

# **ROCKET FUEL INC.**

Filed by  
**SIZMEK INC.**

## **FORM SC TO-T/A**

(Amended tender offer statement by Third Party)

Filed 08/11/17

Address	2000 SEAPORT BLVD, SUITE 400 REDWOOD CITY, CA 94063
Telephone	650-595-1300
CIK	0001477200
Symbol	FUEL
SIC Code	7370 - Computer Programming, Data Processing, And
Industry	Advertising & Marketing
Sector	Consumer Cyclical
Fiscal Year	12/31

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**SCHEDULE TO**

**TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)  
OF THE SECURITIES EXCHANGE ACT OF 1934**  
**Amendment No. 1**

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**ROCKET FUEL INC.**

(Name of Subject Company (Issuer))

**FUEL ACQUISITION CO.  
SIZMEK INC.**

(Name of Filing Persons (Offerors))

**VECTOR SOLOMON HOLDINGS (CAYMAN), L.P.  
VECTOR CAPITAL IV, L.P.  
VECTOR CAPITAL V, L.P.**

(Name of Filing Persons (Others))

**COMMON STOCK, PAR VALUE \$0.001 PER SHARE**  
(Title of Class of Securities)

**773111109**

(CUSIP Number of Class of Securities)

**Mark Grether  
Sizmek Inc.  
500 West Fifth Street, Suite 900  
Austin, Texas 78701  
(512) 469-5900**

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)

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*Copies to:*

**Jeffrey B. Golden  
Joshua M. Zachariah  
Kirkland & Ellis LLP  
555 California Street  
Suite 2700  
San Francisco, CA 94104  
(415) 439-1400**

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**CALCULATION OF FILING FEE**

Transaction Valuation(1)	Amount of Filing Fee(2)
\$125,474,916.18	\$14,542.54

- (1) Calculated solely for purposes of determining the filing fee. The calculation assumes the purchase of 46,969,168 shares of common stock, par value \$0.001 per share, at an offer price of \$2.60 per share. The transaction value also includes (i) 1,168,812 shares issuable pursuant to outstanding stock option grants with an exercise price of less than \$2.60 per share, which is calculated by (x) multiplying the number of shares underlying such options at each exercise price therefor by an amount equal to \$2.60 minus such exercise price and (y) dividing such product by the offer price of \$2.60 per share, (ii) 6,759 shares of restricted stock, and (iii) restricted stock units representing the right to receive up to 1,728,167 shares of common stock, in each case, multiplied by the offer price of \$2.60 per share. The calculation of the filing fee is based on information provided by Rocket Fuel Inc. as of July 14, 2017.
- (2) The amount of the filing fee was calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory #1 for fiscal year 2017, issued August 31, 2016, by multiplying the transaction value by 0.0001159.

- Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

Amount Previously Paid: \$14,542.54  
Form of Registration No.: Schedule TO

Filing Party: Fuel Acquisition Co.  
Date Filed: August 2, 2017

- Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- Third-party tender offer subject to Rule 14d-1.  
 Issuer tender offer subject to Rule 13e-4.  
 Going-private transaction subject to Rule 13e-3.  
 Amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer.

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

- Rule 13e-4(i) (Cross-Border Issuer Tender Offer)  
 Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)
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This Amendment No. 1 (this “Amendment”) to the Tender Offer Statement on Schedule TO (together with this Amendment and any other amendments and supplements thereto, the “Schedule TO”) is being filed by (i) Sizmek Inc., a Delaware corporation (“Parent”), (ii) Fuel Acquisition Co., a Delaware corporation and a wholly-owned subsidiary of Parent (“Purchaser”), (iii) Vector Solomon Holdings (Cayman), L.P., a Cayman Islands limited partnership, an affiliate of each of Parent and Purchaser (“Solomon L.P.”), (iv) Vector Capital IV, L.P., a Delaware limited partnership, an affiliate of each of Parent and Purchaser (“VC IV”), and (v) Vector Capital V, L.P., a Delaware limited partnership, an affiliate of each of Parent and Purchaser (“VC V”). The Schedule TO relates to the tender offer for all of the outstanding shares of common stock, par value \$0.001 per share (the “Shares”), of Rocket Fuel Inc., a Delaware corporation (the “Company”), at a price of \$2.60 per Share, net to the seller in cash without interest and less any applicable withholding taxes, if any, upon the terms and conditions set forth in the offer to purchase dated August 2, 2017 (the “Offer to Purchase”), a copy of which is attached as Exhibit (a)(1)(A), and in the related letter of transmittal (the “Letter of Transmittal”), a copy of which is attached as Exhibit (a)(1)(B), which, together with any amendments or supplements, collectively constitute the “Offer.”

Except as otherwise indicated in this Amendment, the information set forth in the Schedule TO remains unchanged. Capitalized terms used but not defined herein have the meanings ascribed to them in the Schedule TO.

All the information set forth in the Offer to Purchase is incorporated by reference herein in response to Items 1 through 9 and Item 11 in the Schedule TO, and is supplemented by the information specifically provided in the Schedule TO.

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**Item 11. Additional Information.**

The disclosure set forth in the Offer to Purchase under Section 16 “Certain Legal Matters; Regulatory Approvals” is hereby amended and supplemented by inserting the following paragraphs after the first paragraph of the subsection titled “General”:

*Certain Litigation.* On August 2, 2017, the Company filed the Schedule 14D-9 with the SEC in connection with the Offer. That same day, the Company received a demand letter from a purported stockholder of the Company alleging that the Schedule 14D-9 omitted material information necessary for the Company stockholders to make an informed decision regarding the Offer. The letter demands that the Company and the Board provide immediate corrective disclosures.

On August 4, 2017, two purported stockholders of the Company filed an action in the United States District Court for the Northern District of California on behalf of a putative class of the Company’s stockholders against the Company and the Board, alleging violations of federal securities laws. The case is captioned *Bushansky et al. v. Rocket Fuel Inc. et al.* (Case 3:17-cv-04454). The complainants allege, among other things, that the Schedule 14D-9 omits material information necessary for the Company’s stockholders to make an informed decision regarding the Offer. The complainants seek, among other things, either to enjoin the Offer or, should it be consummated, to rescind it or award rescissory damages, as well as an award of the plaintiffs’ attorneys’ fees and costs in the actions.

On August 7, 2017, two additional actions alleging violations of federal securities laws were filed by purported stockholders of the Company in the United States District Court for the Northern District of California. In the first, captioned *Haines v. Rocket Fuel et al.* (Case 5:17-cv-04473), an alleged stockholder of the Company filed an action on behalf of a putative class of the Company’s stockholders against the Company and the Board. In the second, captioned *Scarantino v. Rocket Fuel Inc. et al.* (Case 3:17-cv-04489), an alleged stockholder of the Company filed an action on behalf of a putative class of the Company’s stockholders against the Company, the Board, Sizmek, Purchaser and Vector Capital. The complainants in both the *Haines* and *Scarantino* actions allege claims similar to those in the *Bushansky* action, and seek similar relief.

On August 8, 2017, a purported stockholder of the Company filed an action in the United States District Court for the Northern District of California on behalf of a putative class of the Company’s stockholders against the Company and its Board of Directors, alleging violations of federal securities laws. The case is captioned *Wen v. Rocket Fuel et al.* (Case 3:17-cv-04509). The complainant alleges claims similar to those in the *Bushansky* action, and seeks similar relief.

The defendants deny any wrongdoing in connection with the merger and plan to defend vigorously against the claims set forth in these actions.

The foregoing description is qualified in its entirety by reference to the complaints which are attached as Exhibits (a)(5)(K), (a)(5)(L), (a)(5)(M) and (a)(5)(N), respectively.

Additional lawsuits may be filed against the Company, Sizmek, Purchaser or the Board in connection with the Merger.”

The disclosure set forth in the Offer to Purchase under Section 16 “Certain Legal Matters; Regulatory Approvals” is hereby amended and supplemented by inserting the following paragraph after the fourth paragraph of the subsection titled “United States Antitrust Compliance”:

“At 11:59 p.m. New York City time on August 10, 2017, the required waiting period applicable to the Offer and the Merger under the HSR Act expired. Accordingly, the condition to the Offer relating to the expiration or termination of any waiting period under the HSR Act has been satisfied.”

The disclosure set forth in the Offer to Purchase under Section 16 “Certain Legal Matters; Regulatory Approvals” is hereby amended and supplemented by inserting the following paragraph after the first paragraph of the subsection titled “German Federal Cartel Office Filing”:

“On August 8, 2017, the FCO granted unconditional approval of the Offer and the other transactions contemplated by the Merger Agreement in accordance with ARC and the regulations promulgated thereunder. Accordingly, the condition to the Offer relating to the expiration or termination of any waiting period under ARC has been satisfied.”

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**Item 12. Exhibits.**

Item 12 of the Schedule TO is hereby amended and supplemented by adding the following exhibits:

<u>Exhibit No.</u>	<u>Description</u>
(a)(5)(K)	Class Action Complaint dated August 4, 2017 (Stephen Bushansky and Mendel Zaks v. Rocket Fuel Inc., et al., Case No. 3:17-cv-04454).
(a)(5)(L)	Class Action Complaint dated August 7, 2017 (Adryan Haines v. Rocket Fuel Inc., et al., Case No. 5:17-cv-04473).
(a)(5)(M)	Class Action Complaint dated August 7, 2017 (Louis Scarantino v. Rocket Fuel Inc., et al., Case No. 3:17-cv-04489).
(a)(5)(N)	Class Action Complaint dated August 8, 2017 (Damin Wen v. Rocket Fuel Inc., et al., Case No. 3:17-cv-04509).

**SIGNATURE**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

FUEL ACQUISITION CO.

By /s/ Mark Grether  
Name: Mark Grether  
Title: President and Chief Executive Officer  
Date: August 11, 2017

SIZMEK INC.

By /s/ Mark Grether  
Name: Mark Grether  
Title: President and Chief Executive Officer  
Date: August 11, 2017

VECTOR SOLOMON HOLDINGS (CAYMAN), L.P.

By Vector Capital Partners IV, L.P.  
Its: General Partner

By Vector Capital, Ltd.  
Its: General Partner

By /s/ David Baylor  
Name: David Baylor  
Title: Director  
Date: August 11, 2017

By Vector Capital, L.L.C.  
Its: General Partner

By /s/ David Baylor  
Name: David Baylor  
Title: Chief Operating Officer  
Date: August 11, 2017

VECTOR CAPITAL IV, L.P.

By Vector Capital Partners IV, L.P.  
Its: General Partner

By Vector Capital, Ltd.  
Its: General Partner

By /s/ David Baylor  
Name: David Baylor  
Title: Director  
Date: August 11, 2017

By Vector Capital, L.L.C.  
Its: General Partner

By /s/ David Baylor  
Name: David Baylor  
Title: Chief Operating Officer  
Date: August 11, 2017

VECTOR CAPITAL V, L.P.

By Vector Capital Partners V, L.P.  
Its: General Partner

By Vector Capital V, Ltd.  
Its: General Partner

By /s/ David Baylor

Name: David Baylor

Title: Director

Date: August 11, 2017

## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
(a)(1)(A)	Offer to Purchase, dated August 2, 2017.*
(a)(1)(B)	Form of Letter of Transmittal.*
(a)(1)(C)	Form of Notice of Guaranteed Delivery.*
(a)(1)(D)	Form of Letter from the Information Agent to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(E)	Form of Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(F)	Summary Advertisement as published in the New York Times on August 2, 2017.*
(a)(5)(A)	Joint Press Release issued by the Company and Parent on August 2, 2017.*
(a)(5)(B)	Press Release issued by the Company on July 18, 2017 (incorporated by reference to Exhibit 99.1 to Current Report on Form 8-K of Rocket Fuel filed with the Securities and Exchange Commission on July 18, 2017).*
(a)(5)(C)	Press Release issued by Purchaser and Parent on July 18, 2017 (incorporated by reference to Exhibit 99.1 to Purchaser's and Parent's Schedule TO-C filed by Purchaser and Parent with the Securities and Exchange Commission on July 18, 2017, which is incorporated by reference herein).*
(a)(5)(D)	Blog Post by Parent (incorporated by reference to Exhibit 99.2 to Purchaser's and Parent's Schedule TO-C filed by Purchaser and Parent with the Securities and Exchange Commission on July 18, 2017, which is incorporated by reference herein).*
(a)(5)(E)	Presentation Slides for All-Hands Meeting dated July 18, 2017 (incorporated by reference to Exhibit 99.3 to Purchaser's and Parent's Schedule TO-C filed by Purchaser and Parent with the Securities and Exchange Commission on July 18, 2017, which is incorporated by reference herein)*
(a)(5)(F)	Frequently Asked Questions dated July 18, 2017 (incorporated by reference to Exhibit 99.4 to Purchaser's and Parent's Schedule TO-C filed by Purchaser and Parent with the Securities and Exchange Commission on July 18, 2017, which is incorporated by reference herein)*
(a)(5)(G)	Talking Points for Conversations with Clients dated July 18, 2017 (incorporated by reference to Exhibit 99.5 to Purchaser's and Parent's Schedule TO-C filed by Purchaser and Parent with the Securities and Exchange Commission on July 18, 2017, which is incorporated by reference herein)*
(a)(5)(H)	Email to Employees of Parent (incorporated by reference to Exhibit 99.6 to Purchaser's and Parent's Schedule TO-C filed by Purchaser and Parent with the Securities and Exchange Commission on July 18, 2017, which is incorporated by reference herein)*

<u>Exhibit No.</u>	<u>Description</u>
(a)(5)(I)	Email to Customers and Partners of Parent (incorporated by reference to Exhibit 99.7 to Purchaser's and Parent's Schedule TO-C filed by Purchaser and Parent with the Securities and Exchange Commission on July 18, 2017, which is incorporated by reference herein)*
(a)(5)(J)	Post All-Hands Meeting Email to Employees of Parent (incorporated by reference to Exhibit 99.8 to Purchaser's and Parent's Schedule TO-C filed by Purchaser and Parent with the Securities and Exchange Commission on July 18, 2017, which is incorporated by reference herein)*
(a)(5)(K)	Class Action Complaint dated August 4, 2017 (Stephen Bushansky and Mendel Zaks v. Rocket Fuel Inc., et al., Case No. 3:17-cv-04454).
(a)(5)(L)	Class Action Complaint dated August 7, 2017 (Adryan Haines v. Rocket Fuel Inc., et al., Case No. 5:17-cv-04473).
(a)(5)(M)	Class Action Complaint dated August 7, 2017 (Louis Scarantino v. Rocket Fuel Inc., et al., Case No. 3:17-cv-04489).
(a)(5)(N)	Class Action Complaint dated August 8, 2017 (Damin Wen v. Rocket Fuel Inc., et al., Case No. 3:17-cv-04509).
(b)	None.
(d)(1)	Agreement and Plan of Merger, dated as of July 17, 2017, by and among the Company, Purchaser and Parent (incorporated by reference to Exhibit 2.1 to Current Report on Form 8-K of the Company filed with the Securities and Exchange Commission on July 18, 2017).*
(d)(2)	Confidentiality Agreement, dated March 22, 2017, between the Company and Vector Capital Management, L.P.*
(d)(3)	Exclusivity Agreement, dated as of June 6, 2017, between Rocket Fuel Inc. and Sizmek Inc.*
(d)(4)	Exclusivity Extension Agreement, dated as of July 7, 2017 between Rocket Fuel Inc. and Sizmek Inc.*
(d)(5)	Second Exclusivity Extension Agreement, dated as of July 16, 2017 between Rocket Fuel Inc. and Sizmek Inc.*
(d)(6)	Equity Commitment Letter, dated as of July 17, 2017, from VC IV to Parent.*
(d)(7)	Tender and Support Agreement, dated as of July 17, 2017, by and among Parent, Purchaser and MDV IX, L.P. and Martha M. Conway & Richard A Frankel TR UA 03/13/09 Conway Frankel Family Trust.*
(g)	None.
(h)	None.

\* Previously filed.



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## NATURE OF THE ACTION

1. This is a class action brought on behalf of the public stockholders of Rocket Fuel Inc. (“Rocket Fuel” or the “Company”) against Rocket Fuel and its Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(d)(4), 14(e) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(d)(4), 78n(e), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 14d-9, 17 C.F.R. §240.14d-9(d) (“Rule 14d-9”) and to enjoin the expiration of a tender offer (the “Tender Offer”), pursuant to which Rocket Fuel will be acquired by Sizmek Inc. (“Sizmek”), an affiliate of Vector Capital IV, L.P. (“Vector”) and Vector Capital V, L.P., and Sizmek’s wholly owned subsidiary Fuel Acquisition Co. (“Purchaser”) (the “Proposed Transaction”).

2. On July 18, 2017, Rocket Fuel issued a press release announcing that it had entered into an Agreement and Plan of Merger (the “Merger Agreement”) to sell Rocket Fuel to Sizmek. Under the terms of the Merger Agreement, Sizmek will acquire all outstanding shares of Rocket Fuel for \$2.60 in cash per Rocket Fuel common share (the “Offer Price”). The Tender Offer commenced on August 2, 2017 and is scheduled to expire at 12:00 midnight, New York City time, at the end of August 29, 2017 (the “Expiration Date”). The Proposed Transaction is valued at approximately \$145 million.

3. On August 2, 2017, Rocket Fuel filed a Solicitation/Recommendation Statement on Schedule 14D-9 (the “Recommendation Statement”) with the SEC. The Recommendation Statement, which recommends that Rocket Fuel stockholders tender their shares in favor of the Proposed Transaction, omits or misrepresents material information concerning, among other things: (i) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by the Company’s financial advisor, Needham & Company, LLC (“Needham”); and (ii) Rocket Fuel insiders’ potential conflicts of interest. The failure to adequately disclose such material

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information constitutes a violation of Sections 14(d), 14(e) and 20(a) of the Exchange Act as Rocket Fuel stockholders need such information in order to make a fully informed decision whether to tender their shares in support of the Proposed Transaction or seek appraisal.

4. In short, the Proposed Transaction will unlawfully divest Rocket Fuel's public stockholders of the Company's valuable assets without fully disclosing all material information concerning the Proposed Transaction to Company stockholders. To remedy defendants' Exchange Act violations, Plaintiffs seek to enjoin the expiration of the Tender Offer unless and until such problems are remedied.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(d)(4), 14(e) and 20(a) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. §1331 (federal question jurisdiction).

6. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiffs' claims arose in this District, where a substantial portion of the actionable conduct took place, where most of the documents are electronically stored, and where the evidence exists. Rocket Fuel is incorporated in Delaware and is headquartered in this District. Moreover, each of the Individual Defendants, as Company officers or directors, either resides in this District or has extensive contacts within this District.

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**THE PARTIES**

8. Plaintiffs are, and have been at all times relevant hereto, continuous stockholders of Rocket Fuel.

9. Defendant Rocket Fuel is a Delaware corporation with its principal executive offices located at 2000 Seaport Boulevard, Suite 400, Pacific Shores Center, Redwood City, California 94063. Rocket Fuel's common stock is traded on the NASDAQ Stock Market LLC under the ticker symbol "FUEL."

10. Defendant E. Randolph Wootton III ("Wootton") has been Chief Executive Officer ("CEO") and a director of the Company since November 2015.

11. Defendant Monte Zweben ("Zweben") has been Chairman of the Board since March 2016 and previously served as Executive Chairman of the Board from November 2015 to March 2016 and as interim CEO of the Company from March 2015 to November 2015. Defendant Zweben has been a director of the Company since March 2010.

12. Defendant Richard A. Frankel ("Frankel") has been a director of the Company since March 2008. Defendant Frankel previously served as Executive Vice President of the Company from October 2015 to July 2016, as President of the Company from May 2008 to October 2015, and as Chief Financial Officer of the Company from March 2008 to February 2009. Defendant Frankel is also a co-founder of the Company.

13. Defendant Susan L. Bostrom ("Bostrom") has been a director of the Company since February 2013.

14. Defendant Ronald E. F. Codd ("Codd") has been a director of the Company since February 2012.

15. Defendant William W. Ericson ("Ericson") has been a director of the Company since May 2008.

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16. Defendant Clark M. Kokich (“Kokich”) has been a director of the Company since April 2011.

17. Defendant John J. Lewis (“Lewis”) has been a director of the Company since January 2016.

18. Defendants Wootton, Zweben, Frankel, Bostrom, Codd, Ericson, Kokich and Lewis are collectively referred to herein as the “Board” or the “Individual Defendants.”

#### **OTHER RELEVANT ENTITIES**

19. Sizmek is a Delaware corporation and a provider of powerful, integrated solutions to optimize campaigns across all media.

20. Purchaser is a Delaware corporation and wholly-owned subsidiary of Sizmek.

#### **CLASS ACTION ALLEGATIONS**

21. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons and entities that own Rocket Fuel common stock (the “Class”). Excluded from the Class are defendants and their affiliates, immediate families, legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

22. Plaintiffs’ claims are properly maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure.

23. The Class is so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through discovery, Plaintiffs believe that there are thousands of members in the Class. As of July 31, 2017, there were 46,993,632 shares of Company common stock outstanding. All members of the Class may be identified from records maintained by Rocket Fuel or its transfer agent and may be notified of the pendency of this action by mail, using forms of notice similar to that customarily used in securities class actions.

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24. Questions of law and fact are common to the Class and predominate over questions affecting any individual Class member, including, inter alia:

- (a) Whether defendants have violated Section 14(d)(4) of the Exchange Act and Rule 14d-9 promulgated thereunder;
- (b) Whether the Individual Defendants have violated Section 14(e) of the Exchange Act;
- (c) Whether the Individual Defendants have violated Section 20(a) of the Exchange Act; and
- (d) Whether Plaintiffs and the other members of the Class would suffer irreparable injury were the Proposed Transaction consummated.

25. Plaintiffs will fairly and adequately protect the interests of the Class, and have no interests contrary to or in conflict with those of the Class that Plaintiffs seek to represent. Plaintiffs have retained competent counsel experienced in litigation of this nature.

26. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

27. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

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## SUBSTANTIVE ALLEGATIONS

### Company Background

28. Rocket Fuel is a technology company that brings the power of machine learning to the world of digital marketing. The Company's core service offerings are organized around two platforms: Demand Side Platform ("DSP") and Data Management Platform ("DMP"), which can be used independently, together, or can be integrated with a customer's other customer relationship management or marketing platforms.

29. In September 2014, Rocket Fuel acquired X Plus Two Solutions, Inc., the parent company of [x+1], a privately held programmatic marketing technology company. Rocket Fuel's acquisition of [x+1] allowed the Company to add important assets to its technology solutions, including its DMP. Since this acquisition in September 2014, Rocket Fuel has worked to join its DSP and DMP into a combined platform that has allowed the Company to introduce its Predictive Marketing Platform. Rocket Fuel offers its Predictive Marketing Platform as a managed service, which it operates on behalf of its customers ("Media Services") and as a technology solution its customers acquire and operate themselves, or acquire and obtain supporting services from the Company ("Platform Solutions"). Media Services and Platform Solutions are Rocket Fuel's two main businesses.

30. Rocket Fuel interacts with customers primarily through advertising agencies acting on their behalf. The Company also makes its self-service platform available to agency holding companies, who in turn use Rocket Fuel's platform to service operating advertising agencies affiliated with the holding company, and to independent agencies.

31. On January 9, 2017, the Company issued a press release announcing a restructuring shift toward its Platform Solutions business in order to accelerate the Company's transformation into a leading software-as-a-service ("SaaS") market. Defendant Wootton commented on Rocket Fuel's reorganization plan, stating:

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Our top goal in 2017 is returning to growth. . . . We will do this by working side by side with the world's largest agencies and brands to leverage the value of our predictive marketing platform. We believe we can accelerate the traction in our platform solution business, which — at scale — should have lower costs of sales and service. We will continue plans to integrate our Moment Scoring technology into the top marketing platform OEMs to improve their predictive capabilities. Finally, we will continue partnering with some of the most influential system integrators to create robust solutions for their customers that integrate the very best offerings in the adtech/martech ecosystem.

**The Sale Process**

32. As a result of Rocket Fuel's desire to transition the Company further toward Platform Solutions, the Board decided to explore a sale of Media Services.

33. In December 2016 and January 2017, Needham contacted 69 potential strategic acquirers (not including Sizmek) and two private equity firms (not including Vector) concerning their interest in a possible acquisition of Media Services.

34. On December 2, 2016, defendant Wootton met with Vector, and Vector expressed interest in acquiring the Company. Defendant Wootton informed Vector that Rocket Fuel was currently pursuing its standalone strategy.

35. On January 9, 2017, Rocket Fuel announced its significant restructuring and its intent to continue to shift its strategic focus toward Platform Solutions.

36. On February 17, 2017, the Company received two indications of interest. A company referred to in the Recommendation Statement as "Party A" proposed to acquire Media Services for \$80 to \$85 million. Sizmek, as an affiliate of Vector, proposed to acquire all of Rocket Fuel for \$3.40 per share.

37. On February 21, 2017, a company referred to in the Recommendation Statement as "Party B" submitted an indication of interest to acquire a majority stake in Media Services. Party B's proposal ascribed an enterprise value of \$130 to \$150 million to Media Services in a multi-step transaction.

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38. From February through April 2017, Needham contacted 24 potential strategic acquirers (not including Sizmek) and 13 private equity firms (not including Vector) concerning their interest in a possible acquisition of the Company.

39. On March 30, 2017, Party A submitted a revised indication of interest to acquire Media Services for \$40 million. Party A also proposed making a \$40 million investment in Rocket Fuel following the sale of Media Services.

40. Throughout April 2017, Party B submitted multiple revised indications of interest to acquire Media Services for \$80 million at closing and up to \$60 million to be payable in the future.

41. On April 21, 2017, Rocket Fuel received two indications of interest from a private equity firm referred to in the Recommendation Statement as "Party C" and a company referred to in the Recommendation Statement as "Party D." Party C proposed to acquire all of Rocket Fuel for \$2.00 to \$2.25 per share, or in the alternative, to acquire Platform Solutions for \$65 million to \$75 million. Party D proposed to acquire Media Services with a \$100 million promissory note and making a \$50 million investment in the Company six months following the sale of Media Services.

42. On April 24, 2017, Sizmek submitted a revised indication of interest to acquire all of Rocket Fuel for \$4.00 to \$5.25 per share and requested an exclusivity period.

43. On April 28, 2017, Party C submitted a revised indication of interest to acquire the Company for \$4.60 to \$4.90 per share, but withdrew its proposal on May 18, 2017.

44. On June 2, 2017, Party B and Sizmek submitted further revised indications of interest. Party B proposed to acquire Media Services for \$80 million at closing and up to \$60 million to be payable in the future. Sizmek proposed to acquire all of the Company for \$3.50 to \$4.00 per share.

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45. On June 6, 2017, Sizmek and Rocket Fuel entered into an exclusivity agreement with the goal of Sizmek working toward a price of \$4.00 per share.

46. On June 27, 2017, Sizmek submitted a revised indication of interest to acquire the Company for \$2.50 per share and, at the end of the day, the exclusivity agreement expired.

47. Following negotiations, Sizmek agreed to a proposal of \$2.60 per share and Rocket Fuel would conduct a 30-day “go-shop.”

48. On July 17, 2017, Needham rendered its fairness opinion and the Board approved the Merger Agreement. Rocket Fuel and Sizmek subsequently executed the Merger Agreement.

**The Proposed Transaction is Inadequate**

49. On July 18, 2017, Rocket Fuel issued a press release announcing the Proposed Transaction, which stated, in relevant part:

REDWOOD CITY, Calif. -- Rocket Fuel (NASDAQ:FUEL), a predictive marketing platform, today announced that it has entered into a definitive agreement to be acquired by Sizmek Inc., the largest people-based creative optimization and data activation platform delivering impressions that inspire. Sizmek is an affiliate of Vector Capital.

Under the terms of the merger agreement with Sizmek, which has been unanimously approved by Rocket Fuel’s board of directors, an affiliate of Sizmek will commence a tender offer for all of the outstanding shares of Rocket Fuel’s common stock for \$2.60 per share in cash. This represents an enterprise value for Rocket Fuel of approximately \$145 million.

The proposed combination with Sizmek brings Rocket Fuel’s media optimization and industry leading AI-enabled decisioning to Sizmek’s omni-channel creative optimization and data activation platform, marking the next logical step in marketing automation. Combined, the two companies connect more than 20,000 advertisers and 3,600 agencies to audiences in over 70 countries around the globe, and service a client base comprised of an overwhelming majority of the world’s most recognized brands and agencies.

Under the terms of the merger agreement, Rocket Fuel has a go-shop right to solicit third party alternative acquisition proposals for the next 30 days.

Completion of the acquisition is subject to customary closing conditions, including a majority of the outstanding shares of Rocket Fuel's common stock having been tendered in the tender offer and clearance under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The parties expect the transaction to be completed in third quarter of 2017.

**Insiders' Interests in the Proposed Transaction**

50. Rocket Fuel and Sizmek insiders are the primary beneficiaries of the Proposed Transaction, not the Company's public stockholders. The Board and the Company's executive officers are conflicted because they will have secured unique benefits for themselves from the Proposed Transaction not available to Plaintiffs and the public stockholders of Rocket Fuel.

51. Rocket Fuel insiders stand to reap additional substantial financial benefits for securing the deal with Sizmek. For example, 25% of outstanding unvested Company options and restricted stock units ("RSUs") will become fully vested and converted into the right to receive cash payments. The following tables set forth the consideration the Company's executive officers stand to receive in connection with accelerated vesting of their unvested equity-based awards:

Name	<u>Number of Unvested Rocket Fuel Options</u>	<u>Value of Unvested Rocket Fuel Options (2)</u>
<b><i>Executive Officers</i></b>		
E. Randolph Wootton III**	230,000	\$ 66,700
Stephen Snyder	380,000	\$ 296,400
David Gosen	147,917	\$ 35,604
Richard Pittenger	62,500	\$ 18,125
Richard Song	0	\$ 0

Name	<u>Number of Outstanding Rocket Fuel RSUs</u>	<u>Value of Outstanding Rocket Fuel RSUs (1)</u>
<b><i>Executive Officers</i></b>		
E. Randolph Wootton III**	298,125(2)	\$ 775,125(2)
Stephen Snyder	0	\$ 0
David Gosen	0	\$ 0
Richard Pittenger	0	\$ 0
Richard Song	24,375	\$ 63,375

52. Moreover, if they are terminated in connection with the Proposed Transaction, Rocket Fuel’s named executive officers stand to receive substantial cash severance payments, as set forth in the following table:

<b>Name</b>	<b>Cash (\$)<sup>(1)</sup></b>	<b>Equity (\$)<sup>(2)</sup></b>	<b>Perquisites / Benefits (\$)<sup>(3)</sup></b>	<b>Total (\$)</b>
E. Randolph Wootton III	950,000	841,825	24,478	1,816,303
Richard Song	691,665	63,375	24,478	779,518
JoAnn Covington*	—	—	—	—
Richard Frankel	172,500	85,288	25,067	282,855
Rex Jackson*	—	—	—	—

53. In addition, Rocket Fuel’s Chief Financial Officer Stephen Snyder (“Snyder”) is eligible to receive an \$81,250 “retention bonus” subject to his continued employment, to be paid in two equal installments at the same time payments are made under Rocket Fuel’s corporate bonus program, which is currently expected to be paid in August 2017 and March 2018. Executives David Gosen (“Gosen”) and Richard Pittenger (“Pittenger”) are similarly expected to receive incremental incentive bonuses of £80,715 and \$150,000, respectively, in two installments equal to 25% and 75% of the total amount at the same time payments are made under Rocket Fuel’s corporate bonus program.

**The Recommendation Statement Contains Material Misstatements or Omissions**

54. The defendants filed a materially incomplete and misleading Recommendation Statement with the SEC and disseminated it to Rocket Fuel’s stockholders. The Recommendation Statement misrepresents or omits material information that is necessary for the Company’s stockholders to make an informed decision whether to tender their shares in connection with the Tender Offer or seek appraisal.

55. Specifically, as set forth below, the Recommendation Statement fails to provide Company stockholders with material information or provides them with materially misleading information concerning: (i) the data and inputs underlying the financial valuation analyses that

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support the fairness opinion provided by Needham; and (ii) Rocket Fuel insiders' potential conflicts of interest. Accordingly, Rocket Fuel stockholders are being asked to make a decision whether to tender their shares in connection with the Tender Offer or seek appraisal without all material information at their disposal.

***Material Omissions Concerning Needham's Financial Analyses***

56. The Recommendation Statement describes Needham's fairness opinion and the various valuation analyses performed in support of its opinion. However, the description of Needham's fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, Rocket Fuel's public stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Needham's fairness opinion in determining whether to vote in favor of the Proposed Transaction or seek appraisal. This omitted information, if disclosed, would significantly alter the total mix of information available to Rocket Fuel's stockholders.

57. With respect to Needham's *Discounted Cash Flow Analysis*, the Recommendation Statement fails to disclose: (i) the inputs and assumptions underlying the extremely wide discount rate range of 17.0% to 27.0%; (ii) the implied perpetuity growth rates resulting from the analysis; and (iii) Rocket Fuel's cash and debt, in each case as of June 30, 2017.

58. With respect to Needham's *Selected Companies Analysis*, the Recommendation Statement fails to disclose the individual multiples and financial metrics for the companies observed by Needham in the analysis. A fair summary of such an analysis requires the disclosure of the individual multiples for each company utilized or, at a minimum, the high, low, mean and median multiples. As Needham failed to select and apply multiples to the Proposed Transaction, the individual multiples are critical for Rocket Fuel stockholders to assess the Proposed Transaction.

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59. With respect to Needham's *Selected Transactions Analysis*, the Recommendation Statement fails to disclose the individual multiples and financial metrics for the transactions observed by Needham in the analysis. A fair summary of such an analysis requires the disclosure of the individual multiples for each transaction observed. As Needham failed to select and apply multiples to the Proposed Transaction, the individual multiples are critical for Rocket Fuel stockholders to assess the Proposed Transaction.

60. When a banker's endorsement of the fairness of a transaction is touted to stockholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

61. The omission of this information renders the statements in the "Opinion of Needham & Company, LLC" section of the Recommendation Statement false and/or materially misleading in contravention of the Exchange Act.

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

62. The Recommendation Statement also materially misleads stockholders as to the potential conflicts of interest faced by Rocket Fuel management and the Board.

63. Although the Recommendation Statement states that none of Rocket Fuel's executives have "reached an understanding on potential employment" or "entered into any definitive agreements or arrangements regarding employment" (Recommendation Statement at 21), the Recommendation Statement fails to disclose whether any of Sizmek's prior proposals or indications of interest mentioned management retention.

64. The Recommendation Statement also fails to disclose any information with respect to the negotiation of the \$81,250 retention bonus the Company agreed to pay Snyder and the incremental incentive bonuses of £80,715 and \$150,000 the Company agreed to pay Gosen and Pittenger, respectively.

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

66. The omission of this information renders the statements in the "Arrangements with Current Executive Officers and Directors of Rocket Fuel" and "Background and Reasons for the Rocket Fuel Board's Recommendation" sections of the Recommendation Statement false and/or materially misleading in contravention of the Exchange Act.

**CLAIMS FOR RELIEF**

**COUNT I**

**Class Claims Against All Defendants for  
Violations of Section 14(d) of the Exchange Act And SEC Rule 14d-9**

67. Plaintiffs repeat all previous allegations as if set forth in full.

68. Defendants have caused the Recommendation Statement to be issued with the intention of soliciting Rocket Fuel stockholders to tender their shares in the Tender Offer.

69. Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder require full and complete disclosure in connection with tender offers.

70. The Recommendation Statement violates Section 14(d)(4) and Rule 14d-9 because it omits material facts, including those set forth above, which omission renders the Recommendation Statement false and/or misleading.

71. Defendants knowingly or with deliberate recklessness omitted the material information identified above from the Recommendation Statement, causing certain statements therein to be materially incomplete and therefore misleading. Indeed, while defendants undoubtedly had access to and/or reviewed the omitted material information in connection with approving the Proposed Transaction, they allowed it to be omitted from the Recommendation Statement, rendering certain portions of the Recommendation Statement materially incomplete and therefore misleading.

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72. The misrepresentations and omissions in the Recommendation Statement are material to Plaintiffs and the Class, who will be deprived of their right to make an informed decision whether to tender their shares if such misrepresentations and omissions are not corrected prior to the expiration of the Tender Offer. Plaintiffs and Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiffs and the Class be fully protected from the immediate and irreparable injury that defendants' actions threaten to inflict.

**COUNT II**

**Class Claims Against All Defendants for  
Violations of Section 14(e) of the Exchange Act**

73. Plaintiffs repeat all previous allegations as if set forth in full.

74. Defendants violated Section 14(e) of the Exchange Act by issuing the Recommendation Statement in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engaged in deceptive or manipulative acts or practices, in connection with the Tender Offer.

75. Defendants knew that Plaintiffs would rely upon their statements in the Recommendation Statement in determining whether to tender their shares pursuant to the Tender Offer.

76. As a direct and proximate result of these defendants' unlawful course of conduct in violation of Section 14(e) of the Exchange Act, absent injunctive relief from the Court, Plaintiffs have sustained and will continue to sustain irreparable injury by being denied the opportunity to make an informed decision in deciding whether or not to tender their shares.

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**COUNT III**

**Class Claims Against the Individual Defendants for  
Violation of Section 20(a) of the Exchange Act**

77. Plaintiffs repeat all previous allegations as if set forth in full.

78. The Individual Defendants acted as controlling persons of Rocket Fuel within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers or directors of Rocket Fuel and participation in or awareness of the Company's operations or intimate knowledge of the false statements contained in the Recommendation Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiffs contend are false and misleading.

79. Each of the Individual Defendants was provided with or had unlimited access to copies of the Recommendation Statement and other statements alleged by Plaintiffs to be misleading prior to or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

80. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The Recommendation Statement at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of this document.

81. In addition, as the Recommendation Statement sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction. The Recommendation Statement purports to describe the various issues and information that they reviewed and considered — descriptions which had input from the Individual Defendants.

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

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

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment and preliminary and permanent relief, including injunctive relief, in their favor on behalf of Rocket Fuel, and against defendants, as follows:

- A. Ordering that this action may be maintained as a class action and certifying Plaintiffs as the Class representative and Plaintiffs' counsel as Class counsel;
- B. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;
- C. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiffs and the Class;
- D. Awarding Plaintiffs the costs of this action, including reasonable allowance for Plaintiffs' attorneys' and experts' fees; and
- E. Granting such other and further relief as this Court may deem just and proper.

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**JURY DEMAND**

Plaintiffs demand a trial by jury on all claims and issues so triable.

Dated: August 4, 2017

**WEISSLAW LLP**

Joel E. Elkins

By: /s/ Joel E. Elkins

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-and-

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*Attorneys for Plaintiffs and  
the Proposed Class*

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CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

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*Counsel for Plaintiff Adryan Haines*

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ADRYAN HAINES, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ROCKET FUEL INC., MONTE ZWEBEN,  
RANDY WOOTTON, RICHARD  
FRANKEL, SUSAN L. BOSTROM,  
RONALD E. F. CODD, WILLIAM  
ERICSON, CLARK KOKICH, and JOHN  
LEWIS,

Defendants.

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

- 1. VIOLATIONS OF THE  
SECURITIES EXCHANGE ACT  
OF 1934**

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Adryan Haines (“Plaintiff”), by his undersigned attorneys, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

**NATURE OF THE ACTION**

1. This action is brought as a class action by Plaintiff on behalf of himself and the other public holders of the common stock of Rocket Fuel Inc. (“Rocket Fuel” or the “Company”) against Rocket Fuel and the members of the Company’s board of directors (collectively, the “Board” or “Individual Defendants,” and, together with Rocket Fuel, the “Defendants”) for their violations of Sections 14(e), 14(d)(4), and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(e), 78n(d)(4), 78t(a), SEC Rule 14d-9, 17 C.F.R. 240.14d-9, and Regulation G, 17 C.F.R. § 244.100, in connection with the tender offer (“Tender Offer”) by Sizmek Inc. (“Sizmek”) to purchase all of the issued and outstanding shares of Rocket Fuel common stock for \$2.60 per share (the “Offer Price”).

2. On August 2, 2017, in order to convince Rocket Fuel stockholders to tender their shares, the Board authorized the filing of a materially incomplete and misleading Schedule 14D-9 Solicitation/Recommendation Statement (the “Recommendation Statement”) with the Securities and Exchange Commission (“SEC”). In particular, the Recommendation Statement contains materially incomplete and misleading information concerning Rocket Fuel’s financial projections and the valuation analyses performed by the Company’s financial advisor, Needham & Company, LLC (“Needham”).

3. The Tender Offer is scheduled to expire on August 29, 2017 (the “Expiration Date”). It is imperative that the material information that has been omitted from the Recommendation Statement is disclosed to the Company’s stockholders prior to the forthcoming Expiration Date so they can properly determine whether to tender their shares.

4. For these reasons, and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from closing the Tender Offer or taking any steps to consummate the proposed merger, unless and until the material information discussed below is disclosed to Rocket Fuel stockholders or, in the event the proposed merger is consummated, to recover damages resulting from the Defendants’ violations of the Exchange Act.

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**JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(e), 14(d)(4) and 20(a) of the Exchange Act.

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

7. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had an effect in this District; (ii) Rocket Fuel maintains its primary place of business in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including Defendants' primary participation in the wrongful acts detailed herein, occurred in this District; and (iv) Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

**PARTIES**

8. Plaintiff is, and at all relevant times has been, a stockholder of Rocket Fuel.

9. Defendant Rocket Fuel is a Delaware corporation and maintains its headquarters at 2000 Seaport Blvd., Suite 400, Redwood City, CA 94063. The Company operates two related businesses. The first, which is referred to as "Media Services," involves Rocket Fuel offering its Predictive Marketing Platform as a managed service that is operated on behalf of customers. The second, which is referred to as "Platform Solutions," is a technology solution that Rocket Fuel customers acquire and operate themselves, or acquire and utilize along with support services from Rocket Fuel. Rocket Fuel's common stock trades on the NASDAQ under the ticker symbol "FUEL".

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10. Individual Defendant Monte Zweben is a director of Rocket Fuel and is the Chairman of the Board.
  11. Individual Defendant Randy Wootton is a director of Rocket Fuel and is the Chief Executive Officer of the Company.
  12. Individual Defendant Richard Frankel is, and has been at all relevant times, a director of the Company.
  13. Individual Defendant Susan L. Bostrom is, and has been at all relevant times, a director of the Company.
  14. Individual Defendant Ronald E. F. Codd is, and has been at all relevant times, a director of the Company.
  15. Individual Defendant William Ericson is, and has been at all relevant times, a director of the Company.
  16. Individual Defendant Clark Kokich is, and has been at all relevant times, a director of the Company.
  17. Individual Defendant John Lewis is, and has been at all relevant times, a director of the Company.

**CLASS ACTION ALLEGATIONS**

18. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the other public stockholders of Rocket Fuel (the "Class"). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any Defendant.

19. This action is properly maintainable as a class action because:

a. The Class is so numerous that joinder of all members is impracticable. As of July 31, 2017, there were 46,993,632 shares of Rocket Fuel common stock outstanding, held by hundreds to thousands of individuals and entities scattered throughout the country. The actual number of public stockholders of Rocket Fuel will be ascertained through 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 merger in the Recommendation Statement, in violation of Sections 14(e) and 14(d)(4) 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 appropriate the relief sought herein with respect to the Class as a whole; and

g. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

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**SUBSTANTIVE ALLEGATIONS**

**I. Sizmek's Offer Price is Inadequate.**

20. Rocket Fuel, incorporated on March 25, 2008, is a technology company, which offers a Programmatic Marketing Platform that is designed for helping marketers and their agencies to connect with consumers through digital media. The Company's service offerings are organized around platforms, including Data Management Platform (DMP) and Demand Side Platform (DSP). DMP and DSP are used by customers themselves for integrating with other customer relationship management or marketing platforms, and together in various permutations as its Programmatic Marketing Platform. The integrated platform is designed to deliver and optimize media spend to engage, upsell, and retarget consumers across addressable channels, including display, mobile, video, social, and television, and across addressable devices, including tablets, personal computers, set top boxes, television, and mobile phones. The Company offers Programmatic Marketing Platform as a managed service, which it operates on behalf of its customers, and as a self-service platform operated by its customers or their agencies directly. Its Programmatic Marketing Platform uses a technology, Moment Scoring.

21. The Offer Price appears inadequate given Rocket Fuel's financial performance and growth prospects. In fact, at the time of the announcement of the proposed transaction, Rocket Fuel stock was trading at a premium to the Offer Price. That means instead of stockholders receiving a premium for their shares, as is customary in merger or takeover situations, Rocket Fuel stockholders would actually be offering their shares at a discount. "Takeunders" generally only occur when the target company is in severe financial distress; otherwise, the target company would simply reject the below market offer. <sup>1</sup> Since Rocket Fuel is not in severe financial distress, it does not follow logically that Rocket Fuel would accept an offer for less than their trading price.

22. Instead of focusing on maximizing stockholder value and obtaining the highest possible sale price for the Company, it appears that management and the Board were more concerned with the procession of the deal and their lucrative payouts that would result. The total cash-out compensation for the Company's directors and executive officers is a staggering \$35,634,805.00 <sup>2</sup>. That is equal to nearly 30% of the total deal value.

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<sup>1</sup> See <http://www.investopedia.com/terms/t/takeunder.asp>

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23. In sum, the Offer Price appears to inadequately compensate Rocket Fuel stockholders for their shares. Given the Company's strong financial results and growth potential, it appears that \$2.60 per share is not fair compensation for Rocket Fuel stockholders. It is therefore imperative that Rocket Fuel stockholders receive the material information that has been omitted from the Recommendation Statement, so that they can make a fully informed decision concerning whether to tender their shares.

## **II. The Merger Agreement's Deal Protection Provisions Deter Superior Offers.**

24. In addition to conducting an unreasonable sales process that resulted in an unfair Offer Price, the Individual Defendants agreed to certain deal protection provisions in the Merger Agreement that operate conjunctively to deter other suitors from submitting a superior offer for Rocket Fuel.

25. First, the Merger Agreement contains a no solicitation provision that prohibits the Company or the Individual Defendants from taking any affirmative action to obtain a better deal for Rocket Fuel stockholders. The Merger Agreement states that the Company and the Individual Defendants shall not:

(i) solicit, initiate, propose or induce or knowingly encourage, facilitate or assist any proposal that constitutes, or is reasonably expected to lead to, an Acquisition Proposal; (ii) furnish to any person (other than to Parent, Purchaser or any of their respective designees) any non-public information relating to the Company or any of its subsidiaries or afford to any person access to the business, properties, assets, books, records or other non-public information, or to any personnel, of the Company or any of its subsidiaries (other than Parent, Purchaser or any of their respective designees), in any such case in connection with any Acquisition Proposal or with the intent to induce the making, submission or announcement of, or to knowingly encourage, facilitate or assist an Acquisition Proposal or the making of any proposal that would reasonably be expected to lead to an Acquisition Proposal; (iii) participate, or engage in discussions or negotiations, with any person with respect to an Acquisition Proposal or with respect to any inquiries from third persons relating to the making of an

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<sup>2</sup> This amount includes the value of shares of common stock owned, vested and vesting options, restricted stock units, and severance payments.

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Acquisition Proposal; (iv) approve, endorse or recommend any proposal that constitutes, or is reasonably expected to lead to, an Acquisition Proposal; (v) enter into any letter of intent, memorandum of understanding, Merger Agreement, acquisition agreement or other contract relating to an Acquisition Transaction (as defined below), other than an acceptable confidentiality agreement; or (vi) authorize, resolve or commit to do any of the foregoing.

26. Additionally, the Merger Agreement grants Sizmek recurring and unlimited matching rights, which provides Sizmek with: (i) unfettered access to confidential, non-public information about competing proposals from third parties which it can use to prepare a matching bid; and (ii) four business days to negotiate with Rocket Fuel, amend the terms of the Merger Agreement, and make a counter-offer in the event a superior offer is received.

27. The non-solicitation and matching rights provisions essentially ensure that a superior bidder will not emerge, as any potential suitor will undoubtedly be deterred from expending the time, cost, and effort of making a superior proposal while knowing that Sizmek can easily foreclose a competing bid. As a result, these provisions unreasonably favor Sizmek, to the detriment of Rocket Fuel's public stockholders.

28. Further, the Merger Agreement provides that Rocket Fuel must pay Sizmek a termination fee of \$4.1 million in the event the Company elects to terminate the Merger Agreement to pursue a superior proposal. The termination fee provision further ensures that no competing offer will emerge, as any competing bidder would have to pay a naked premium for the right to provide Rocket Fuel stockholders with a superior offer.

29. Compounding matters, two stockholders of Rocket Fuel, MDV IX, L.P. and Martha M. Conway & Richard A. Frankel TR UA 03/13/09 Conway Frankel Family Trust, entered into a Tender and Support Agreement, which is referred to as the "Tender and Support Agreement," with Sizmek pursuant to which such stockholders agreed, among other things, to tender all shares of Common Stock held by them into the Offer. The shares of Common Stock subject to the Tender and Support Agreement represent approximately 24% of the outstanding shares of Common Stock. The Support Agreement in combination with the Company's officers' and directors' 24% ownership stake make it a near certainty that Tender Offer will consummate, and, therefore, is materially unfair to MRV stockholders generally.

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30. Ultimately, these preclusive deal protection provisions restrain the Company's ability to solicit or engage in negotiations with any third party regarding a proposal to acquire all or a significant interest in the Company.

31. Given that the preclusive deal protection provisions in the Merger Agreement impede a superior bidder from emerging, it is imperative that Rocket Fuel's stockholders receive all material information necessary for them to cast a fully informed vote at the stockholder meeting concerning the Proposed shares.

### **III. The Recommendation Statement Is Materially Incomplete and Misleading.**

32. On August 2, 2017, Defendants filed the Recommendation Statement with the SEC. The Recommendation Statement has been disseminated to the Company's stockholders, and solicits the Company's stockholders to tender their shares in the Tender Offer. The Individual Defendants were obligated to carefully review the Recommendation Statement before it was filed with the SEC and disseminated to the Company's stockholders to ensure that it did not contain any material misrepresentations or omissions. However, the Recommendation Statement misrepresents and/or omits material information that is necessary for the Company's stockholders to make an informed decision concerning whether to tender their shares, in violation of Sections 14(e), 14(d)(4), and 20(a) of the Exchange Act.

33. First, the Recommendation Statement fails to provide material information concerning the Company's financial projections. Specifically, the Recommendation Statement provides projections for non-GAAP (generally accepted accounting principles) metrics, including, among others, Adjusted EBITDA, but fails to provide line item projections for the metrics used to calculate these non-GAAP measures or otherwise reconcile the non-GAAP projections to the most comparable GAAP measures. The Recommendation Statement provides several iterations of various financial forecasts but only one non-GAAP reconciliation table for the "*Management Forecasts*". The Recommendation Statement is not consistent and fails to provide a Non-GAAP reconciliation for each set of projections, which include non-GAAP financial measures.

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34. When a company discloses non-GAAP financial measures in a Recommendation Statement, the Company must also disclose all projections and information necessary to make the non-GAAP measures not misleading, and must provide a reconciliation (by schedule or other clearly understandable method), of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP. 17 C.F.R. § 244.100.

35. Indeed, the SEC has recently increased its scrutiny of the use of non-GAAP financial measures in communications with stockholders. The former SEC Chairwoman, Mary Jo White, recently stated that the frequent use by publicly traded companies of unique, company-specific non-GAAP financial measures (as Rocket Fuel has included in the Recommendation Statement here), implicates the centerpiece of the SEC's disclosures regime:

In too many cases, the non-GAAP information, which is meant to supplement the GAAP information, has become the key message to investors, crowding out and effectively supplanting the GAAP presentation. Jim Schnurr, our Chief Accountant, Mark Kronforst, our Chief Accountant in the Division of Corporation Finance and I, along with other members of the staff, have spoken out frequently about our concerns to raise the awareness of boards, management and investors. And last month, the staff issued guidance addressing a number of troublesome practices *which can make non-GAAP disclosures misleading*: the lack of equal or greater prominence for GAAP measures; exclusion of normal, recurring cash operating expenses; individually tailored non-GAAP revenues; lack of consistency; cherry-picking; and the use of cash per share data. I strongly urge companies to carefully consider this guidance and revisit their approach to non-GAAP disclosures. I also urge again, as I did last December, that appropriate controls be considered and that audit committees carefully oversee their company's use of non-GAAP measures and disclosures.<sup>3</sup>

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<sup>3</sup> Mary Jo White, *Keynote Address, International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability* (June 27, 2016), <https://www.sec.gov/news/speech/chair-white-icgn-speech.html>.

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36. Recently, the SEC has repeatedly emphasized that disclosure of non-GAAP projections can be inherently misleading, and has therefore heightened its scrutiny of the use of such projections. <sup>4</sup> Indeed, on May 17, 2016, the SEC's Division of Corporation Finance released new and updated Compliance and Disclosure Interpretations ("C&DIs") on the use of non-GAAP financial measures that demonstrate the SEC's tightening policy. <sup>5</sup> One of the new C&DIs regarding forward-looking information, such as financial projections, explicitly requires companies to provide any reconciling metrics that are available without unreasonable efforts.

37. In order to make the projections included on pages 56-58 of the Recommendation Statement materially complete and not misleading, Defendants must provide a reconciliation table of the non-GAAP measures (such as Adjusted EBITDA) to the most comparable GAAP measures.

38. At the very least, the Company must disclose the line item projections for the financial metrics that were used to calculate the non-GAAP measure Adjusted EBITDA (i.e., operating loss plus: capital leases, restructuring costs, stock compensation, and depreciation and amortization). Such projections are necessary to make the non-GAAP Adjusted EBITDA projections included in the Recommendation Statement not misleading.

39. The Recommendation Statement also fails to disclose the unlevered free cash flow projections <sup>6</sup> for all financial projections prepared by management. Rocket Fuel discloses

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<sup>4</sup> See, e.g., Nicolas Grabar and Sandra Flow, *Non-GAAP Financial Measures: The SEC's Evolving Views*, Harvard Law School Forum on Corporate Governance and Financial Regulation (June 24, 2016), <https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-measures-the-secs-evolving-views/>; Gretchen Morgenson, *Fantasy Math Is Helping Companies Spin Losses Into Profits*, N.Y. Times, Apr. 22, 2016, [http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?\\_r=0](http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?_r=0).

<sup>5</sup> *Non-GAAP Financial Measures, Compliance & Disclosure Interpretations*, U.S. SECURITIES AND EXCHANGE COMMISSION (May 17, 2016), <https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm>.

<sup>6</sup> Unlevered free cash flows are used to determine a company's enterprise value. The unlevered free cash flow allows investors to ascertain the operating value of a company 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, unlevered free cash flows are routinely used to value a company, especially in merger contexts.

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the unlevered free cash flow projections for the “ *Management Forecasts* ”, but fails to do so for the other five sets of projections prepared by Management. Unlevered free cash flows are material to the Company’s stockholders. Indeed, investors are concerned, perhaps above all else, with the unlevered free cash flows of the companies in which they invest. Under sound corporate finance theory, the value of stock should be premised on the expected unlevered free cash flows of the corporation. Accordingly, the question that the Company’s stockholders need to assess in determining whether to vote in favor of the merger is clear – is the Merger Consideration fair compensation given the Rocket Fuel’s expected unlevered free cash flows? Without unlevered free cash flow projections, the Company’s stockholders will not be able to answer this question and assess the fairness of the Merger Consideration.

40. The omission of the above-referenced projections also renders the financial projections included on pages 56-58 of the Recommendation Statement materially incomplete and misleading. If a recommendation statement discloses financial projections and valuation information, such projections must be complete and accurate. The question here is not the duty to speak, but liability for not having spoken enough. With regard to future events, uncertain figures, and other so-called soft information, a company may choose silence or speech elaborated by the factual basis as then known—but it may not choose half-truths.

41. With respect to Needham’s *Discounted Cash Flow Analysis* , the Recommendation Statement fails to disclose the following key components used in the analysis: (i) the inputs and assumptions underlying the calculation of the discount rate range of 17.0% to 27.0%; (ii) the inputs and assumption underlying the selection of the illustrative multiples for the revenue multiple calculation; (iii) the inputs and assumption underlying the selection of the illustrative multiples for the EBITDA multiple calculation (iv) the estimated terminal values used for the revenue multiple calculation; (v) the estimated terminal values used for the EBITDA multiple calculation; and (vi) the cash and debt figures used to adjust the final ranges of the implied value.

42. These key inputs are material to Rocket Fuel stockholders, and their omission renders the summary of Needham’s Discounted Cash Flow Analysis incomplete and misleading. As a highly-respected professor explained in one of the most thorough law review articles

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regarding the fundamental flaws with the valuation analyses bankers perform in support of fairness opinions, in a discounted cash flow analysis a banker takes management's forecasts, and then makes several key choices "each of which can significantly affect the final valuation." Steven M. Davidoff, *Fairness Opinions*, 55 Am. U.L. Rev. 1557, 1576 (2006). Such choices include "the appropriate discount rate, and the terminal value..." *Id.* As Professor Davidoff explains:

There is substantial leeway to determine each of these, and any change can markedly affect the discounted cash flow value. For example, a change in the discount rate by one percent on a stream of cash flows in the billions of dollars can change the discounted cash flow value by tens if not hundreds of millions of 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 disclosure is made of the various inputs in the valuation process, the weight assigned for each, and the rationale underlying these choices. The substantial discretion and lack of guidelines and standards also makes the process vulnerable to manipulation to arrive at the "right" answer for fairness. This raises a further dilemma in light of the conflicted nature of the investment banks who often provide these opinions.

*Id.* at 1577-78.

43. With respect to Needham's *Present Value of Illustrative Projected Stock Prices Analyses*, the Recommendation Statement also fails to disclose the following key components used in the analysis: (i) the inputs and assumptions underlying the calculation of the discount rate of 22.8%%; (ii) the inputs and assumption underlying the selection of the illustrative multiples for the revenue multiple case; (iii) the inputs and assumption underlying the selection of the illustrative multiples for the EBITDA multiple case; and (iv) the net cash values at the end of the respective calendar years 2018, 2019 and 2020 used in the analyses. These key inputs are material to Rocket Fuel stockholders, and their omission renders the summary of Needham's Present Value of Illustrative Projected Stock Prices Analyses incomplete and misleading.

44. With respect to Needham's *Selected Companies* and *Selected Transactions* Analyses, the Recommendation Statement fails to disclose the individual multiples Needham

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calculated for each of the companies and transactions used. A fair summary of these analyses requires the disclosure of the individual multiples for each transaction utilized. Merely providing the range that a banker applied to render the Implied Value Per Share is insufficient, as stockholders are unable to assess whether the banker applied appropriate multiples, or, instead, applied unreasonably low multiples in order to drive down the implied valuation of the Company. The omission of the individual multiples renders the summary of this analysis set forth on pages 49-51 of the Recommendation Statement materially incomplete and misleading.

45. With respect to Needham's *Premiums Paid Analysis*, the Recommendation Statement fails to disclose the 19 individual premiums used to prepare the comparative analysis. A fair summary of this analysis requires the disclosure of the individual premiums for each transaction observed. Providing only the mean and median premiums is insufficient. This is especially true where, as here, the "premium" related to the Offer Price is actually a discount to the market price at the time of the transaction. The omission of the individual premiums renders the summary of this analysis set forth on page 53 of the Recommendation Statement materially incomplete and misleading.

46. In sum, the omission of the above-referenced information renders statements in the Recommendation Statement materially incomplete and misleading in contravention of the Exchange Act. Absent disclosure of the foregoing material information prior to the expiration of the Tender Offer, Plaintiff and the other members of the Class will be unable to make a fully-informed decision regarding whether to tender their shares, and they are thus threatened with irreparable harm, warranting the injunctive relief sought herein.

### **COUNT I**

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

47. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

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

49. SEC Regulation G has two requirements: (1) a general disclosure requirement; and (2) a reconciliation requirement. The general disclosure requirement prohibits “mak[ing] public a non-GAAP financial measure that, taken together with the information accompanying that measure, contains an untrue statement of a material fact or *omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure ... not misleading.*” 17 C.F.R. § 244.100(b). The reconciliation requirement requires an issuer that chooses to disclose a non-GAAP measure to provide a presentation of the “most directly comparable” GAAP measure, and a reconciliation “by schedule or other clearly understandable method” of the non-GAAP measure to the “most directly comparable” GAAP measure. 17 C.F.R. § 244.100(a). As set forth above, the Recommendation Statement omits information required by SEC Regulation G, 17 C.F.R. § 244.100.

50. Defendants have issued the Recommendation Statement with the intention of soliciting Rocket Fuel stockholders to tender their shares. Each of the Defendants reviewed and authorized the dissemination of the Recommendation Statement, which fails to provide material information regarding Rocket Fuel’s financial projections and the valuation analyses performed by Needham.

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

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52. The Individual Defendants were privy to and had knowledge of the projections for the Company and the details concerning Needham's valuation analyses. The Individual Defendants were reckless in choosing to omit material information from the Recommendation Statement, despite the fact that such information could have been disclosed without unreasonable efforts.

53. The misrepresentations and omissions in the Recommendation Statement are material to Plaintiff and the Class, who will be deprived of their right to make an informed decision regarding whether to tender their shares if such misrepresentations and omissions are not corrected prior to the Expiration Date. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

**COUNT II**

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

54. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

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

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

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

Information required in solicitation or recommendation. Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1 through 8 of Schedule 14D-9 (§ 240.14d-101) or a fair and adequate summary thereof.

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

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

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

59. Defendants knowingly or with deliberate recklessness omitted the material information identified above from the Recommendation Statement, causing certain statements therein to be materially incomplete and therefore misleading. Indeed, Defendants undoubtedly reviewed the omitted material information in connection with approving the proposed merger.

60. The misrepresentations and omissions in the Recommendation Statement are material to Plaintiff and the Class, who will be deprived of their right to make an informed decision regarding whether to tender their shares if such misrepresentations and omissions are not corrected prior to the Expiration Date. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

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**COUNT III**

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

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

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

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

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

65. In addition, as the Recommendation Statement sets forth, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the merger agreement. The Recommendation Statement purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

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

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

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

**RELIEF REQUESTED**

WHEREFORE, Plaintiff demands injunctive relief in his favor and in favor of the Class and against the Defendants jointly and severally, as follows:

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

B. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees and all persons acting under, in concert with, or for them, from proceeding with, consummating, or closing the Proposed Merger, unless and until Defendants disclose the material information identified above which has been omitted from the Recommendation Statement;

C. Rescinding, to the extent already implemented, the Merger Agreement or any of the terms thereof, or granting Plaintiff and the Class rescissory damages;

D. Directing the Defendants to account to Plaintiff and the Class for all damages suffered as a result of their wrongdoing;

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

F. Granting such other and further equitable relief as this Court may deem just and proper.

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**JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: August 7, 2017

**OF COUNSEL**

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*Counsel for Plaintiff*

Respectfully submitted,

*/s/ David E. Bower*

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*Attorneys for Plaintiff*

*[Additional counsel on signature page]*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

LOUIS SCARANTINO, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ROCKET FUEL INC., RANDY WOOTTON,  
MONTE ZWEBEN, RICHARD FRANKEL,  
SUSAN L. BOSTROM, RONALD E. F.  
CODD, WILLIAM ERICSON, CLARK  
KOKICH, JOHN LEWIS, SIZMEK INC.,  
FUEL ACQUISITION CO., and VECTOR  
CAPITAL,

Defendants.

Case No. \_\_\_\_\_

CLASS ACTION

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

JURY TRIAL DEMANDED

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

Plaintiff, by his undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

**NATURE OF THE ACTION**

1. This action stems from a proposed transaction announced on July 18, 2017 (the "Proposed Transaction"), pursuant to which Rocket Fuel Inc. ("Rocket Fuel" or the "Company") will be acquired by affiliates of Vector Capital.

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2. On July 17, 2017, Rocket Fuel's Board of Directors (the "Board" or "Individual Defendants") caused the Company to enter into an agreement and plan of merger (the "Merger Agreement") with Sizmek Inc. ("Parent") and Fuel Acquisition Co. ("Merger Sub," and together with Parent and Vector Capital, the "Buyers"). Pursuant to the terms of the Merger Agreement, shareholders of Rocket Fuel will receive \$2.60 in cash for each share of Rocket Fuel common stock.

3. On August 2, 2017, defendants filed a Solicitation/Recommendation Statement (the "Solicitation Statement") with the United States Securities and Exchange Commission ("SEC") in connection with the Proposed Transaction.

4. The Solicitation Statement omits material information with respect to the Proposed Transaction, which renders the Solicitation Statement false and misleading. Accordingly, plaintiff alleges herein that defendants violated Sections 14(e), 14(d), and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act") in connection with the Solicitation Statement.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over all claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(e), 14(d), and 20(a) of the 1934 Act and Rule 14a-9.

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

7. Venue is proper under 28 U.S.C. § 1391 because a substantial portion of the transactions and wrongs complained of herein occurred in this District.

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**PARTIES**

8. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of Rocket Fuel common stock.

9. Defendant Rocket Fuel is a Delaware corporation and maintains its principal executive offices at 1900 Seaport Boulevard, Redwood City, CA 94063. Rocket Fuel's common stock is traded on the NasdaqGS under the ticker symbol "FUEL."

10. Defendant Randy Wootton ("Wootton") is a director of Rocket Fuel and has served as Chief Executive Officer ("CEO") since November 2015.

11. Defendant Monte Zweben ("Zweben") has served as a director of Rocket Fuel since March 2010 and as Chairman of the Board since March 2016.

12. Defendant Richard Frankel ("Frankel") has served as a director of Rocket Fuel since March of 2008 and is a co-founder of Rocket Fuel.

13. Defendant Susan L. Bostrom ("Bostrom") has served as a director of Rocket Fuel since February 2013.

14. Defendant Ronald E. F. Codd ("Codd") has served as a director of Rocket Fuel since February 2012.

15. Defendant William Ericson ("Ericson") has served as a director of Rocket Fuel since May 2008.

16. Defendant Clark Kokich ("Kokich") has served as a director of Rocket Fuel since April 2011.

17. Defendant John Lewis ("Lewis") has served as a director of Rocket Fuel since January 2016.

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18. The defendants identified in paragraphs 10 through 17 are collectively referred to herein as the “Individual Defendants.”

19. Defendant Parent is a party to the Merger Agreement.

20. Defendant Merger Sub is a wholly-owned subsidiary of the Parent and a party to the Merger Agreement.

21. Defendant Vector Capital is an affiliate of Parent and Merger Sub.

**CLASS ACTION ALLEGATIONS**

22. Plaintiff brings this action as a class action on behalf of himself and the other public stockholders of Rocket Fuel (the “Class”). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

23. This action is properly maintainable as a class action.

24. The Class is so numerous that joinder of all members is impracticable. As of July 14, 2017, there were approximately 46,969,168 shares of Rocket Fuel common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

25. Questions of law and fact are common to the Class, including, among others, whether defendants will irreparably harm plaintiff and the other members of the Class if defendants’ conduct complained of herein continues.

26. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff’s claims are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

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27. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

28. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

### **SUBSTANTIVE ALLEGATIONS**

#### ***Background of the Company and the Proposed Transaction***

29. Rocket Fuel is a predictive marketing software company that uses artificial intelligence to empower agencies and marketers to anticipate people's need for products and services.

30. Rocket Fuel was founded in March 2008 with a vision of transforming the digital advertising industry through big data and artificial intelligence.

31. With Moment Scoring™, the Company continues to define the next wave of data-driven marketing by optimizing programmatic marketing decisions across channels, devices, and objectives for agencies and marketers.

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32. On May 9, 2017, the Company issued a press release wherein it reported its financial results for the first quarter ended March 31, 2017. The Company reported that Platform Solutions revenue grew significantly year-on-year, representing 29% of total revenue in the first quarter versus 16% in last year's first quarter. Media Services revenue represented 71% and 84% of total revenue in the first quarter 2017 and the first quarter 2016, respectively. With respect to the results, Individual Defendant Wootton commented:

Rocket Fuel's first quarter was highlighted by 70% year over year spend growth in Platform Solutions. Our Platform business represented a record 32% of the quarter's total spend, evidence of the progress we are making transitioning Rocket Fuel towards a platform-oriented software model. While we expect our Media Services business to continue to contract in the near term, we are encouraged by the growth in both adoption, and spend, from our platform services business[.]

Additionally, Stephen Snyder, Chief Financial Officer of the Company, commented:

We believe total spend is a valuable new metric for investors as we transform to selling both technology and services versus selling solely a managed service[.] Our sharp focus on expenses and operational efficiency enabled us to deliver first quarter adjusted EBITDA results that were at the high end of our guidance range and flat with last year, despite a 7% decline in spend year over year. We believe we are making the right long-term decisions that will position Rocket Fuel for profitable growth over time.

33. On July 17, 2017, the Board caused the Company to enter into the Merger Agreement, pursuant to which the Company will be acquired by the Buyers.

34. To the detriment of the Company's stockholders, the terms of the Merger Agreement substantially favor the Buyers and are calculated to unreasonably dissuade potential suitors from making competing offers.

35. For example, the Individual Defendants have all but ensured that another entity will not emerge with a competing proposal by agreeing to a "no solicitation" provision in the Merger Agreement that prohibits the Individual Defendants from soliciting alternative proposals and severely constrains their ability to communicate and negotiate with potential buyers who wish to submit or have submitted unsolicited alternative proposals.

36. Further, the Company must promptly advise the Buyers of any proposals or inquiries received from other parties.

37. Moreover, the Merger Agreement contains a highly restrictive "fiduciary out" provision permitting the Board to change its recommendation of the Proposed Transaction under extremely limited circumstances, and grants the Buyers a "matching right" with respect to any "Superior Proposal" made to the Company.

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38. Further locking up control of the Company in favor of the Buyers, the Merger Agreement provides for a “termination fee” of \$4.1 million payable by the Company to the Buyers if the Individual Defendants cause the Company to terminate the Merger Agreement.

39. By agreeing to all of the deal protection devices, the Individual Defendants have locked up the Proposed Transaction and have precluded other bidders from making successful competing offers for the Company.

40. The consideration to be provided to plaintiff and the Class in the Proposed Transaction is inadequate because, among other things, the intrinsic value of the Company is materially in excess of the amount offered in the Proposed Transaction.

41. Furthermore, the Proposed Transaction consideration fails to adequately compensate the Company’s stockholders for the significant synergies created by the merger.

42. Accordingly, the Proposed Transaction will deny Class members their right to share proportionately and equitably in the true value of the Company’s valuable and profitable business, and future growth in profits and earnings.

***The Solicitation Statement Omits Material Information, Rendering It False and Misleading***

43. Defendants filed the Solicitation Statement with the SEC in connection with the Proposed Transaction.

44. The Solicitation Statement omits material information with respect to the Proposed Transaction, which renders the Solicitation Statement false and misleading.

45. First, the Solicitation Statement omits material information regarding the Company’s financial projections and the analyses performed by the Company’s financial advisor, Needham & Company LLC (“Needham”).

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46. With respect to Rocket Fuel's financial projections, the Solicitation Statement fails to disclose projected free cash flow for each set of Company forecasts.

47. With respect to Needham's *Discounted Cash Flow Analysis*, the Solicitation Statement fails to disclose: (i) the inputs and assumptions underlying the discount rate range of 17.0% to 27.0%; (ii) Rocket Fuel's cash and debt; and (iii) the calculated terminal values.

48. With respect to Needham's *Selected Companies Analysis*, the Solicitation Statement fails to disclose the individual multiples and financial metrics for the companies observed by Needham in the analysis.

49. With respect to Needham's *Selected Transactions Analysis*, the Solicitation Statement fails to disclose the individual multiples and financial metrics for the transactions observed by Needham in the analysis.

50. With respect to Needham's *Premiums Paid Analysis*, the Solicitation Statement fails to disclose the transactions observed by Needham and the premiums paid in such transactions.

51. When a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed. Moreover, the disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion.

52. The omission of this material information renders the Solicitation Statement false and misleading, including, *inter alia*, the following section of the Solicitation Statement: "The Solicitation or Recommendation."

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53. Second, the Solicitation Statement omits material information regarding potential conflicts of interest of the Company's officers and directors.

54. For example, the Solicitation Statement fails to disclose when the Buyers first expressed interest in retaining Rocket Fuel's offices and/or directors following the close of the merger.

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

56. The omission of this material information renders the Solicitation Statement false and misleading, including, *inter alia*, the following section of the Solicitation Statement: "The Solicitation or Recommendation."

57. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to Rocket Fuel's stockholders.

**COUNT I**

**(Claim for Violation of Section 14(e) of the 1934 Act Against Defendants)**

58. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

59. Section 14(e) of the 1934 Act states, in relevant part, that:

It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading . . . in connection with any tender offer or request or invitation for tenders[.]

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60. Defendants disseminated the misleading Solicitation Statement, which contained statements that, in violation of Section 14(e) of the 1934 Act, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not misleading.

61. The Solicitation Statement was prepared, reviewed, and/or disseminated by defendants.

62. The Solicitation Statement misrepresented and/or omitted material facts in connection with the Proposed Transaction as set forth above.

63. By virtue of their positions within the Company and/or roles in the process and the preparation of the Solicitation Statement, defendants were aware of this information and their duty to disclose this information in the Solicitation Statement.

64. The omissions in the Solicitation Statement are material in that a reasonable shareholder will consider them important in deciding whether to tender their shares in connection with the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available.

65. Defendants knowingly or with deliberate recklessness omitted the material information identified above in the Solicitation Statement, causing statements therein to be materially incomplete and misleading.

66. By reason of the foregoing, defendants violated Section 14(e) of the 1934 Act.

67. Because of the false and misleading statements in the Solicitation Statement, plaintiff and the Class are threatened with irreparable harm.

68. Plaintiff and the Class have no adequate remedy at law.

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**COUNT II**

**(Claim for Violation of 14(d) of the 1934 Act Against Defendants)**

69. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

70. Section 14(d)(4) of the 1934 Act states:

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

71. Rule 14d-9(d) states, in relevant part:

Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1 through 8 of Schedule 14D-9 (§ 240.14d-101) or a fair and adequate summary thereof[.]

Item 8 requires that directors must “furnish such additional information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.”

72. The Solicitation Statement violates Section 14(d)(4) and Rule 14d-9 because it omits the material facts set forth above, which renders the Solicitation Statement false and/or misleading.

73. Defendants knowingly or with deliberate recklessness omitted the material information set forth above, causing statements therein to be materially incomplete and misleading.

74. The omissions in the Solicitation Statement are material to plaintiff and the Class, and they will be deprived of their entitlement to make a fully informed decision with respect to the Proposed Transaction if such misrepresentations and omissions are not corrected prior to the expiration of the tender offer.

75. Plaintiff and the Class have no adequate remedy at law.

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**COUNT III**

**(Claim for Violation of Section 20(a) of the 1934 Act Against the Individual Defendants and the Buyers)**

76. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

77. The Individual Defendants and the Buyers acted as controlling persons of Rocket Fuel within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as officers and/or directors of Rocket Fuel and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Solicitation Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that plaintiff contends are false and misleading.

78. Each of the Individual Defendants and the Buyers was provided with or had unlimited access to copies of the Solicitation Statement alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

79. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Solicitation Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly connected with and involved in the making of the Solicitation Statement.

80. The Buyers also had direct supervisory control over the composition of the Solicitation Statement and the information disclosed therein, as well as the information that was omitted and/or misrepresented in the Solicitation Statement.

81. By virtue of the foregoing, the Individual Defendants and the Buyers violated Section 20(a) of the 1934 Act.

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82. As set forth above, the Individual Defendants and the Buyers had the ability to exercise control over and did control a person or persons who have each violated Section 14(e) of the 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the 1934 Act.

83. As a direct and proximate result of defendants' conduct, plaintiff and the Class are threatened with irreparable harm.

84. Plaintiff and the Class have no adequate remedy at law.

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff prays for judgment and relief as follows:

A. Enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages;

C. Directing the Individual Defendants to file a Solicitation Statement that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;

D. Declaring that defendants violated Sections 14(e), 14(d), and 20(a) of the 1934 Act, as well as Rule 14a-9 promulgated thereunder;

E. Awarding plaintiff the costs of this action, including reasonable allowance for plaintiff's attorneys' and experts' fees; and

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

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**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Dated: August 7, 2017

**WEISSLAW LLP**

By: /s/ Joel E. Elkins

Joel E. Elkins  
9107 Wilshire Blvd., Suite 450  
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*Attorneys for Plaintiff*

**OF COUNSEL:**

**RIGRODSKY & LONG, P.A.**

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2 Righter Parkway, Suite 120  
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**CERTIFICATION OF PLAINTIFF**

I, Louis Scarantino ("Plaintiff"), hereby declare as to the claims asserted under the federal securities laws that:

1. Plaintiff has reviewed the complaint and authorizes its filing.
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 any private action.

3. Plaintiff is willing to serve as a representative party on behalf of the class, either individually or as part of a group, and I will testify at deposition or trial, if necessary. I understand that this is not a claim form and that I do not need to execute this Certification to share in any recovery as a member of the class.

4. Plaintiff's purchase and sale transactions in the Rocket Fuel Inc. (NasdaqGS: FUEL) security that is the subject of this action during the class period is/are as follows:

<b>PURCHASES</b>			<b>SALES</b>		
<u>Buy Date</u>	<u>Shares</u>	<u>Price per Share</u>	<u>Sell Date</u>	<u>Shares</u>	<u>Price per Share</u>
2/6/17	75	\$2.34			

*Please list additional transactions on separate sheet of paper, if necessary.*

5. Plaintiff has complete authority to bring a suit to recover for investment losses on behalf of purchasers of the subject securities described herein (including Plaintiff, any co-owners, any corporations or other entities, and/or any beneficial owners).



**BRODSKY & SMITH, LLC**  
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*Attorneys for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DAMIN WEN, Individually and on behalf of all others similarly situated,

Case No.:

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

Plaintiff,

**JURY TRIAL DEMANDED**

vs.

ROCKET FUEL INC., E. RANDOLPH WOOTTON III, MONTE ZWEBEN,  
RICHARD A. FRANKEL, SUSAN L. BOSTROM, RONALD E. F. CODD,  
WILLIAM W. ERICSON, CLARK M. KOKICH and JOHN L. LEWIS,

Defendants.

**CLASS ACTION COMPLAINT**

Plaintiff Damir Wen (“Plaintiff”), by and through his attorneys, alleges upon personal knowledge as to himself, and upon information and belief based upon, among other things, the investigation of counsel as to all other allegations herein, as follows:

**SUMMARY OF THE ACTION**

1. This action stems from a proposed transaction announced on July 18, 2017 (the “Proposed Transaction”), pursuant to which Rocket Fuel Inc. (“Rocket Fuel” or the “Company”) will be acquired by Simzek Inc. (“Simzek”), an affiliate of Vector Capital IV, L.P., and Vector Capital V, L.P. (collectively, “Vector”), and Simzek’s wholly owned subsidiary Fuel Acquisition Co. (“Purchaser”).

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2. On July 18, 2017, Rocket Fuel's Board of Directors (the "Board" or "Individual Defendants") caused the Company to enter into an agreement and plan of merger (the "Merger Agreement"). Pursuant to the terms of the Merger Agreement, on August 2, 2017 Simzek will commence a Tender Offer to acquire all of the outstanding shares of Rocket Fuel for \$2.60 in cash (the "Offer Price"), in a transaction that is valued at approximately \$145 million. The Tender Offer is scheduled to expire at 12:00 midnight, New York City time, at the end of August 29, 2017.

3. On August 2, 2017, Rocket Fuel filed a Solicitation/Recommendation Statement on Schedule 14D-9 with the United States Securities and Exchange Commission ("SEC") in connection with the Proposed Transaction (the "Recommendation Statement" or "14D-9"). The 14D-9, which recommends that Rocket Fuel stockholders tender their shares in favor of the Proposed Transaction, omits or misrepresents material information concerning, among other things, (i) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by the Company's financial advisor, Needham & Company, LLC ("Needham"), and (ii) Rocket Fuel insiders' potential conflicts of interest.

4. The Recommendation Statement's failure to adequately disclose material information renders it false and misleading. Accordingly, Plaintiff alleges herein that Defendants <sup>1</sup> violated Sections 14(d), 14(e) and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act") in connection with the Recommendation Statement as Rocket Fuel stockholders need a full and accurate disclosure of all material information in order to make a fully informed decision whether to tender their shares in support of the Proposed Transaction or seek appraisal.

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<sup>1</sup> The Individual Defendants together with Rocket Fuel are collectively referred to herein as, "Defendants."

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5. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin the expiration of the Tender Offer until such time that Rocket Fuel remedies its breaches of fiduciary duty and discloses all material information necessary to allow stockholders to make an informed decision with respect to their shares.

**JURISDICTION AND VENUE**

6. Jurisdiction is founded upon federal question jurisdiction, pursuant to §27 of the Exchange Act, as amended, 15 U.S.C. §78aa, and 28 U.S.C. § 1331.

7. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Defendants systematically conducted business on a regular basis in this District and/or reside in this District and the wrongful conduct complained of herein occurred in this District.

**PARTIES**

8. Plaintiff is, and at all relevant times was, a continuous stockholder of Rocket Fuel.

9. Defendant Rocket Fuel is a Delaware corporation and maintains its principal executive offices at 2000 Seaport Blvd., Ste. 400, Pacific Shores Center, Redwood City, CA 94063. Rocket Fuel's common stock is traded on the Nasdaq under the ticker symbol "FUEL."

10. Defendant E. Randolph Wootton III ("Wootton") has served as a director of Rocket Fuel, and has served as the Company's Chief Executive Officer ("CEO") since 2015.

11. Defendant Monte Zweben ("Zweben") has served as the Chairman of Rocket Fuel's Board since February 2016, and previously served as Executive Chairman of the Board from November 2015 to March 2016, and as interim CEO of the Company from March 2015 to November 2015. Zweben has served as a director of the Company since 2010.

12. Defendant Rochard A. Frankel ("Frankel"), a Rocket Fuel co-founder, has served as a director of the Company since 2008. Frankel previously served as Executive Vice President of the Company from October 2015 to July 2016, as President of the Company from May 2008 to February 2009.

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13. Defendant Susan L. Bostrom (“Bostrom”) has served as a director of Rocket Fuel since February 2013.
  14. Defendant Ronald E. F. Codd (“Codd”) has served as a director of Rocket Fuel 2012.
  15. Defendant William W. Ericson (“Ericson”) has served as a director of Rocket Fuel since 2008.
  16. Defendant Clark M. Kokich (“Kokich”) has served as a director of Rocket Fuel since 2011.
  17. Defendant John J. Lewis (“Lewis”) has served as a director of Rocket Fuel since 2016.
  18. The defendants identified in paragraphs 10 through 17 are collectively referred to herein as the “Board” or the “Individual Defendants.”

**CLASS ACTION ALLEGATIONS**

19. Plaintiff brings this action on his own behalf and as a class action pursuant to Fed. R. Civ. P. 23 on behalf of all holders of Rocket Fuel common stock who are being and will be harmed by Defendants’ actions described below (“Class”). Excluded from the Class are Defendants herein and any person, firm, trust, corporation or other entity related to or affiliated with any of the Defendants.

20. This action is properly maintainable as a class action because:

- a. The Class is so numerous that joinder of all members is impracticable. As of July 31, 2017, there were over 46 million shares of Rocket Fuel common stock issued and outstanding. The actual number of public shareholders of Rocket Fuel will be ascertained through discovery.

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b. There are questions of law and fact that are common to the Class, including:

- i) whether Defendants have misrepresented or omitted material information concerning the Proposed Transaction in the 14D-9 in violation of the Exchange Act;
- ii) whether the Individual Defendants have violated Section 20(a) of the Exchange Act;
- iii) whether the Individual Defendants have violated Section 14(d)(4) of the Exchange Act and Rule 14D-9 promulgated thereunder;
- iv) whether the Individual Defendants have violated Section 14(e) of the Exchange Act; and
- v) whether Plaintiff and the other members of the Class would suffer irreparable injury were the Proposed Transaction complained of herein consummated.

c. Plaintiff is an adequate representative of the Class, and 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 appropriate the relief sought herein with respect to the Class as a whole.

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**SUBSTANTIVE ALLEGATIONS**

**A. Background**

21. Rocket Fuel is a predictive marketing software company that uses artificial intelligence to empower agencies and marketers to anticipate people's need for products and services. Rocket Fuel was founded in March 2008 with a vision of transforming the digital advertising industry through big data and artificial intelligence.

22. According to Zacks Investment Research, "Rocket Fuel Inc. is a leading provider of artificial intelligence advertising solutions for digital marketers. They deliver a leading programmatic media-buying platform at Big Data scale that harnesses the power of artificial intelligence to improve marketing ROI in digital media across web, mobile, video, and social channels. Rocket Fuel powers digital advertising and marketing programs globally for customers in North America, Europe, and Japan. Customers trust Rocket Fuel's Advertising That Learns platform to achieve brand and direct-response objectives in diverse industries from luxury cars to groceries to retail."

23. The Company's service offerings are organized around platforms, including Data Management Platform (DMP) and Demand Side Platform (DSP), which are used by customers themselves or integrating with other customer relationship management or marketing platforms, and together in various permutations as its Programmatic Marketing Platform. The integrated platform is designed to deliver and optimize media spend to engage, upsell and retarget consumers across addressable channels, including display, mobile and video, and across addressable devices, such as tablets, set top boxes, television and mobile phones (the "Media Services" segment). Rocket Fuel also offers Programmatic Marketing Platform as a managed service, which it operates on behalf of its customers, and as a self-service platform operated by its customers or their agencies directly (the "Platform Solutions" segment). Media Services and Platform Solutions are Rocket Fuel's two main businesses.

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24. On Feb 21, 2017, Rocket Fuel issued a press release wherein it reported its financial results for its fourth quarter and full fiscal year ended December 31, 2016. “2016 was a transformational year for Rocket Fuel. We sharpened our strategy to become the industry-leading predictive marketing platform, and reorganized the company to support our continued transformation into a SaaS company, selling both technology and services. We are excited to report that in the fourth quarter, we grew our revenue from platform solutions by 97% year over year,” stated defendant Wootton. “Our fourth quarter and 2016 results demonstrate our continued ability to execute against our strategic priorities and deliver predictable financial results. As evidence, our non-GAAP net revenue came in at the high end of our guidance range, our Adjusted EBITDA was well above our guidance range and we delivered on our commitment to be free cash flow positive in Q4 and for the full year. We believe that we have taken the right steps to strengthen the company and stay on the leading edge of innovation in ad tech,” concluded Wootton.

25. With respect to the results, Needham commented:

Rocket Fuel reported better than expected 4Q16. Platform Solutions is gaining traction with its largest customers, which we expect to continue in 2017. While we believe the company should return to growth on a gross revenue basis as Media Services growth adds to the rapidly growing Platform Solutions, a shift toward fixed margin should push FY17 net revenue lower y/y. The lower media margin, increasing mix of lower-margin Platform revenue, and seasonal weakness pushed 1Q17 revenue guidance below expectations. We believe the lower net revenue also pushed Q1 EBITDA guidance below expectations. While continued cost cutting efforts should translate into positive EBITDA and free cash flow, we estimate lower profitability y/y due to the lower media margin and increasing mix of lower margin Platform revenue.

26. On May 9, 2017, Rocket Fuel issued a press release wherein it reported its financial results for the first quarter ended March 31, 2017. “Rocket Fuel’s first quarter was highlighted by 70% year over year spend growth in Platform Solutions. Our Platform business represented a

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record 32% of the quarter's total spend, evidence of the progress we are making transitioning Rocket Fuel towards a platform-oriented software model. While we expect our Media Services business to continue to contract in the near term, we are encouraged by the growth in both adoption, and spend, from our platform services business," commented defendant Wootton.

27. "We believe total spend is a valuable new metric for investors as we transform to selling both technology and services versus selling solely a managed service. Our sharp focus on expenses and operational efficiency enabled us to deliver first quarter adjusted EBITDA results that were at the high end of our guidance range and flat with last year, despite a 7% decline in spend year over year. We believe we are making the right long-term decisions that will position Rocket Fuel for profitable growth over time," added Stephen Snyder, Chief Financial Officer.

28. Four equities research analysts have issued twelve-month price targets for Rocket Fuel's stock. Their predictions range from \$2.20 to \$4.75. On average, they anticipate Rocket Fuel's share price to reach \$3.48 in the next twelve months.

**B. The Sales Process**

29. On January 9, 2017, the Company issued a press release announcing a restructuring shift towards its Platform Solutions business in order to accelerate the Company's transformation into a leading software-as-a-service (SaaS") market. As a result of this desired transition, the Board decided to explore a sale of the Company's Media Services.

30. Following the Company's retention of Needham to assist in this endeavor, between December 2016 and January 2017, Needham contacted 69 potential strategic acquirors (not including Sizmek) and two private equity firms (not including Vector) concerning their interest in FUEL's Media Services. Though not initially contacted, Vector quickly made known its interest in acquiring the Company in the entirety. On December 2, 2016, Defendant Wootton met with Vector to discuss this interest. In this meeting, Wootton advised Vector that Rocket Fuel was, presently, committed to pursuing the Company's standalone strategy.

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31. Undeterred, on February 17, 2017 Sizmek, a Vector affiliate, submitted an indication of interest (IOI) to acquire all of Rocket Fuel for \$3.40/share. The Company also received a second IOI, from Party A, which proposed to acquire the FUEL's Media Services for \$80 to \$85 MM. Days later, on February 21, 2017, Party B submitted an IOI to acquire a majority stake in FUEL's Media Services for an enterprise value of \$130 to \$150 MM.

32. Following the Sizmek IOI for the acquisition of the Company, Needham contact 24 other potential strategic acquirors and 13 private equity firms (not including Vector) concerning their potential interest in an acquisition of the Company. Between March 2017 and April 2017, the Company received a revised IOI from Party A to acquire the Company's Media Services for \$40 MM, in addition to a proposed \$40 MM investment in Rocket Fuel following the sale of Media Services; an IOI (revised multiple times) by Party B to acquire Media Service for \$80 MM at closing, and up to \$60 MM payable in the future; an IOI from Party D to acquire Media Services with a \$100 MM promissory note, plus \$50 MM investment in the Company within 6 months following the sale of Media Services; and an IOI from Party C to acquire Platform Solutions for between \$65 and \$75 MM. Party C also proposed to acquire all of Rocket Fuel for between \$2 and \$2.25/share<sup>2</sup>, and on April 24, 2017, Sizmek submitted a revised IOI to acquire Rocket Fuel for \$4 to \$5.25/share.

33. On June 2, 2017, Party B and submitted further revised IOI's. Party B proposed to acquire Media Services for \$80 MM at closing and up to \$60 MM payable in the future; and Sizmek proposed to acquire Rocket Fuel for \$3.50 to \$4/share. Enticed by Sizmek's most recent IOI, on June 6, 2017, Rocket Fuel and Sizmek, entered into an exclusivity agreement with the goal

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<sup>2</sup> On April 28, 2017, Party C submitted a revised IOI to acquire the Company for \$4.60 to \$4.90, but withdrew its proposal on May 18, 2017. of Sizmek working towards a price of \$4/share.

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34. This goal was not met. On June 27<sup>th</sup>, the day that the exclusivity agreement expires, Sizmek submitted a revised IOI to acquire Rocket Fuel for \$2.50/share. Negotiations ensued and Sizmek upped the offer to \$2.60/share accompanied by a 30-day “go-shop” period for the Company.

35. On July 17, 2017, Needham rendered its fairness opinion, the Board approved the Proposed Transaction with Simzek, and the parties executed the Merger Agreement the next day.

**C. The Proposed Transaction**

36. On Jul 18, 2017, Rocket Fuel issued a press release announcing the Proposed Transaction:

REDWOOD CITY, Calif.—(BUSINESS WIRE)— Rocket Fuel (NASDAQ:FUEL), a predictive marketing platform, today announced that it has entered into a definitive agreement to be acquired by Sizmek Inc., the largest people-based creative optimization and data activation platform delivering impressions that inspire. Sizmek is an affiliate of Vector Capital.

Under the terms of the merger agreement with Sizmek, which has been unanimously approved by Rocket Fuel’s board of directors, an affiliate of Sizmek will commence a tender offer for all of the outstanding shares of Rocket Fuel’s common stock for \$2.60 per share in cash. This represents an enterprise value for Rocket Fuel of approximately \$145 million.

The proposed combination with Sizmek brings Rocket Fuel’s media optimization and industry leading AI-enabled decisioning to Sizmek’s omni-channel creative optimization and data activation platform, marking the next logical step in marketing automation. Combined, the two companies connect more than 20,000 advertisers and 3,600 agencies to audiences in over 70 countries around the globe, and service a client base comprised of an overwhelming majority of the world’s most recognized brands and agencies.

Under the terms of the merger agreement, Rocket Fuel has a go-shop right to solicit third party alternative acquisition proposals for the next 30 days.

Completion of the acquisition is subject to customary closing conditions, including a majority of the outstanding shares of Rocket Fuel’s common stock having been tendered in the tender offer and clearance under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The parties expect the transaction to be completed in third quarter of 2017.

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Needham & Company, LLC is serving as financial advisor to Rocket Fuel. Wilson Sonsini Goodrich & Rosati, Professional Corporation is acting as Rocket Fuel's legal advisor. Kirkland & Ellis LLP is acting as Sizmek's legal advisor.

In addition to the acquisition by Sizmek, Rocket Fuel today announced selected preliminary, unaudited financial results for the three months ended June 30, 2017. Rocket Fuel expects second quarter 2017 Spend to decline approximately 20% year over year to \$95 million to \$96 million. Net Revenue for the second quarter of 2017 is expected to decline approximately 36% year over year to \$42 million to \$43 million. Rocket Fuel's Platform Solutions business grew approximately 77% compared to the prior year quarter, and the Media Services business declined approximately 41% compared with the prior year quarter. Company Media Margin declined approximately 11% from the prior year quarter. These factors contributed to an estimated Adjusted EBITDA loss of approximately \$3 million to \$4 million for the second quarter of 2017, compared with a \$4.2 million Adjusted EBITDA profit in the second quarter of 2016. Rocket Fuel expects its ending second quarter cash position will be roughly flat with the first quarter of 2017 at \$62 million to \$63 million, and total debt and capital lease obligations will be approximately \$83 million to \$84 million.

Rocket Fuel expects the Spend, Net Revenue and Adjusted EBITDA trajectory noted above to continue during the second half of 2017 and, as a result, it expects its second half 2017 financial results will be materially below current analysts' expectations and last year's performance.

Rocket Fuel will provide final financial results and file its second quarter Form 10-Q on or about August 9, 2017. Due to the pending acquisition by Sizmek, Rocket Fuel will not host an earnings call.

**D. Insiders' Interests in the Proposed Transaction**

37. As part of the Merger Agreement, insiders of both Rocket Fuel and Simzek have secured for themselves unique financial benefits that will not be shared with Plaintiff and the Class. These benefits include accelerated vesting of Company Options and Restricted Stock Units (RSUs). The table below sets forth information, as of July 28, 2017, regarding the outstanding Rocket Fuel Options held by each director and executive officer with an exercise price per share less than the Offer Price:

Name	Number of Vested Rocket Fuel Options	Value of Vested Rocket Fuel Options (1)	Number of Unvested Rocket Fuel Options	Value of Unvested Rocket Fuel Options (2)	Total Value of Vested and Unvested Rocket Fuel Options
<b>Directors</b>					
Susan Bostrom	67,060	\$ 24,142	0	\$ 0	\$ 24,142
Ronald Codd	67,060	\$ 24,142	0	\$ 0	\$ 24,142
William Ericson	67,060	\$ 24,142	0	\$ 0	\$ 24,142
Richard Frankel*	130,288	\$ 48,207	230,508	\$ 85,288	\$ 133,495
Clark Kokich	67,060	\$ 24,142	0	\$ 0	\$ 24,142
John Lewis	67,060	\$ 24,142	0	\$ 0	\$ 24,142
Monte Zweben	349,403	\$ 387,595	0	\$ 0	\$ 387,595
<b>Executive Officers</b>					
E. Randolph Wootton III**	0	\$ 0	230,000	\$ 66,700	\$ 66,700
Stephen Snyder	0	\$ 0	380,000	\$ 296,400	\$ 296,400
David Gosen	27,083	\$ 5,146	147,917	\$ 35,604	\$ 40,750
Richard Pittenger	0	\$ 0	62,500	\$ 18,125	\$ 18,125
Richard Song	0	\$ 0	0	\$ 0	\$ 0

38. In addition to the accelerated vesting of Company Options depicted above, Defendant Wootton will also receive significant consideration from the accelerated vesting of RSUs, as depicted in the table below:

Name	Number of Outstanding Rocket Fuel RSUs	Value of Outstanding Rocket Fuel RSUs (1)
E. Randolph Wootton III**	298,125(2)	\$ 775,125(2)

39. Further, the senior executive officers of the Company, and Defendant Wootton, will also be entitled to receive significant Golden Parachute payments in the event their employment is terminated following consummation of the Merger, as depicted in the below table:

Name	Benefit Type	Payment Upon the Occurrence of the Effective Time Only	Payment Upon a Qualifying Termination Immediately Prior to the Effective Time
E. Randolph Wootton III	Cash Severance (1)	—	\$ 950,000
	Benefits Continuation (2)	—	\$ 24,478
	Consideration for Vested Rocket Fuel Options (3)	—	—
	Consideration for Unvested Rocket Fuel Options (4)	—	\$ 66,700
	Consideration for Rocket Fuel RSUs (5)	—	\$ 775,125
	<b>TOTAL</b>		\$ 0
Stephen Snyder	Cash Severance (1)	—	\$ 520,000
	Benefits Continuation (2)	—	\$ 24,478
	Consideration for Vested Rocket Fuel Options (3)	—	—
	Consideration for Unvested Rocket Fuel Options (4)	—	\$ 296,400
	Consideration for Rocket Fuel RSUs (5)	—	—
	<b>TOTAL</b>		\$ 0
David Gosen	Cash Severance (1)	—	\$ 611,435
	Benefits Continuation (2)	—	—
	Consideration for Vested Rocket Fuel Options (3)	\$ 5,146	—
	Consideration for Unvested Rocket Fuel Options (4)	—	\$ 35,604
	Consideration for Rocket Fuel RSUs (5)	—	—
	<b>TOTAL</b>		\$ 5,146
Richard Pittenger	Cash Severance (1)	—	\$ 686,250
	Benefits Continuation (2)	—	\$ 24,478
	Consideration for Vested Rocket Fuel Options (3)	—	—
	Consideration for Unvested Rocket Fuel Options (4)	—	\$ 18,125
	Consideration for Rocket Fuel RSUs (5)	—	—
	<b>TOTAL</b>		—
Richard Song	Cash Severance (1)	—	\$ 691,665
	Benefits Continuation (2)	—	\$ 24,478
	Consideration for Vested Rocket Fuel Options (3)	—	—
	Consideration for Unvested Rocket Fuel Options	—	—
	Consideration for Rocket Fuel RSUs (5)	—	\$ 63,375
	<b>TOTAL</b>		\$ 0

40. In addition, Rocket Fuel’s CEO, Stephen Snyder, and executives David Gosen and Richard Pettinger, are also eligible to receive “retention/incremental incentive” bonus(es) subject to their continued employment with Rocket Fuel. These bonus(es) of \$81,250, \$80,715, and \$150,000, respectively, in addition to the above payments and vesting of illiquid equity awards has, at all relevant times, acted as a substantial incentive to the Individual Defendants and officers of the Company to steer and, eventually, secure a deal with Sizmek.

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**E. The Materially Incomplete and Misleading 14D-9**

41. The 14D-9 recommending that Rocket Fuel stockholders tender their shares of Rocket Fuel stock into the Offer fails to disclose and/or materially misrepresents material information to the stockholders of the Company thereby preventing them from making an informed decision regarding the Proposed Transaction. Specifically, the 14D-9 omits and/or misrepresents material information concerning, among other things: (i) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by Needham; and (ii) Rocket Fuel insiders' potential conflicts of interest. Accordingly, Rocket Fuel stockholders are being asked to make a decision whether to tender their shares in connection with the Tender Offer or seek appraisal without all material information at their disposal.

42. With respect to Needham's *Discounted Cash Flow Analysis*, the Recommendation Statement fails to disclose: (i) the inputs and assumptions underlying the discount range of 17% to 27%; (ii) the implied perpetuity growth rates resulting from the analysis; and (iii) Rocket Fuel's cash and debt, in each case as of June 30, 2017.

43. With respect to Needham's *Selected Companies Analysis*, the Recommendation Statement fails to disclose the individual multiples and financial metrics for the companies observed by Needham in the analysis. A fair summary of such an analysis requires the disclosure of the individual multiples for each company utilized or, at a minimum, the high, low, mean and median multiples. As Needham failed to select and apply multiples to the Proposed Transaction, the individual multiples are critical for Rocket Fuel stockholders to assess the Proposed Transaction.

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44. With respect to Needham's *Selected Transactions Analysis*, the Recommendation Statement fails to disclose the individual multiples and financial metrics for the transactions observed by Needham in the analysis. A fair summary of such an analysis requires the disclosure of the individual multiples for each transaction observed. As Needham failed to select and apply multiples to the Proposed Transaction, the individual multiples are critical for Rocket Fuel stockholders to assess the Proposed Transaction.

45. Moreover, when a banker's endorsement of the fairness of a transaction is touted to stockholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

46. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to Rocket Fuel's stockholders.

**F. Material Omissions Concerning Insiders' Potential Conflicts of Interest**

47. The Recommendation statement also material misleads stockholders as to the potential conflicts of interest faced by Rocket Fuel management and the Board.

48. Although the Recommendation Statement states that none of Rocket Fuel's executives have "reached an understanding on potential employment" or have "entered into any definitive agreements or arrangements regarding employments (14D-9 at p. 21), the Recommendation Statement fails to disclose whether any of Sizmek's prior proposals or IOI's contemplated management retention.

49. The 14D-9 also fails to disclose any information with respect to the negotiation of the Retention/Incremental Incentive Bonuses that the Company has agreed to pay Snyder, Pittenger and Gosen.

50. Communications regarding post-transaction employment and merger related benefits during the negotiation of the underlying transaction must be disclosed to stockholders that are trying to understand the motivations that could potentially influence or prevent fiduciaries from acting solely in the best interests of the Company.

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**FIRST CAUSE OF ACTION**

**(Against Rocket Fuel and the Individual Defendants for Violations of Sections 14(d) of the Exchange Act)**

51. Plaintiff repeats and realleges each allegation set forth herein. Defendants have caused the 14D-9 to be issued with the intention of soliciting Rocket Fuel stockholders to tender their shares in the Tender Offer.

52. During the relevant period, Rocket Fuel and the Individual Defendants disseminated the false and misleading 14D-9 specified above, which failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in violation of section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder.

53. By virtue of their positions within the Company, the Individual Defendants were aware of this information and of their duty to disclose this information in the 14D-9. The 14D-9 was prepared, reviewed, and/or disseminated by the defendants. The 14D-9 misrepresented and/or omitted material information about the sale process for the Company, the unfair consideration offered in the Proposed Transaction, and the actual intrinsic value of the Company's assets. Rocket Fuel and the Individual Defendants were at least negligent in filing the 14D-9 with these materially false and misleading statements. Rocket Fuel and the Individual Defendants have also failed to correct the 14D-9 and the failure to update and correct false statements is also a violation of section 14(d) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder.

54. The omissions and false and misleading statements in the 14D-9 are material in that a reasonable stockholder would consider them important in deciding whether to vote in favor of the Proposed Transaction. In addition, a reasonable investor would view a full and accurate disclosure as significantly altering the "total mix" of information made available in the 14D-9 and in other information reasonably available to stockholders.

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55. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from immediate and irreparable injury, which Rocket Fuel and the Individual Defendants' actions threaten to inflict.

**SECOND CAUSE OF ACTION**

**(Against the Individual Defendants for Violation of Section 14(e) of the Exchange Act)**

56. Plaintiff repeats and realleges each allegation set forth herein. Defendants have violated Section 14(e) of the Exchange Act by issuing the Recommendation Statement in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engaged in deceptive or manipulative acts or practices, in connection with the Tender Offer.

57. Defendants knew that Plaintiff would rely upon their statements in the 14D-9 in determining whether to tender their shares pursuant to the Tender Offer.

58. As a direct and proximate result of these defendants' unlawful course or conduct in violation of Section 14(e) of the Exchange Act, absent injunctive relief from the Court, Plaintiff has sustained and will continue to sustain irreparable injury by being denied the opportunity to make an informed decision in deciding whether or not to tender his shares.

**THIRD CAUSE OF ACTION**

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

59. Plaintiff repeats and realleges each allegation set forth herein

60. The Individual Defendants acted as controlling persons of Rocket Fuel within the meaning of section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers or directors of Rocket Fuel and participation in or awareness of the Company's operations or intimate knowledge of the false statements contained in the 14D-9 filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading

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61. Each of the Individual Defendants was provided with or had unlimited access to copies of the 14D-9 and other statements alleged by Plaintiff to be misleading prior to or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected

62. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The 14D-9 at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of this document

63. In addition, as the 14D-9 sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction. The 14D-9 purports to describe the various issues and information that they reviewed and considered — descriptions which had input from the Individual Defendants

64. By virtue of the foregoing, the Individual Defendants have violated section 20(a) of the Exchange Act.

65. Plaintiff has no adequate remedy at law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands relief in his favor against Defendants as follows:

A. Declaring that this action is properly maintainable as a Class action and certifying Plaintiff as Class representative;

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B. Enjoining Defendants, their agents, counsel, employees and all persons acting in concert with them from consummating the Proposed Transaction, unless and until the Company discloses the material information discussed above which has been omitted from the 14D-9 and adopts and implements a procedure or process to obtain the best available terms for shareholders;

C. Rescinding, to the extent already implemented, the Proposed Transaction or any of the terms thereof, or granting Plaintiff rescissory damages;

D. Directing the Individual Defendants to account to Plaintiff for all damages suffered as a result of the wrongdoing;

E. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorney' and experts' fees; and

F. Granting such other and further equitable relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff prays for a jury trial on all issues and in all proceedings so triable.

Dated: August 8, 2017

BRODSKY & SMITH, LLC

By: /s/ Evan J. Smith

EVAN J. SMITH (S.B. # 242352)  
9595 Wilshire Boulevard, Suite 900  
Beverly Hills, CA 90212  
Tel: (877) 834-2590

*Attorneys for Plaintiff*

**CERTIFICATION PURSUANT  
TO FEDERAL SECURITIES LAWS**

1. I, Damin Wen, make this declaration pursuant to Section 27(a)(2) of the Securities Act of 1933 (“Securities Act”) and/or Section 21D(a)(2) of the Securities Exchange Act of 1934 (“Exchange Act”) as amended by the Private Securities Litigation Reform Act of 1995.

2. I have reviewed a Complaint against Rocket Fuel Inc (NASDAQ: FUEL, hereafter referred as the “Company”) and authorize the filing of a comparable complaint on my behalf.

3. I did not purchase or acquire the “Company” securities at the direction of plaintiffs counsel or in order to participate in any private action arising under the Securities Act or Exchange Act.

4. I am willing to serve as a representative party on behalf of a Class of investors who purchased or acquired the “Company” securities during the class period, including providing testimony at deposition and trial, if necessary. I understand that the Court has the authority to select the most adequate lead plaintiff in this action.

5. To the best of my current knowledge, the attached sheet lists all of my transactions in the “Company” securities during the Class Period as specified in the Complaint.

6. During the three-year period preceding the date on which this Certification is signed, I have not sought to serve as a representative party on behalf of a class under the federal securities laws.

7. I agree not to accept any payment for serving as a representative party on behalf of the class as set forth in the Complaint, beyond my pro rata share of any recovery, except such reasonable costs and expenses directly relating to the representation of the class as ordered or approved by the Court.

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8. I declare under penalty of perjury that the foregoing is true and correct.

Executed 2017-7-19

(Date)

/s/ Damin Wen

(Signature)

/s/ Damin Wen

(Type or Print Name)