interests of the Company's stockholders.

22 51. The omission of this information renders the statements in the Effect of
23 Merger Agreement on Employee Compensation and Benefits and the Background of the
24 Offer and Merger Agreement; Reasons for Recommendation sections of the
25
26

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1 Recommendation Statement false and/or materially misleading in contravention of the
2 Exchange Act.

3 52. In sum, the omission of the above-referenced information renders the
4 Recommendation Statement materially incomplete and misleading, in contravention of the
5 Exchange Act. Absent disclosure of the foregoing material information prior to the
6 expiration of the Proposed Transaction, Plaintiff and the other members of the Class will
7 be unable to make a fully-informed decision regarding whether to vote in favor of the
8 Proposed Transaction, and they are thus threatened with irreparable harm, warranting the
9 injunctive relief sought herein.

10 **COUNT I**

11 **(Against All Defendants for Violation of Section 14(e) of the Exchange Act
12 and 17 C.F.R. § 244.100 Promulgated Thereunder)**

13 53. Plaintiff incorporates each and every allegation set forth above as if fully set
14 forth herein.

15 54. Section 14(e) of the Exchange Act provides that it is unlawful “for any person
16 to make any untrue statement of a material fact or omit to state any material fact necessary
17 in order to make the statements made, in the light of the circumstances under which they are
18 made, not misleading...” 15 U.S.C. §78n(e).

19 55. Defendants violated § 14(e) of the Exchange Act by issuing the
20 Recommendation Statement in which they made untrue statements of material facts or
21 failed to state all material facts necessary in order to make the statements made, in the light
22 of the circumstances under which they are made, not misleading, in connection with the
23 tender offer commenced in conjunction with the Proposed Transaction. Defendants knew
24 or recklessly disregarded that the Recommendation Statement failed to disclose material
25 facts necessary in order to make the statements made, in light of the circumstances under
26 which they were made, not misleading.

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1 56. The Recommendation Statement was prepared, reviewed, and/or disseminated
2 by Defendants. It misrepresented and/or omitted material facts, including material
3 information about the consideration offered to stockholders via the tender offer, the intrinsic
4 value of the Company, and potential conflicts of interest faced by certain Individual
5 Defendants.

6 57. In so doing, Defendants made untrue statements of fact and/or omitted
7 material facts necessary to make the statements made not misleading. Each of the
8 Individual Defendants, by virtue of their roles as officers and/or directors, were aware of
9 the omitted information but failed to disclose such information, in violation of Section
10 14(e). The Individual Defendants were therefore reckless, as they had reasonable grounds
11 to believe material facts existed that were misstated or omitted from the Recommendation
12 Statement, but nonetheless failed to obtain and disclose such information to shareholders
13 although they could have done so without extraordinary effort.

14 58. The omissions and incomplete and misleading statements in the
15 Recommendation Statement are material in that a reasonable stockholder would consider
16 them important in deciding whether to tender their shares or seek appraisal. In addition, a
17 reasonable investor would view the information identified above which has been omitted
18 from the Recommendation Statement as altering the “total mix” of information made
19 available to stockholders.

20 59. Defendants knowingly or with deliberate recklessness omitted the material
21 information identified above from the Recommendation Statement, causing certain
22 statements therein to be materially incomplete and therefore misleading. Indeed, while
23 Defendants undoubtedly had access to and/or reviewed the omitted material information in
24 connection with approving the Proposed Transaction, they allowed it to be omitted from the
25
26

1 Recommendation Statement, rendering certain portions of the Recommendation Statement
2 materially incomplete and therefore misleading.

3 60. The misrepresentations and omissions in the Recommendation Statement are
4 material to Plaintiff, and Plaintiff will be deprived of their entitlement to make a fully
5 informed decision if such misrepresentations and omissions are not corrected prior to the
6 expiration of the tender offer.

7 **COUNT II**

8 **(Against all Defendants for Violations of Section 14(d)(4) of the Exchange Act
9 and SEC Rule 14d-9, 17 C.F.R. § 240.14d-9)**

10 61. Plaintiff incorporates each and every allegation set forth above as if fully set
11 forth herein.

12 62. Defendants have caused the Recommendation Statement to be issued with the
13 intention of soliciting stockholder support of the Proposed Transaction.

14 63. Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated
15 thereunder require full and complete disclosure in connection with tender offers.
16 Specifically, Section 14(d)(4) provides that:

17 Any solicitation or recommendation to the holders of such a
18 security to accept or reject a tender offer or request or invitation
19 for tenders shall be made in accordance with such rules and
20 regulations as the Commission may prescribe as necessary or
21 appropriate in the public interest or for the protection of
22 investors.

21 64. SEC Rule 14d-9(d), which was adopted to implement Section 14(d)(4) of the
22 Exchange Act, provides that:

23 Information required in solicitation or recommendation. Any
24 solicitation or recommendation to holders of a class of securities
25 referred to in section 14(d)(1) of the Act with respect to a tender
26 offer for such securities shall include the name of the person
making such solicitation or recommendation and the

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1 information required by Items 1 through 8 of Schedule 14D-9 (§
2 240.14d-101) or a fair and adequate summary thereof.

3 65. In accordance with Rule 14d-9, Item 8 of a Schedule 14D-9 requires a
4 Company's directors to:

5 Furnish such additional information, if any, as may be necessary
6 to make the required statements, in light of the
7 circumstances under which they are made, not materially
8 misleading.

9 66. The Recommendation Statement violates Section 14(d)(4) and Rule 14d-9
10 because it omits material facts, including those set forth above, which omissions render the
11 Recommendation Statement false and/or misleading. Defendants knowingly or with
12 deliberate recklessness omitted the material information identified above from the
13 Recommendation Statement, causing certain statements therein to be materially incomplete
14 and therefore misleading. Indeed, while Defendants undoubtedly had access to and/or
15 reviewed the omitted material information in connection with approving the Proposed
16 Transaction, they allowed it to be omitted from the Recommendation Statement, rendering
17 certain portions of the Recommendation Statement materially incomplete and therefore
18 misleading.

19 67. The misrepresentations and omissions in the Recommendation Statement are
20 material to Plaintiff, and Plaintiff will be deprived of their entitlement to make a fully
21 informed decision if such misrepresentations and omissions are not corrected prior to the
22 expiration of the Tender Offer.

23 68. The misrepresentations and omissions in the Recommendation Statement are
24 material to Plaintiff, and Plaintiff will be deprived of their entitlement to make a fully
25 informed decision if such misrepresentations and omissions are not corrected prior to the
26 expiration of the tender offer.

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COUNT III

(Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act)

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4 69. Plaintiff incorporates each and every allegation set forth above as if fully set
5 forth herein.

6 70. The Individual Defendants acted as controlling persons of Inventure within
7 the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their
8 positions as officers and/or directors of Inventure, and participation in and/or awareness of
9 the Company's operations and/or intimate knowledge of the incomplete and misleading
10 statements contained in the Recommendation Statement, they had the power to influence
11 and control and did influence and control, directly or indirectly, the decision making of the
12 Company, including the content and dissemination of the various statements that Plaintiff
13 contends are materially incomplete and misleading.

14 71. Each of the Individual Defendants was provided with or had unlimited access
15 to copies of the Recommendation Statement by Plaintiff to be misleading prior to the date
16 the Recommendation Statement was issued, and had the ability to prevent the issuance of
17 the false and misleading statements or cause the statements to be corrected.

18 72. In particular, each of the Individual Defendants had direct and supervisory
19 involvement in the day-to-day operations of the Company, and, therefore, is presumed to
20 have had the power to control or influence the particular transactions giving rise to the
21 Exchange Act violations alleged herein, and exercised the same. The Recommendation
22 Statement at issue contains the unanimous recommendation of each of the Individual
23 Defendants that shareholders tender their shares in the Tender Offer. They were thus
24 directly involved in preparing this document.

25 73. In addition, as the Recommendation Statement sets forth, and as described
26 herein, the Individual Defendants were involved in negotiating, reviewing, and approving

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1 the merger agreement. The Recommendation Statement purports to describe the various
2 issues and information that the Individual Defendants reviewed and considered. The
3 Individual Defendants participated in drafting and/or gave their input on the content of
4 those descriptions.

5 74. By virtue of the foregoing, the Individual Defendants have violated Section
6 20(a) of the Exchange Act.

7 75. As set forth above, the Individual Defendants had the ability to exercise
8 control over and did control a person or persons who have each violated Sections 14(e) and
9 14(d)(4) and Rule 14d-9 by their acts and omissions as alleged herein. By virtue of their
10 positions as controlling persons, these Defendants are liable pursuant to Section 20(a) of the
11 Exchange Act. As a direct and proximate result of Individual Defendants' conduct,
12 Plaintiff and the Class will be irreparably harmed.

13 76. Plaintiff and the Class have no adequate remedy at law. Only through the
14 exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from
15 the immediate and irreparable injury that Defendants' actions threaten to inflict.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff prays for judgment and relief as follows:

18 A. Declaring that this action is properly maintainable as a Class Action and
19 certifying Plaintiff as Class Representative and his counsel as Class Counsel;

20 B. Enjoining Defendants and all persons acting in concert with them from
21 closing the Tender Offer or consummating the proposed merger, unless and until the
22 Company discloses the material information discussed above which has been omitted from
23 the Recommendation Statement;

24 C. Directing the Defendants to account to Plaintiff and the Class for all damages
25 sustained as a result of their wrongdoing;

26

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1 D. Awarding Plaintiff the costs and disbursements of this action, including
2 reasonable attorneys' and expert fees and expenses; and

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

4 **JURY DEMAND**

5 Plaintiff demands a trial by jury on all issues so triable.

6 DATED this 21st day of November, 2017.

7 DECONCINI MCDONALD YETWIN & LACY, P.C.

8
9 By: /s/ Gary F. Urman

10 Gary F. Urman
11 2525 E. Broadway Blvd., Suite 200
12 Tucson, AZ 85716-5300
13 Attorneys for Plaintiff

14 **OF COUNSEL**

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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):	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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Inventure Foods, Board Members Hit with Securities Lawsuits Over Company's Sale to Utz](#)
