

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SUSAN FINGER,

Plaintiff,

v.

NUANCE COMMUNICATIONS, INC.,
LLOYD CARNEY, MARK BENJAMIN,
DANIEL BRENNAN, THOMAS EBLING,
ROBERT FINOCCHIO, LAURA KAISER,
MICHAL KATZ, MARK LARET, and
SANJAY VASWANI,

Defendants.

Case No.

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Susan Finger (“Plaintiff”), upon information and belief, including an examination and inquiry conducted by and through her counsel, except as to those allegations pertaining to Plaintiff, which are alleged upon personal belief, alleges the following for her Complaint:

NATURE AND SUMMARY OF THE ACTION

1. Plaintiff brings this action against Nuance Communications, Inc. (“Nuance” or the “Company”) and the members of Nuance’s Board of Directors (the “Board” or the “Individual Defendants,” and together with the Company, “Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 14a-9, 17 C.F.R. § 240.14a-9, arising out of their agreement to be acquired by Microsoft Corporation (“Microsoft”) (the “Proposed Transaction”).

2. On April 11, 2021, Nuance and Microsoft into an Agreement and Plan of Merger (the “Merger Agreement”) pursuant to which, Nuance stockholders will receive \$56.00 in cash for each share of Nuance common stock that they own.

3. On May 17, 2021, Nuance filed a Schedule 14A Definitive Proxy Statement (the “Proxy Statement”) with the SEC, which omits or misrepresents material information concerning the Proposed Transaction. The failure to adequately disclose such material information renders the Proxy Statement false and misleading.

4. The stockholder vote to approve the Proposed Transaction is forthcoming. Under the Merger Agreement, following a successful stockholder vote, the Proposed Transaction will be consummated. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from conducting the stockholder vote on the Proposed Transaction unless and until the material information discussed below is disclosed to the holders of the Company’s common stock, or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants’ violations of the Exchange Act.

JURISDICTION AND VENUE

5. This Court has jurisdiction over all claims asserted herein pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1331 because the claims asserted herein arise under Sections 14(a) and 20(a) of the Exchange Act and Rule 14a-9.

6. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over each Defendant by this Court permissible under the traditional notions of fair play and substantial justice. “Where a federal statute such as Section 27 of the [Exchange] Act confers nationwide service of process, the question becomes

whether the party has sufficient contacts with the United States, not any particular state.” *Sec. Inv’r Prot. Corp. v. Vigman*, 764 F.2d 1309, 1315 (9th Cir. 1985). “[S]o long as a defendant has minimum contacts with the United States, Section 27 of the Act confers personal jurisdiction over the defendant in any federal district court.” *Id.* at 1316.

7. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as 28 U.S.C. § 1391, because Defendants are found or are inhabitants or transact business in this District. Indeed, the Company’s stock trades on the Nasdaq Global Select Market, which is also headquartered in this District. *See, e.g., United States v. Svoboda*, 347 F.3d 471, 484 n.13 (2d Cir. 2003) (collecting cases).

THE PARTIES

8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of Nuance.

9. Defendant Nuance is a Delaware corporation, with its principal executive offices located at 1 Wayside Road, Burlington, Massachusetts 01803. Nuance’s common stock trades on the Nasdaq Global Select Market under the ticker symbol “NUAN.”

10. Defendant Lloyd Carney is, and has been at all relevant times, Independent Chairperson of the Board and a director of the Company.

11. Defendant Mark Benjamin is, and has been at all relevant times, Chief Executive Officer and a director of the Company.

12. Defendant Daniel Brennan is, and has been at all relevant times, a director of the Company.

13. Defendant Thomas Ebling is, and has been at all relevant times, a director of the Company.

14. Defendant Robert Finocchio is, and has been at all relevant times, a director of the Company.

15. Defendant Laura Kaiser is, and has been at all relevant times, a director of the Company.

16. Defendant Michal Katz is, and has been at all relevant times, a director of the Company.

17. Defendant Mark Laret is, and has been at all relevant times, a director of the Company.

18. Defendant Sanjay Vaswani is, and has been at all relevant times, a director of the Company.

19. Defendants identified in paragraphs 10-18 are referred to herein as the “Board” or the “Individual Defendants,” and together with Nuance, “Defendants.”

SUBSTANTIVE ALLEGATIONS

A. Background of the Company

20. Nuance is a technology pioneer and market leader in conversational artificial intelligence (“AI”) and ambient clinical intelligence. It delivers intuitive solutions that understand, analyze, and respond to people - amplifying their ability to help others with increased productivity and security. Nuance works with thousands of organizations globally across healthcare, financial services, telecommunications, government and retail - to create stronger relationships and better experiences for their customers and workforce. Nuance offers its customers a wide range of products and services, including clinical documentation, solutions for clinicians, radiologists and care teams, as well as intelligent customer engagement and security biometric solutions for leading brands. In addition, Nuance’s solutions increasingly utilize its innovations in AI, including cognitive sciences and machine learning to create smarter, more natural experiences with

technology. Using advanced analytics and algorithms, Nuance's technologies create personalized experiences and transform the way people interact with information and the technology around them. Nuance markets and sells its solutions and technologies around the world directly through a dedicated sales force and a global network of resellers, including system integrators, independent software vendors, value-added resellers, distributors, hardware vendors, telecommunications carriers and e-commerce websites.

B. The Proposed Transaction

21. On April 12, 2021, Nuance and Microsoft issued a joint press release announcing the Proposed Transaction stating, in pertinent part:

REDMOND, Wash., and BURLINGTON, Mass. – April 12, 2021 – Microsoft Corp (Nasdaq: MSFT) and Nuance Communications, Inc. (Nasdaq: NUAN) today announced they have entered into a definitive agreement under which Microsoft will acquire Nuance for \$56.00 per share, implying a 23% premium to the closing price of Nuance on Friday, April 9, in an all-cash transaction valued at \$19.7 billion, inclusive of Nuance's net debt. Nuance is a trusted cloud and AI software leader representing decades of accumulated healthcare and enterprise AI experience. Mark Benjamin will remain CEO of Nuance, reporting to Scott Guthrie, executive vice president of Cloud & AI at Microsoft. The transaction is intended to close this calendar year.

Microsoft has accelerated its efforts to provide industry-specific cloud offerings to support customers and partners as they respond to disruption and new opportunities. These efforts include the Microsoft Cloud for Healthcare, introduced in 2020, which aims to address the comprehensive needs of the rapidly transforming and growing healthcare industry. Today's acquisition announcement represents the latest step in Microsoft's industry-specific cloud strategy.

Nuance is a pioneer and a leading provider of conversational AI and cloud-based ambient clinical intelligence for healthcare providers. Nuance's products include the Dragon Ambient eXperience, Dragon Medical One and PowerScribe One for radiology reporting, all leading clinical speech recognition SaaS offerings built on Microsoft Azure. Nuance's solutions work seamlessly with core healthcare systems, including longstanding relationships with Electronic Health Records (EHRs), to alleviate the burden of clinical documentation and empower providers to deliver better patient experiences. Nuance solutions are currently used by more than 55% of physicians and 75% of radiologists in the U.S., and used in 77% of U.S. hospitals. Nuance's Healthcare Cloud revenue experienced 37% year-over-year growth in Nuance's fiscal year 2020 (ended September 2020).

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