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9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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

14 **Plaintiff,**

15 **v.**

16 **ROCKET FUEL INC., MONTE ZWEBEN,**
17 **RANDY WOOTTON, RICHARD**
18 **FRANKEL, SUSAN L. BOSTROM,**
19 **RONALD E. F. CODD, WILLIAM**
20 **ERICSON, CLARK KOKICH, and JOHN**
21 **LEWIS,**

22 **Defendants.**

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1. VIOLATIONS OF THE
SECURITIES EXCHANGE ACT
OF 1934

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

4 **NATURE OF THE ACTION**

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

14 2. On August 2, 2017, in order to convince Rocket Fuel stockholders to tender their
15 shares, the Board authorized the filing of a materially incomplete and misleading Schedule 14D-
16 9 Solicitation/Recommendation Statement (the “Recommendation Statement”) with the
17 Securities and Exchange Commission (“SEC”). In particular, the Recommendation Statement
18 contains materially incomplete and misleading information concerning Rocket Fuel’s financial
19 projections and the valuation analyses performed by the Company’s financial
20 advisor, Needham & Company, LLC (“Needham”).

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

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

3 **JURISDICTION AND VENUE**

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

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

12 7. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C.
13 § 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had an
14 effect in this District; (ii) Rocket Fuel maintains its primary place of business in this District; (iii)
15 a substantial portion of the transactions and wrongs complained of herein, including Defendants'
16 primary participation in the wrongful acts detailed herein, occurred in this District; and (iv)
17 Defendants have received substantial compensation in this District by doing business here and
18 engaging in numerous activities that had an effect in this District.

19 **PARTIES**

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

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

1 10. Individual Defendant Monte Zweben is a director of Rocket Fuel and is the
2 Chairman of the Board.

3 11. Individual Defendant Randy Wootton is a director of Rocket Fuel and is the Chief
4 Executive Officer of the Company.

5 12. Individual Defendant Richard Frankel is, and has been at all relevant times, a
6 director of the Company.

7 13. Individual Defendant Susan L. Bostrom is, and has been at all relevant times, a
8 director of the Company.

9 14. Individual Defendant Ronald E. F. Codd is, and has been at all relevant times, a
10 director of the Company.

11 15. Individual Defendant William Ericson is, and has been at all relevant times, a
12 director of the Company.

13 16. Individual Defendant Clark Kokich is, and has been at all relevant times, a
14 director of the Company.

15 17. Individual Defendant John Lewis is, and has been at all relevant times, a director
16 of the Company.

17 **CLASS ACTION ALLEGATIONS**

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

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

23 a. The Class is so numerous that joinder of all members is impracticable. As
24 of July 31, 2017, there were 46,993,632 shares of Rocket Fuel common stock
25 outstanding, held by hundreds to thousands of individuals and entities scattered
26 throughout the country. The actual number of public stockholders of Rocket Fuel will be
27 ascertained through discovery;

1 b. There are questions of law and fact that are common to the Class that
2 predominate over any questions affecting only individual members, including the
3 following:

4 i) whether Defendants have misrepresented or omitted material
5 information concerning the proposed merger in the
6 Recommendation Statement, in violation of Sections 14(e) and
7 14(d)(4) of the Exchange Act;

8 ii) whether the Individual Defendants have violated Section 20(a) of
9 the Exchange Act; and

10 iii) whether Plaintiff and other members of the Class will suffer
11 irreparable harm if compelled to tender their shares based on the
12 materially incomplete and misleading Recommendation Statement.

13 c. Plaintiff is an adequate representative of the Class, has retained competent
14 counsel experienced in litigation of this nature, and will fairly and adequately protect the
15 interests of the Class;

16 d. Plaintiff's claims are typical of the claims of the other members of the
17 Class and Plaintiff does not have any interests adverse to the Class;

18 e. The prosecution of separate actions by individual members of the Class
19 would create a risk of inconsistent or varying adjudications with respect to individual
20 members of the Class, which would establish incompatible standards of conduct for the
21 party opposing the Class;

22 f. Defendants have acted on grounds generally applicable to the Class with
23 respect to the matters complained of herein, thereby making appropriate the relief sought
24 herein with respect to the Class as a whole; and

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

27 **SUBSTANTIVE ALLEGATIONS**

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

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

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

23 22. Instead of focusing on maximizing stockholder value and obtaining the highest
24 possible sale price for the Company, it appears that management and the Board were more
25 concerned with the procession of the deal and their lucrative payouts that would result. The total
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27 _____
28 ¹ See <http://www.investopedia.com/terms/t/takeunder.asp>

1 cash-out compensation for the Company's directors and executive officers is a staggering
2 \$35,634,805.00². That is equal to nearly 30% of the total deal value.

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

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

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

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

18 (i) solicit, initiate, propose or induce or knowingly encourage,
19 facilitate or assist any proposal that constitutes, or is reasonably
20 expected to lead to, an Acquisition Proposal; (ii) furnish to any
21 person (other than to Parent, Purchaser or any of their respective
22 designees) any non-public information relating to the Company or
23 any of its subsidiaries or afford to any person access to the
24 business, properties, assets, books, records or other non-public
25 information, or to any personnel, of the Company or any of its
26 subsidiaries (other than Parent, Purchaser or any of their respective
27 designees), in any such case in connection with any Acquisition
28 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

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

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

9
10 26. Additionally, the Merger Agreement grants Sizmek recurring and unlimited
11 matching rights, which provides Sizmek with: (i) unfettered access to confidential, non-public
12 information about competing proposals from third parties which it can use to prepare a matching
13 bid; and (ii) four business days to negotiate with Rocket Fuel, amend the terms of the Merger
14 Agreement, and make a counter-offer in the event a superior offer is received.

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

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

25 29. Compounding matters, two stockholders of Rocket Fuel, MDV IX, L.P. and
26 Martha M. Conway & Richard A. Frankel TR UA 03/13/09 Conway Frankel Family Trust,
27 entered into a Tender and Support Agreement, which is referred to as the "Tender and Support
28 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'

1 and directors' 24% ownership stake make it a near certainty that Tender Offer will consummate,
2 and, therefore, is materially unfair to MRV stockholders generally.

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

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

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

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

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

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

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

14 In too many cases, the non-GAAP information, which is meant to
15 supplement the GAAP information, has become the key message
16 to investors, crowding out and effectively supplanting the GAAP
17 presentation. Jim Schnurr, our Chief Accountant, Mark Kronforst,
18 our Chief Accountant in the Division of Corporation Finance and I,
19 along with other members of the staff, have spoken out frequently
20 about our concerns to raise the awareness of boards, management
21 and investors. And last month, the staff issued guidance
22 addressing a number of troublesome practices *which can make*
23 *non-GAAP disclosures misleading*: the lack of equal or greater
24 prominence for GAAP measures; exclusion of normal, recurring
25 cash operating expenses; individually tailored non-GAAP
26 revenues; lack of consistency; cherry-picking; and the use of cash
27 per share data. I strongly urge companies to carefully consider this
28 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.³

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

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

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

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

17 39. The Recommendation Statement also fails to disclose the unlevered free cash
18 flow projections⁶ for all financial projections prepared by management. Rocket Fuel discloses

19 _____
20 ⁴ See, e.g., Nicolas Grabar and Sandra Flow, *Non-GAAP Financial Measures: The SEC's*
21 *Evolving Views*, Harvard Law School Forum on Corporate Governance and Financial Regulation
22 (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.

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

26 ⁶ Unlevered free cash flows are used to determine a company's enterprise value. The unlevered
27 free cash flow allows investors to ascertain the operating value of a company independent of its
28 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.

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

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

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

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

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

7 There is substantial leeway to determine each of these, and any
8 change can markedly affect the discounted cash flow value. For
9 example, a change in the discount rate by one percent on a stream
10 of cash flows in the billions of dollars can change the discounted
11 cash flow value by tens if not hundreds of millions of
12 dollars....This issue arises not only with a discounted cash flow
13 analysis, but with each of the other valuation techniques. This
14 dazzling variability makes it difficult to rely, compare, or analyze
15 the valuations underlying a fairness opinion unless full disclosure
16 is made of the various inputs in the valuation process, the weight
17 assigned for each, and the rationale underlying these choices. The
18 substantial discretion and lack of guidelines and standards also
19 makes the process vulnerable to manipulation to arrive at the
20 "right" answer for fairness. This raises a further dilemma in light
21 of the conflicted nature of the investment banks who often provide
22 these opinions.

23 *Id.* at 1577-78.

24 43. With respect to Needham's *Present Value of Illustrative Projected Stock Prices*
25 *Analyses*, the Recommendation Statement also fails to disclose the following key components
26 used in the analysis: (i) the inputs and assumptions underlying the calculation of the discount rate
27 of 22.8%%; (ii) the inputs and assumption underlying the selection of the illustrative multiples
28 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

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

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

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

22 **COUNT I**

23
24 **(Against All Defendants for Violation of Section 14(e) of the Exchange Act and 17 C.F.R. §**
25 **244.100 Promulgated Thereunder)**

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

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

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

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

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

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

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

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

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

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

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

27 **COUNT III**

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

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

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

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

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

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

1 Plaintiff demands a trial by jury.

2 DATED: August 7, 2017

Respectfully submitted,

3 /s/ David E. Bower
David E. Bower

4 David E. Bower SBN 119546
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Counsel for Plaintiff

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20 *Counsel for Plaintiff*

S-CAND 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS ADRYAN HAINES, individually and on behalf of all others similarly situated</p> <p>(b) County of Residence of First Listed Plaintiff Medocino <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i></p>	<p>DEFENDANTS Rocket Fuel Inc. Monte Zweben, Randy Wootton, et al.</p> <p>County of Residence of First Listed Defendant San Mateo county CA <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </tbody> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities-Employment 446 Amer. w/Disabilities-Other 448 Education	PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability PRISONER PETITIONS HABEAS CORPUS 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty OTHER 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee-Conditions of Confinement	625 Drug Related Seizure of Property 21 USC § 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent-Abbreviated New Drug Application 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
 15 USC §§ 78n(d)(4), 78n(e), 78(a) § 20(a) Securities exchange Act of 1934
 Brief description of cause:
 Violations of § 14(a) of the exchange act and SEC Rule 14a-9

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY *(See instructions):* JUDGE Hon. James Donato DOCKET NUMBER 3:17-cv-04454-JD

IX. DIVISIONAL ASSIGNMENT *(Civil Local Rule 3-2)*
(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 08/07/2017 SIGNATURE OF ATTORNEY OF RECORD

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Suit Demands Rocket Fuel Release Information Concerning Proposed Merger](#)
