

1 Rosemary M. Rivas (State Bar No. 209147)  
 Email: rrivas@zlk.com  
 2 **LEVI & KORSINSKY, LLP**  
 44 Montgomery Street, Suite 650  
 3 San Francisco, California 94104  
 Telephone: (415) 291-2420  
 4 Facsimile: (415) 484-1294

5 *Counsel for Plaintiff ARNAB DEBNATH*

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 8 **UNITED STATES DISTRICT COURT**  
 9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 10 **SAN FRANCISCO DIVISION**

11 ARNAB DEBNATH, on behalf of himself and all  
 12 others similarly situated,

13 Plaintiff,

14 vs.

15 ROCKET FUEL INC., E. RANDOLPH  
 16 WOOTTON III, MONTE ZWEBEN, RICHARD  
 17 A. FRANKEL, SUSAN L. BOSTROM, RONALD  
 M. KOKICH, and JOHN J. LEWIS,

18 Defendants.

Case No. 3:17-cv-04615-RS

CLASS ACTION

**STIPULATION AND ~~[PROPOSED]~~ ORDER  
 DISMISSING ACTION AS MOOT AND  
 RETAINING JURISDICTION TO  
 DETERMINE PLAINTIFF'S COUNSEL'S  
 POTENTIAL JOINT APPLICATION FOR  
 FEES AND EXPENSES**

20 **WHEREAS**, on August 10, 2017, Plaintiff Arnab Debnath filed a putative Class Action  
 21 Complaint (the "Complaint") in the captioned action (the "Action") alleging violations of the Securities  
 22 Exchange Act of 1934 (the "Exchange Act");

23 **WHEREAS**, Plaintiff alleged that Defendants violated Section 14(d) of the Exchange Act and  
 24 Rule 14d-9 promulgated thereunder by causing an allegedly materially incomplete and misleading  
 25 Recommendation Statement on Schedule 14D-9 (the "Recommendation Statement") filed with the  
 26 Securities and Exchange Commission (the "SEC") on August 2, 2017, which recommended that Rocket  
 27 Fuel Inc. ("Rocket Fuel") stockholders tender their shares in favor of approving a transaction between  
 28 Rocket Fuel and Sizmek Inc. (the "Tender Offer");

1           **WHEREAS**, Plaintiff further alleged that Defendants violated Section 14(e) of the Exchange  
2 Act by issuing the Recommendation Statement in which they made allegedly false and misleading  
3 statements or allegedly omitted material facts;

4           **WHEREAS**, six similarly-styled class actions have been filed in this Court challenging the  
5 Tender Offer (together with the Action, the “Related Actions”);

6           **WHEREAS**, subsequent to the filing of the Complaint, counsel for the parties engaged in  
7 arm’s-length negotiations in an effort to resolve Plaintiff’s claims;

8           **WHEREAS**, following these negotiations, on August 22, 2017, the parties to the Related Actions  
9 entered a Memorandum of Understanding (“MOU”) pursuant to which Rocket Fuel agreed to make  
10 certain supplemental disclosures;

11           **WHEREAS**, pursuant to the MOU, on August 23, 2017, Rocket Fuel filed a Schedule 14D-9/A  
12 with the SEC, which contained certain supplemental disclosures related to the Proposed Transaction  
13 (the “Supplemental Disclosures”), which Plaintiff believes addressed and mooted his claims regarding  
14 the sufficiency of the disclosures in the Recommendation Statement;

15           **WHEREAS**, Plaintiff asserts that the prosecution of the Related Actions caused Rocket Fuel  
16 to file the Supplemental Disclosures and that plaintiffs’ counsel have the right to seek and recover  
17 attorneys’ fees and expenses in connection with a claimed common benefit provided to Rocket Fuel’s  
18 shareholders as a result of the filing of the Supplemental Disclosures, and plaintiffs’ counsel in the  
19 Related Actions have agreed that if their claim for fees and expenses cannot be resolved through  
20 negotiations, a single application for fees and expenses will be jointly made by plaintiffs’ counsel and  
21 filed in the action captioned *Bushansky, et al. v. Rocket Fuel, Inc. et al.*, Case No. 3:17-cv-04454-JD  
22 (the “Fee Application”);

23           **WHEREAS**, the Tender Offer closed on September 5, 2017;

24           **WHEREAS**, pursuant to the terms of the MOU, Plaintiff’s counsel wishes to dismiss the  
25 Complaint with prejudice as to Plaintiff and without prejudice as to the unnamed members of the  
26 putative class;

27           **WHEREAS**, the parties agree and respectfully request that this Court retain jurisdiction over  
28 the Action for the sole purpose of considering any Fee Application in the event the parties are unable

1 to reach an agreement concerning the amount of any attorneys' fees and expenses to be paid to counsel  
2 for plaintiffs in the Related Actions and such an application becomes necessary;

3       **WHEREAS**, for the avoidance of doubt, no compensation in any form has passed directly or  
4 indirectly to Plaintiff or his attorneys, and no promise, understanding or agreement to give any such  
5 compensation has been made; nor have the parties had any discussions concerning the amount of any  
6 attorneys' fees and expenses;

7       **WHEREAS**, Defendants have denied and continue to deny any wrongdoing and contend that  
8 no claim asserted in the Related Actions was ever meritorious;

9       **WHEREAS**, Defendants reserve the right to oppose, in whole or in part, any Fee Application;  
10 and

11       **WHEREAS**, no class has been certified in this Action.

12       **NOW, THEREFORE, IT IS STIPULATED AND AGREED** by the undersigned parties,  
13 through their attorneys and subject to the Court's approval, that:

- 14       1. Notice is hereby given that pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil  
15 Procedure, Plaintiff voluntarily dismisses this Action as moot.
- 16       2. The claims pleaded in the Complaint are dismissed with prejudice as to Plaintiff and  
17 without prejudice as to the unnamed members of the putative class.
- 18       3. Because the dismissal is with prejudice as to the named Plaintiff only, and not on behalf  
19 of a putative class, and no class has been certified, notice of this dismissal is not required.
- 20       4. This Court shall retain jurisdiction over the parties in the Action solely for the purpose  
21 of adjudicating the Fee Application, should such an application prove necessary.

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1 5. The parties to the Related Actions shall meet and confer concerning plaintiffs' claim for  
2 attorneys' fees and expenses. To the extent that the parties are unable to reach an  
3 agreement concerning plaintiffs' claim for attorneys' fees and expense, they will contact  
4 the Court to set a stipulated briefing and hearing schedule with respect to the Fee  
5 Application. If the parties reach an agreement concerning plaintiffs' claim for attorneys'  
6 fees and expenses, they will notify the Court.

7 Respectfully submitted,

8 Dated: September 13, 2017

**LEVI & KORSINSKY, LLP**

9 By: /s/ Rosemary M. Rivas

10 Rosemary M. Rivas  
11 44 Montgomery Street, Suite 650  
12 San Francisco, CA 94104  
13 Telephone: (415) 291-2420  
14 Facsimile: (415) 484-1294

15 Donald J. Enright (to be admitted *pro hac vice*)  
16 Elizabeth K. Tripodi (to be admitted *pro hac vice*)

17 **LEVI & KORSINSKY, LLP**  
18 1101 30th Street NW, Suite 115  
19 Washington, DC 20007  
20 Tel: (202) 524-4290  
21 Fax: (202) 337-1567  
22 Email: denright@zlk.com

23 *Counsel for Plaintiff Arnab Debnath*

24 Dated: September 13, 2017

25 **WILSON SONSINI GOODRICH &**  
26 **ROSATI, PROFESSIONAL**  
27 **CORPORATION**

28 By: /s/ Steven Guggenheim

Steven Guggenheim  
650 Page Mill Road  
Palo Alto, California 94304-1050  
Telephone: 650/565-3751

*Attorneys for Defendants Rocket Fuel Inc.,  
Randolph Wootton III, Monte Zweben, Richard  
A. Frankel, Susan L. Bostrom, Ronald E. F.  
Codd, William W. Ericson, Clark M. Kokich,  
and John J. Lewis*

1 Dated: September 13, 2017

**KIRKLAND & ELLIS LLP**

2 By: /s/ Matthew Solum

3 Matthew Solum  
4 601 Lexington Avenue  
5 New York, NY 10022  
6 Telephone: 212/446-4688

7 *Attorneys for Defendants Sizmek inc., Fuel*  
8 *Acquisition Co., and Vector Capital*

9 **FILER'S ATTESTATION**

10 Pursuant to Civil Local Rule 5-1 regarding signatures, I attest under penalty of perjury that the  
11 concurrence in the filing of this document has been obtained from all signatories.

12 /s/ Rosemary M. Rivas

13 Rosemary M. Rivas

**~~PROPOSED~~ ORDER**

Based on the foregoing stipulation and good cause being shown, the Court hereby GRANTS the parties' Stipulation. The Court hereby orders as follows:

1. Plaintiff voluntarily dismisses this action as moot.
2. The claims pleaded in the Complaint are dismissed with prejudice as to Plaintiff and without prejudice as to the unnamed members of the putative class.
3. This Court shall retain jurisdiction over the parties in the Action solely for the purpose of adjudicating the Fee Application, should such an application prove necessary.
4. Because the dismissal is with prejudice as to the named Plaintiff only, and not on behalf of a putative class, and no class has been certified, notice of this dismissal is not required.
5. The parties to the Related Actions shall meet and confer concerning Plaintiffs' claim for attorneys' fees and expenses. To the extent that the parties are unable to reach an agreement concerning Plaintiffs' claim for attorneys' fees and expense, they will contact the Court to set a stipulated briefing and hearing schedule with respect to the Fee Application. If the parties reach an agreement concerning Plaintiffs' claim for attorneys' fees and expenses, they will notify the Court.

**SO ORDERED** this 14th day of September, 2017.

By:   
HONORABLE RICHARD SEEBORG  
UNITED STATES DISTRICT COURT JUDGE