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

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

Plaintiff,

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.

Case No.:

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

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Damin 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

1 Capital V, L.P. (collectively, “Vector”), and Simzek’s wholly owned subsidiary Fuel Acquisition
2 Co. (“Purchaser”).

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

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10 3. On August 2, 2017, Rocket Fuel filed a Solicitation/Recommendation Statement on
11 Schedule 14D-9 with the United States Securities and Exchange Commission (“SEC”) in
12 connection with the Proposed Transaction (the “Recommendation Statement” or “14D-9”). The
13 14D-9, which recommends that Rocket Fuel stockholders tender their shares in favor of the
14 Proposed Transaction, omits or misrepresents material information concerning, among other
15 things, (i) the data and inputs underlying the financial valuation analyses that support the fairness
16 opinion provided by the Company’s financial advisor, Needham & Company, LLC (“Needham”),
17 and (ii) Rocket Fuel insiders’ potential conflicts of interest.

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19 4. The Recommendation Statement’s failure to adequately disclose material
20 information renders it false and misleading. Accordingly, Plaintiff alleges herein that Defendants¹
21 violated Sections 14(d), 14(e) and 20(a) of the Securities Exchange Act of 1934 (the “1934 Act”)
22 in connection with the Recommendation Statement as Rocket Fuel stockholders need a full and
23 accurate disclosure of all material information in order to make a fully informed decision whether
24 to tender their shares in support of the Proposed Transaction or seek appraisal.

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27 ¹ The Individual Defendants together with Rocket Fuel are collectively referred to herein as,
28 “Defendants.”

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

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6 **JURISDICTION AND VENUE**

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

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

12
13 **PARTIES**

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

15 9. Defendant Rocket Fuel is a Delaware corporation and maintains its principal
16 executive offices at 2000 Seaport Blvd., Ste. 400, Pacific Shores Center, Redwood City, CA
17 94063. Rocket Fuel's common stock is traded on the Nasdaq under the ticker symbol "FUEL."

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

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

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

2 13. Defendant Susan L. Bostrom (“Bostrom”) has served as a director of Rocket Fuel
3 since February 2013.

4 14. Defendant Ronald E. F. Codd (“Codd”) has served as a director of Rocket Fuel
5 2012.

6 15. Defendant William W. Ericson (“Ericson”) has served as a director of Rocket Fuel
7 since 2008.

8 16. Defendant Clark M. Kokich (“Kokich”) has served as a director of Rocket Fuel
9 since 2011.

10 17. Defendant John J. Lewis (“Lewis”) has served as a director of Rocket Fuel since
11 2016.

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

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16 **CLASS ACTION ALLEGATIONS**

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

22 20. 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 over 46 million shares of Rocket Fuel common stock issued
25 and outstanding. The actual number of public shareholders of Rocket Fuel will be
26 ascertained through discovery.
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1 b. There are questions of law and fact that are common to the Class, including:

2 i) whether Defendants have misrepresented or omitted material
3 information concerning the Proposed Transaction in the 14D-9 in
4 violation of the Exchange Act;

5 ii) whether the Individual Defendants have violated Section 20(a) of
6 the Exchange Act;

7 iii) whether the Individual Defendants have violated Section 14(d)(4) of
8 the Exchange Act and Rule 14D-9 promulgated thereunder;

9 iv) whether the Individual Defendants have violated Section 14(e) of
10 the Exchange Act; and

11 v) whether Plaintiff and the other members of the Class would suffer
12 irreparable injury were the Proposed Transaction complained of
13 herein consummated.

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

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

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

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

2 **SUBSTANTIVE ALLEGATIONS**

3 **A. Background**

4 21. Rocket Fuel is a predictive marketing software company that uses artificial
5 intelligence to empower agencies and marketers to anticipate people's need for products and
6 services. Rocket Fuel was founded in March 2008 with a vision of transforming the digital
7 advertising industry through big data and artificial intelligence.
8

9 22. According to Zacks Investment Research, "Rocket Fuel Inc. is a leading provider
10 of artificial intelligence advertising solutions for digital marketers. They deliver a leading
11 programmatic media-buying platform at Big Data scale that harnesses the power of artificial
12 intelligence to improve marketing ROI in digital media across web, mobile, video, and social
13 channels. Rocket Fuel powers digital advertising and marketing programs globally for customers
14 in North America, Europe, and Japan. Customers trust Rocket Fuel's Advertising That Learns
15 platform to achieve brand and direct-response objectives in diverse industries from luxury cars to
16 groceries to retail."
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18 23. The Company's service offerings are organized around platforms, including Data
19 Management Platform (DMP) and Demand Side Platform (DSP), which are used by customers
20 themselves or integrating with other customer relationship management or marketing platforms,
21 and together in various permutations as its Programmatic Marketing Platform. The integrated
22 platform is designed to deliver and optimize media spend to engage, upsell and retarget consumers
23 across addressable channels, including display, mobile and video, and across addressable devices,
24 such as tablets, set top boxes, television and mobile phones (the "Media Services" segment).
25 Rocket Fuel also offers Programmatic Marketing Platform as a managed service, which it operates
26 on behalf of its customers, and as a self-service platform operated by its customers or their agencies
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1 directly (the “Platform Solutions” segment). Media Services and Platform Solutions are Rocket
2 Fuel’s two main businesses.

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

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17 25. With respect to the results, Needham commented:

18 Rocket Fuel reported better than expected 4Q16. Platform Solutions is gaining
19 traction with its largest customers, which we expect to continue in 2017. While we
20 believe the company should return to growth on a gross revenue basis as Media
21 Services growth adds to the rapidly growing Platform Solutions, a shift toward
22 fixed margin should push FY17 net revenue lower y/y. The lower media margin,
23 increasing mix of lower-margin Platform revenue, and seasonal weakness pushed
24 1Q17 revenue guidance below expectations. We believe the lower net revenue also
25 pushed Q1 EBITDA guidance below expectations. While continued cost cutting
26 efforts should translate into positive EBITDA and free cash flow, we estimate lower
27 profitability y/y due to the lower media margin and increasing mix of lower margin
28 Platform revenue.

25 26. On May 9, 2017, Rocket Fuel issued a press release wherein it reported its financial
26 results for the first quarter ended March 31, 2017. “Rocket Fuel's first quarter was highlighted by
27 70% year over year spend growth in Platform Solutions. Our Platform business represented a
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1 record 32% of the quarter's total spend, evidence of the progress we are making transitioning
2 Rocket Fuel towards a platform-oriented software model. While we expect our Media Services
3 business to continue to contract in the near term, we are encouraged by the growth in both adoption,
4 and spend, from our platform services business," commented defendant Wootton.

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

12
13 28. Four equities research analysts have issued twelve-month price targets for Rocket
14 Fuel's stock. Their predictions range from \$2.20 to \$4.75. On average, they anticipate Rocket
15 Fuel's share price to reach \$3.48 in the next twelve months.

16 **B. The Sales Process**

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

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

2 31. Undeterred, on February 17, 2017 Sizmek, a Vector affiliate, submitted an
3 indication of interest (IOI) to acquire all of Rocket Fuel for \$3.40/share. The Company also
4 received a second IOI, from Party A, which proposed to acquire the FUEL's Media Services for
5 \$80 to \$85 MM. Days later, on February 21, 2017, Party B submitted an IOI to acquire a majority
6 stake in FUEL's Media Services for an enterprise value of \$130 to \$150 MM.
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8 32. Following the Sizmek IOI for the acquisition of the Company, Needham contact 24
9 other potential strategic acquirors and 13 private equity firms (not including Vector) concerning
10 their potential interest in an acquisition of the Company. Between March 2017 and April 2017,
11 the Company received a revised IOI from Party A to acquire the Company's Media Services for
12 \$40 MM, in addition to a proposed \$40 MM investment in Rocket Fuel following the sale of Media
13 Services; an IOI (revised multiple times) by Party B to acquire Media Service for \$80 MM at
14 closing, and up to \$60 MM payable in the future; an IOI from Party D to acquire Media Services
15 with a \$100 MM promissory note, plus \$50 MM investment in the Company within 6 months
16 following the sale of Media Services; and an IOI from Party C to acquire Platform Solutions for
17 between \$65 and \$75 MM. Party C also proposed to acquire all of Rocket Fuel for between \$2
18 and \$2.25/share², and on April 24, 2017, Sizmek submitted a revised IOI to acquire Rocket Fuel
19 for \$4 to \$5.25/share.
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21 33. On June 2, 2017, Party B and submitted further revised IOI's. Party B proposed to
22 acquire Media Services for \$80 MM at closing and up to \$60 MM payable in the future; and
23 Sizmek proposed to acquire Rocket Fuel for \$3.50 to \$4/share. Enticed by Sizmek's most recent
24 IOI, on June 6, 2017, Rocket Fuel and Sizmek, entered into an exclusivity agreement with the goal
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26 _____
27 ² On April 28, 2017, Party C submitted a revised IOI to acquire the Company for \$4.60 to \$4.90,
28 but withdrew its proposal on May 18, 2017.

1 of Sizmek working towards a price of \$4/share.

2 34. This goal was not met. On June 27th, the day that the exclusivity agreement expires,
3 Sizmek submitted a revised IOI to acquire Rocket Fuel for \$2.50/share. Negotiations ensued and
4 Sizmek upped the offer to \$2.60/share accompanied by a 30-day “go-shop” period for the
5 Company.
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7 35. On July 17, 2017, Needham rendered its fairness opinion, the Board approved the
8 Proposed Transaction with Simzek, and the parties executed the Merger Agreement the next day.

9 **C. The Proposed Transaction**

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

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

16 Under the terms of the merger agreement with Sizmek, which has been
17 unanimously approved by Rocket Fuel's board of directors, an affiliate of Sizmek
18 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.

19 The proposed combination with Sizmek brings Rocket Fuel's media optimization
20 and industry leading AI-enabled decisioning to Sizmek's omni-channel creative
21 optimization and data activation platform, marking the next logical step in
22 marketing automation. Combined, the two companies connect more than 20,000
23 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.

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

26 Completion of the acquisition is subject to customary closing conditions, including
27 a majority of the outstanding shares of Rocket Fuel's common stock having been
28 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.

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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
Directors					
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
Executive Officers					
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

1 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
	TOTAL	\$ 0	\$ 1,816,303
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⁾	—	—
	TOTAL	\$ 0	\$ 840,878
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⁾	—	—
	TOTAL	\$ 5,146	\$ 647,039
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⁾	—	—
	TOTAL	\$	\$ 728,853
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
	TOTAL	\$ 0	\$ 779,518

23 40. In addition, Rocket Fuel's CEO, Stephen Snyder, and executives David Gosen and
 24 Richard Pettinger, are also eligible to receive "retention/incremental incentive" bonus(es) subject
 25 to their continued employment with Rocket Fuel. These bonus(es) of \$81,250, \$80,715, and
 26 \$150,000, respectively, in addition to the above payments and vesting of illiquid equity awards
 27 has, at all relevant times, acted as a substantial incentive to the Individual Defendants and officers
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1 of the Company to steer and, eventually, secure a deal with Sizmek.

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

3 41. The 14D-9 recommending that Rocket Fuel stockholders tender their shares of
4 Rocket Fuel stock into the Offer fails to disclose and/or materially misrepresents material
5 information to the stockholders of the Company thereby preventing them from making an informed
6 decision regarding the Proposed Transaction. Specifically, the 14D-9 omits and/or misrepresents
7 material information concerning, among other things: (i) the data and inputs underlying the
8 financial valuation analyses that support the fairness opinion provided by Needham; and (ii)
9 Rocket Fuel insiders' potential conflicts of interest. Accordingly, Rocket Fuel stockholders are
10 being asked to make a decision whether to tender their shares in connection with the Tender Offer
11 or seek appraisal without all material information at their disposal.
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13 42. With respect to Needhams's *Discounted Cash Flow Analysis*, the Recommendation
14 Statement fails to disclose: (i) the inputs and assumptions underlying the discount range of 17% to
15 27%; (ii) the implied perpetuity growth rates resulting from the analysis; and (iii) Rocket Fuel's
16 cash and debt, in each case as of June 30, 2017.
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18 43. With respect to Needhams's *Selected Companies Analysis*, the Recommendation
19 Statement fails to disclose the individual multiples and financial metrics for the companies
20 observed by Needham in the analysis. A fair summary of such an analysis requires the disclosure
21 of the individual multiples for each company utilized or, at a minimum, the high, low, mean and
22 median multiples. As Needham failed to select and apply multiples to the Proposed Transaction,
23 the individual multiples are critical for Rocket Fuel stockholders to assess the Proposed
24 Transaction.
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26 44. With respect to Needhams's *Selected Transactions Analysis*, the Recommendation
27 Statement fails to disclose the individual multiples and financial metrics for the transactions
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1 observed by Needham in the analysis. A fair summary of such an analysis requires the disclosure
2 of the individual multiples for each transaction observed. As Needham failed to select and apply
3 multiples to the Proposed Transaction, the individual multiples are critical for Rocket Fuel
4 stockholders to assess the Proposed Transaction.

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

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

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

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

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

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

22 50. Communications regarding post-transaction employment and merger related
23 benefits during the negotiation of the underlying transaction must be disclosed to stockholders that
24 are trying to understand the motivations that could potentially influence or prevent fiduciaries from
25 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)

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

7 52. During the relevant period, Rocket Fuel and the Individual Defendants
8 disseminated the false and misleading 14D-9 specified above, which failed to disclose material
9 facts necessary in order to make the statements made, in light of the circumstances under which
10 they were made, not misleading in violation of section 14(d)(4) of the Exchange Act and SEC Rule
11 14d-9 promulgated thereunder.

12 53. By virtue of their positions within the Company, the Individual Defendants were
13 aware of this information and of their duty to disclose this information in the 14D-9. The 14D-9
14 was prepared, reviewed, and/or disseminated by the defendants. The 14D-9 misrepresented and/or
15 omitted material information about the sale process for the Company, the unfair consideration
16 offered in the Proposed Transaction, and the actual intrinsic value of the Company's assets. Rocket
17 Fuel and the Individual Defendants were at least negligent in filing the 14D-9 with these materially
18 false and misleading statements. Rocket Fuel and the Individual Defendants have also failed to
19 correct the 14D-9 and the failure to update and correct false statements is also a violation of section
20 14(d) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder.

21 54. The omissions and false and misleading statements in the 14D-9 are material in that
22 a reasonable stockholder would consider them important in deciding whether to vote in favor of
23 the Proposed Transaction. In addition, a reasonable investor would view a full and accurate
24 disclosure as significantly altering the "total mix" of information made available in the 14D-9 and
25 in other information reasonably available to stockholders.
26
27
28

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

4 **SECOND CAUSE OF ACTION**

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

6
7 56. Plaintiff repeats and realleges each allegation set forth herein. Defendants have
8 violated Section 14(e) of the Exchange Act by issuing the Recommendation Statement in which
9 they made untrue statements of material facts or failed to state all material facts necessary in order
10 to make the statements made, in light of the circumstances under which they are made, not
11 misleading, or engaged in deceptive or manipulative acts or practices, in connection with the
12 Tender Offer.

13
14 57. Defendants knew that Plaintiff would rely upon their statements in the 14D-9 in
15 determining whether to tender their shares pursuant to the Tender Offer.

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

20 **THIRD CAUSE OF ACTION**

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

22
23 59. Plaintiff repeats and realleges each allegation set forth herein

24 60. The Individual Defendants acted as controlling persons of Rocket Fuel within the
25 meaning of section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as
26 officers or directors of Rocket Fuel and participation in or awareness of the Company's operations
27 or intimate knowledge of the false statements contained in the 14D-9 filed with the SEC, they had
28

1 the power to influence and control and did influence and control, directly or indirectly, the
2 decision-making of the Company, including the content and dissemination of the various
3 statements which Plaintiff contends are false and misleading

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

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

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

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

20 65. Plaintiff has no adequate remedy at law.

21
22
23
24 **PRAYER FOR RELIEF**

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

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

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

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

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

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

11 F. Granting such other and further equitable relief as this Court may deem just and
12 proper.
13
14

15 **JURY DEMAND**

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

17 Dated: August 8, 2017

BRODSKY & SMITH, LLC

18
19 By: /s/ Evan J. Smith
20 EVAN J. SMITH (S.B. # 242352)
21 9595 Wilshire Boulevard, Suite 900
22 Beverly Hills, CA 90212
23 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.

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

Executed 2017-7-19

(Date)

Damin Wen

(Signature)

Damin Wen

(Type or Print Name)

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.)

I. (a) PLAINTIFFS

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

(b) County of Residence of First Listed Plaintiff China (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Evan J. Smith, Brodsky & Smith, LLC, 9595 Wilshire Boulevard, Suite 900, Beverly Hills, CA 90212, (Tel) (877) 534-2590 Fax: (310) 247-0160 Email: esmith@brodskysmith.com

DEFENDANTS

ROCKET FUEL INC., et al.

County of Residence of First Listed Defendant Santa Mateo County, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff x 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

Table with columns PTF, DEF and rows for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with columns CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- x 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 U.S.C. § 78aa and 28 U.S.C. § 1331
Brief description of cause:
Violations of the Exchange Act

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: x Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE James Donato

DOCKET NUMBER 3:17-cv-04454-JD

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) x SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 08/08/2017

SIGNATURE OF ATTORNEY OF RECORD

Evan J. Smith

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Rocket Fuel, Directors Face Securities Lawsuit](#)
