

1 Eric H. Gibbs (Bar # 178658)
2 David Stein (Bar # 257465)
3 **GIBBS LAW GROUP LLP**
4 505 14th Street, Suite 1110
5 Oakland, CA 94612-1406
6 Telephone: (510) 350-9700
7 Facsimile: (510) 350-9701
8 ehg@classlawgroup.com
9 ds@classlawgroup.com

10 John A. Kehoe
11 **KEHOE LAW FIRM, P.C.**
12 Two Penn Center Plaza
13 1500 JFK Boulevard, Suite 1020
14 Philadelphia, PA 19102
15 Telephone: (215) 792-6676
16 jkehoe@kehoelawfirm.com

17 *Lead Counsel*

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 ATUL SINGH DEORA, *et al.*,

21 Plaintiffs,

22 v.

23 NANTHEALTH, *et al.*,

24 Defendants.

Case No. 2:17-cv-01825-TJH-MRWx

**DECLARATION OF DAVID STEIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT AND TO
DIRECT CLASS NOTICE**

Date: January 13, 2019

Time: UNDER SUBMISSION

Judge: The Hon. Terry J. Hatter, Jr.

Courtroom: 9B

1 I, David Stein, hereby declare,

2 1. I am a partner with the law firm of Gibbs Law Group LLP, one of the
3 law firms that has served as Lead Counsel in this action over the past several years. I
4 make this declaration based on my personal knowledge and review of my firm's case
5 file, and if called upon to do so, could and would testify competently the matters in
6 this declaration.

7 2. Gibbs Law Group is a national litigation firm dedicated to representing
8 plaintiffs in class and collective actions in state and federal courts. The firm serves
9 clients in consumer protection, securities, antitrust, whistleblower, personal injury,
10 and employment cases. Our attorneys have served as lead counsel, class counsel, or
11 liaison counsel in dozens of class and coordinated proceedings in which we have
12 achieved numerous record-breaking settlements. A true and correct copy of the
13 Gibbs Law Group firm resume is attached as **Exhibit C**. The firm's lawyers have
14 experience handling securities and other class actions, and we have brought that
15 experience to bear over the course of this litigation and in the context of negotiating
16 and finalizing the pending settlement.

17 3. This proposed class action began in March 2017. My firm and our co-
18 counsel initiated suit after investigating the claims against NantHealth and its
19 officers and directors, including Dr. Soon-Shiong, first publicized by the medical
20 news organization, STAT, March 6, 2017

21 4. Since inception of the litigation, Lead Counsel have vigorously
22 prosecuted this case, with NantHealth consistently denying the core allegations of
23 the suit and contesting our legal theories. Lead Counsel opposed Defendants'
24 motion to dismiss, and engaged in protracted discovery efforts, including serving
25 three sets of document requests, five sets of interrogatories, and two sets of requests
26 for admission on NantHealth, and additional discovery on the officer and director
27 defendants; seeking documents or testimony from 24 third parties through
28 subpoenas, including to the University of Utah and four non-profit entities

1 associated with Defendant Dr. Patrick Soon-Shiong; making a public records
2 request to the State of Utah; and deposing witnesses from the University of Utah
3 and NantHealth, including NantHealth's former president. Defendants ultimately
4 produced over one million pages of documents, and likewise served document
5 requests, interrogatories, and requests for admission on Co-Lead Plaintiffs; deposed
6 Lead Plaintiff SEPTA and former Lead-Plaintiff Michael Fontaine; and sought
7 documents from numerous third parties, including several international parties.
8 Lead Counsel assisted in the collection, review, and production of responsive
9 documents and in serving formal discovery responses, and also defended SEPTA
10 and Michael Fontaine's depositions.

11 5. In September 2018, in the midst of discovery, Lead Counsel moved to
12 certify two classes of investors. While the motion was pending, Lead Plaintiff
13 Michael Fontaine passed away, and Lead Counsel moved to substitute his daughter
14 in his place. After the Court granted the motion for class certification, Lead Counsel
15 also opposed Defendants' Petition under Rule 23(f) to the Ninth Circuit challenging
16 the Court's order.

17 6. Lead Counsel also engaged the services of an economist who assisted in
18 calculating the damages that would be available were Plaintiff to prevail at trial. The
19 economist calculated the effect of each alleged misrepresentation and corrective
20 disclosure on NantHealth's share price, adjusting for market or industry forces.
21 Based on these calculations, the economist concluded that four statistically
22 significant corrective disclosures led to a total of \$40,935,148 in damages for the
23 Classes. Lead Counsel also worked with Plaintiff's expert to devise the plan of
24 allocation described in the Mailed Notice, attached as **Exhibit A-2**. In creating a
25 plan of allocation that equitably compensates Exchange Act and Securities Act Class
26 Members based on the strengths and weaknesses of their respective claims, the
27 economist looked to the 2018 annual report published by Cornerstone Research, an
28 established economic consulting firm, that analyzed securities class actions from

1 2009-2018. Based in part on a review of that report, attached as **Exhibit D**, Lead
2 Counsel and Plaintiff's expert determined that an enhancement of 26% for Class
3 Members' recoveries under the Securities Act Class is equitable. As part of these and
4 other efforts, my firm and our co-counsel have or will advance up to \$375,000 in
5 expenses to prosecute this action.¹

6 7. At the end of 2018, while the class certification motion was pending, the
7 parties began discussing whether a compromise resolution of the litigation might be
8 feasible, and they ultimately agreed to conduct a mediation. The parties engaged in
9 a mediation in January 2019 with the assistance of JAMS mediator Robert A.
10 Meyer. The parties were unable to reach an agreement but continued to engage with
11 Mr. Meyer and later agreed to participate in another mediation on September 11,
12 2019. Again, the parties did not come to an agreement at the mediation, but
13 continued to work with Mr. Meyer over the next month, and ultimately agreed to
14 terms to resolve the litigation, under Mr. Meyer's continued supervision, in late
15 October 2019.

16 8. Since then, the parties have worked to prepare the formal stipulation of
17 settlement now before the Court, which involved cooperative efforts to finalize the
18 terms of the agreement, and to prepare and finalize the agreement's exhibits and this
19 motion.

20 9. A true and correct copy of the parties' formal settlement agreement is
21 attached as **Exhibit A**. To finalize the settlement agreement, counsel for the parties
22 engaged in cooperative efforts for over a month, including to finalize the settlement
23 agreement exhibits and the pending motion to direct settlement notice to the class.
24 The parties have also agreed to **Exhibit B**, a supplemental agreement (a true and

25 _____
26 ¹ I provide an estimate of our expenses here, rather than a final total, because we
27 typically continue to incur costs through final settlement approval. I will provide the
28 Court with the total costs incurred in connection with Plaintiff's motion for attorney's
fees and cost reimbursements, which will also include a breakdown of the various types
of costs incurred, with corresponding dollar amounts.

1 correct copy of which Plaintiff filed provisionally under seal) which provides that if
2 Class Member opt-outs reach a certain threshold, Defendants will have the option to
3 terminate the settlement.

4 10. Plaintiff also recently retained the services of an experienced settlement
5 administrator, JND Legal Administration, to assist with overseeing the claims
6 administration process. Per the Preliminary Approval Order, Lead Counsel will
7 direct the settlement administrator to mail the Mailed Notice to all Class members
8 who can be identified with reasonable effort within 21 days after entry of the
9 Preliminary Approval Order, and to publish the Summary Notice twice on a
10 national business newswire at approximately 10 days and again at approximately 20
11 days after Mailed Notice is distributed. In the event that Mailed Notices are returned
12 as undeliverable, the settlement administrator will process them, attempt to cure any
13 defects, and re-mail them. The settlement administrator will also set up a dedicated
14 website where Class Members can find out more about the settlement, access the
15 claim form, and submit claims and supporting documentation. The settlement
16 administrator will evaluate claims submitted by Class Members, and will determine
17 which claims shall be allowed, subject to appeal to the Court.

18 11. With respect to the compensatory award for the Lead Plaintiff, I note
19 that SEPTA has diligently represented the class: SEPTA's representative, Gino
20 Benedetti has actively participated in the case over multiple years; including by
21 responding to over a dozen written discovery requests, conducting ESI searches,
22 producing documents, responding to interrogatories, and serving as SEPTA's Rule
23 30(b)(6) deponent. Throughout, Mr. Benedetti, an attorney himself, has remained in
24 contact with Lead Counsel, stayed apprised of the litigation, and acted with the
25 interests of the Classes in mind. I anticipate that a still more detailed declaration
26 supporting the requested compensatory award will be filed along with Plaintiff's
27 motions for final settlement approval and for attorney's fees and cost
28 reimbursements.

