

1 Eric H. Gibbs (Bar # 178658)  
2 David Stein (Bar # 257465)  
3 Kyla J. Gibboney (Bar # 301441)  
4 **GIBBS LAW GROUP LLP**  
5 505 14th Street, Suite 1110  
6 Oakland, CA 94612-1406  
7 Telephone: (510) 350-9700  
8 Facsimile: (510) 350-9701  
9 ehg@classlawgroup.com  
10 ds@classlawgroup.com  
11 kjg@classlawgroup.com

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

19 *Class Counsel*

20 **UNITED STATES DISTRICT COURT**  
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 ATUL SINGH DEORA, *et al.*,

23 Plaintiffs,

24 v.

25 NANTHEALTH, *et al.*,

26 Defendants.

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

**JOINT DECLARATION OF DAVID  
STEIN AND JOHN A. KEHOE IN  
SUPPORT OF MOTION FOR FINAL  
APPROVAL OF CLASS  
SETTLEMENT AND FOR AWARD  
OF ATTORNEYS' FEES,  
LITIGATION COSTS, AND  
COMPENSATORY AWARD**

Date: June 15, 2020

Time: 10:00 a.m.

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

Courtroom: 9B

1 We, David Stein and John A. Kehoe declare as follows:

2 1. We are partners at the two law firms (Gibbs Law Group LLP and  
3 Kehoe Law Firm P.C.) that have served as Lead Counsel representing Lead Plaintiff  
4 Southeastern Pennsylvania Transportation Authority (SEPTA) and the Classes over  
5 the past three years. We make this declaration based on personal knowledge and  
6 review of each firm's case file, and in support of Plaintiff's motion for final approval  
7 of class settlement, and for an award of attorneys' fees, litigation costs, and a  
8 compensatory award.

9 2. To assist in the Court's assessment of reasonable attorneys' fees, below  
10 we first provide a summary of the efforts Gibbs Law Group and Kehoe Law Firm  
11 devoted to litigating this action and delivering this settlement for the Classes. For  
12 additional detail regarding our firms, we attach Gibbs Law Group's firm resume as  
13 **Exhibit A**, and Kehoe Law Firm's firm resume as **Exhibit B**.

14 3. Next, we provide a summary of the role played by each of the attorneys  
15 from our firms responsible for prosecuting this action over the last three years,  
16 support for our firms' hourly billing rates, and a breakdown of each firm's out-of-  
17 pocket litigation contributions.

18 4. Attached as **Exhibit C**, we include a declaration from Javier Bleichmar,  
19 from Bleichmar Fonti & Auld LLP, who served as additional counsel to Lead  
20 Plaintiff SEPTA and performed work on behalf of Lead Plaintiff and the Classes at  
21 the direction of Class Counsel, supporting his firm's hourly billing rates, litigation-  
22 cost contributions, and other information that may be relevant to the Court's  
23 consideration of final approval or to attorneys' fees and cost reimbursements.

24 5. Finally, in support of our request for a compensatory award for Lead  
25 Plaintiff SEPTA, we attach as **Exhibit D** a declaration from Gino Benedetti, general  
26 counsel for SEPTA, describing the efforts Lead Plaintiff expended on behalf of the  
27 Classes over the course of the litigation, and attesting to Lead Plaintiff's support for  
28 final approval of the settlement, and Class Counsel's request for attorneys' fees,

1 litigation costs, and a compensatory award. Due to the Shelter-in-Place Order issued  
2 by the governor of Pennsylvania in response to the COVID-19 pandemic, Mr.  
3 Benedetti executed his declaration using Adobe's Adobe Sign program. Should the  
4 Court desire, we will submit a scanned version of Mr. Benedetti's signature upon the  
5 lifting of the Shelter-in-Place Order.

6 **I. Summary of counsel's efforts throughout the litigation**

7 6. As detailed below and in **Exhibit C**, Lead Counsel and additional  
8 counsel from Bleichmar Fonti & Auld LLP have devoted 5159.25 hours to  
9 prosecuting this action over the last three years and delivering the proposed  
10 settlement for the Classes.

11 7. In our experience, having litigated and successfully resolved numerous  
12 complex class actions in recent years, and given the nature of this case and the  
13 aggressive defense Defendants mounted, the number of hours devoted to litigating  
14 this case on behalf of the Classes was reasonable and indeed necessary to achieving  
15 the results obtained.

16 8. Due to the significant time and resources it required, litigating this  
17 action over the last three years precluded our firms from accepting additional  
18 employment.

19 **A. Factual investigation, Lead Plaintiff application, preparation of**  
20 **Amended Complaint**

21 9. We began our investigation into the conduct at issue in this action in  
22 March 2017. That investigation included reviewing reports about NantHealth's  
23 relationship with the University of Utah, such as the STAT articles cited in the  
24 Amended Complaint, as well as analyzing NantHealth's share price and documents  
25 related to NantHealth's June 2016 IPO.

26 10. We then worked with former Co-Lead Plaintiff Michael Fontaine and  
27 Lead Plaintiff SEPTA to submit an application for appointment as Co-Lead  
28 Plaintiffs, which involved reviewing their trading records, calculating their losses,

1 drafting a motion and memoranda in support of the application, and reviewing and  
2 responding to the competing applications from other investors.

3 11. After the Court appointed Mr. Fontaine and SEPTA as Co-Lead  
4 Plaintiffs and our firms as Co-Lead Counsel, we continued our investigation of  
5 publicly available information about NantHealth, including its IPO prospectus and  
6 related documents, quarterly and annual SEC filings, and investor call transcripts.  
7 Based on our investigation, we drafted a comprehensive amended complaint,  
8 alleging violations of Sections 11, 12(a)(2), and 15 of the Securities Act, and  
9 Sections 10(b) and 20(a) of the Exchange Act.

10 **B. Motion-to-dismiss briefing and initial discovery efforts**

11 12. In August 2017, Defendants moved to dismiss the Amended Complaint  
12 in its entirety. We drafted a memorandum opposing the motion, which the Court  
13 largely denied.

14 13. With the pleadings resolved, we served initial discovery, which included  
15 our first sets of requests for production, interrogatories, and requests for admission  
16 to NantHealth; interrogatories to the individual Defendants; third-party subpoenas  
17 requesting documents from the University of Utah, Ernst & Young, the IPO  
18 underwriters, and the charities that funded the donation to the University of Utah;  
19 and a public records request to the State of Utah. In all, Plaintiff served three sets of  
20 document requests and five sets of interrogatories on NantHealth, additional  
21 requests for production and interrogatories on the individual Defendants, and 24  
22 third-party subpoenas.

23 14. NantHealth likewise served its first sets of requests for production and  
24 interrogatories on the Co-Lead Plaintiffs, and we worked with Mr. Fontaine and  
25 SEPTA to conduct searches, collect, review, and prepare responsive ESI and  
26 documents for production, and draft responses and objections to Defendants'  
27 requests.

28

1 15. Once we received Defendants' responses to our initial discovery, we  
2 began a months-long meet-and-confer process that featured dozens of calls and  
3 letters to defense counsel.

4 16. Defendants ultimately produced over one million pages of documents,  
5 and third parties produced thousands more in response to our subpoenas and public  
6 records request.

7 17. To review those productions, we established an online discovery  
8 platform, and developed a review protocol to aid in identifying and summarizing  
9 key documents.

10 **C. Motion for class certification, work with experts, first mediation,**  
11 **and continued discovery**

12 18. In the midst of our discovery efforts, we prepared and filed a motion for  
13 class certification seeking certify two classes of investors, supported by 21 exhibits.  
14 In preparation for filing our motion, we retained and worked with a damages and  
15 market efficiency expert to craft a report, which we submitted in support of the  
16 motion.

17 19. Defendants opposed the motion in part, arguing, among other things,  
18 that the Securities Act Class was overbroad, and that SEPTA was not an adequate  
19 class representative for the Securities Act Class.

20 20. While the class certification motion was pending, we participated in an  
21 in-person mediation with JAMS mediator Robert A. Meyer, Esq., in Los Angeles.  
22 In preparation for the mediation, we drafted a mediation brief and worked with our  
23 damages expert to create a damages model so we could evaluate any potential  
24 classwide settlement.

25 21. We did not reach an agreement at the initial mediation, and discovery  
26 continued. In March 2019, we prepared for and defended the depositions of former  
27 Co-Lead Plaintiff Michael Fontaine, and Gino Benedetti, who served as the Rule  
28 30(b)(6) deponent for Lead Plaintiff SEPTA.

1           22. In June 2019, while the class certification motion was pending, we  
2 moved to substitute Melanie Fontaine Alonzo as Co-Lead Plaintiff in place of  
3 Michael Fontaine, who passed away in May 2019.

4           23. After the Court granted our class certification motion in July 2019,  
5 Defendants petitioned the Ninth Circuit for permission to appeal the order. We  
6 opposed the petition, which remained pending at the time of settlement.

7           **D. Fact witness depositions, second mediation, and ongoing discovery**  
8           **efforts**

9           24. Our discovery efforts continued through the summer and fall of 2019, as  
10 we began preparing for and taking fact witness depositions.

11           25. Our first round of depositions took place in Salt Lake City, Utah, and  
12 included Amy Davis, the former director of research program development at the  
13 University of Utah School of Medicine, and James Haisley, deputy general counsel  
14 to the University of Utah.

15           26. In September 2019, we mediated for the second time with Mr. Meyer in  
16 Los Angeles. In advance of the mediation, we prepared updated mediation briefs  
17 summarizing our discovery efforts to date, and worked with our expert to revise our  
18 damages models to enable us to evaluate a potential classwide settlement.

19           27. We did not reach agreement at the mediation, and in the following  
20 weeks, continued with fact witness depositions in Los Angeles and New York.

21           28. Those depositions included NantHealth's former president, Robert  
22 Watson, and Dr. Shahrooz Rabizadeh, the chief scientific officer at NantHealth's  
23 sister company NantOmics; and Dr. Vivian Lee, former senior vice president of life  
24 sciences at the University of Utah, who was the main point of contact between Dr.  
25 Soon-Shiong and the University.

26           29. We also served additional third-party subpoenas, including to other  
27 recipients of donations from Dr. Soon-Shiong's charities, and continued our  
28 ongoing meet-and-confer efforts with NantHealth and third parties.



1           **E. Post-mediation negotiations, settlement agreement, motions for**  
2                           **preliminary and final settlement approval, settlement administration**

3           30. In the weeks following the second mediation, we remained in contact  
4 with Mr. Meyer, and continued settlement discussions under his supervision, before  
5 ultimately reaching terms on a classwide settlement in October 2019.

6           31. After agreeing to terms, we worked to prepare the formal settlement  
7 agreement, the supporting exhibits (including the Mailed and Summary Notices and  
8 Claim Form), worked with our damages expert to devise the plan of allocation, and  
9 retained and consulted with the settlement administrator to prepare to roll out the  
10 settlement.

11           32. We then researched and prepared the motion for preliminary approval  
12 of the settlement and supporting documents.

13           33. In the time since the Court granted the motion to preliminarily approve  
14 the settlement and direct class notice, we worked closely with the settlement  
15 administrator to ensure the notice program was effectuated and prepared our motion  
16 for final approval and attorneys' fees, costs, and a compensatory award.

17           34. Based on our experience in past class action settlements, our efforts are  
18 likely to continue in the coming months as we work with the settlement  
19 administrator to finalize implementation of the settlement, respond to Class member  
20 inquiries, and prepare a reply brief in support of final settlement approval.

21           **II. Gibbs Law Group Attorneys' Hourly Rates and Lodestar**

22           35. In the course of the efforts described above, Gibbs Law Group has  
23 spent 3470 hours, 90% of which was contributed by six lawyers at the firm:

- 24           ▪ David Stein: Mr. Stein was the partner at Gibbs Law Group primarily  
25 responsible for the day-to-day management of the case. He helped  
26 oversee and execute Plaintiff's offensive discovery efforts, including  
27 taking several depositions; was involved in preparing pleadings and  
28 briefing, including Plaintiff's motions for preliminary and final

1 settlement approval; and helped with Plaintiff's expert's efforts to craft  
2 their report in support of class certification as well as the plan of  
3 allocation.

- 4 ■ Eric Gibbs: Mr. Gibbs provided high-level oversight of the litigation and  
5 helped lead the settlement negotiations as well as the finalization of the  
6 formal settlement agreement, and the selection and retention of a  
7 settlement administrator.
- 8 ■ Amanda Karl: Ms. Karl was the associate assigned to the case through  
9 June 2019 when she took maternity leave. Ms. Karl helped research and  
10 draft the amended complaint and several briefs and helped with  
11 Plaintiff's offensive discovery efforts, drafting Plaintiff's discovery  
12 requests on Defendants, subpoenas on numerous third-parties, and the  
13 public records request on the state of Utah, and helping to build  
14 Plaintiff's affirmative case based on a review of the documents  
15 produced.
- 16 ■ Kyla Gibboney: Ms. Gibboney, a second associate, began working on  
17 the case after Ms. Karl began maternity leave. Among other things, she  
18 helped with discovery efforts, including establishing a review protocol  
19 for Defendants' and third parties' document productions, and preparing  
20 for and taking or attending fact-witness depositions. Ms. Gibboney  
21 helped draft Plaintiff's second mediation brief and contributed to  
22 Plaintiff's motions for preliminary and final settlement approval and  
23 supporting documents, and coordinated with the settlement  
24 administrator to establish the settlement website and effectuate notice to  
25 Class members.
- 26 ■ Geoffrey Monroe: Mr. Monroe assisted primarily with writing projects,  
27 including Plaintiff's opposition to Defendants' motion to dismiss,  
28



1 Plaintiff's first mediation brief, and Plaintiff's motion for class  
2 certification.

- 3 ■ Amy Zeman: Partner Amy Zeman contributed to Plaintiff's offensive  
4 discovery efforts, leading Plaintiff's meet-and-confer efforts with  
5 NantHealth and other Defendants, and coordinating third-party  
6 discovery.

7 36. The remaining 10% of our firm's hours were contributed by two  
8 lawyers:

- 9 ■ Jeffrey Kosbie: Mr. Kosbie assisted primarily with discovery-related  
10 tasks including document review, and worked with Ms. Zeman to  
11 further Plaintiff's meet and confer efforts with Defendants and third  
12 parties.
- 13 ■ Nate Brown: Mr. Brown was a summer associate with the firm in 2017.  
14 Mr. Brown conducted legal research for Plaintiff's opposition to  
15 Defendants' motion to dismiss.

16 37. The following table lists the time contributed by each of these attorneys,  
17 their titles, the date they were admitted to the California bar, their hourly rates, and  
18 the total lodestar associated with their time.

19 Name	Title	Bar Date	Hours	Rate	Lodestar
20 Kyla Gibboney	Associate	2014	910.8	\$460	\$418,968
21 Amanda Karl	Associate	2014	858.6	\$465	\$399,249
22 David Stein	Partner	2007	711.5	\$710	\$505,165
23 Amy Zeman	Partner	2010	326	\$600	\$195,600
24 Eric Gibbs	Partner	1995	98.8	\$910	\$89,908
25 Jeffrey Kosbie	Associate	2015	327.7	\$415	\$135,995.50
26 Geoffrey Munroe	Partner	2003	210.1	\$720	\$151,272

Nate Brown	Summer Associate	N/A	26.5	\$200	\$5,300
<b>Total</b>			<b>3470</b>		<b>\$1,901,458</b>

38. In the course of reviewing Gibbs Law Group’s billed time in this matter, Gibbs attorneys exercised billing judgment and reduced the total number of hours billed by the attorneys and professional staff at the firm.

39. Based on years of experience in class action and complex litigation, we believe Gibbs Law Group’s hourly billing rates are commensurate with the rates charged by other firms with similar experience and expertise.

40. In connection with fee applications like this one, Gibbs Law Group’s billing rates have regularly been evaluated and approved by courts throughout California, including in *Glenn v. Hyundai Motor America*, No. 15-cv-02052, ECF No. 280 (C.D. Cal. Aug. 26, 2019); *In re: Vizio, Inc., Consumer Privacy Litig.*, No. 16-ml-02693, ECF No. 337 (C.D. Cal. July 31, 2019); *Velasco v. Chrysler Group, LLC*, No. 13-cv-08080, ECF No. 167 (C.D. Cal. Jan. 27, 2016); *In re Lenovo Adware Litig.*, No. 15-md-02624, ECF No. 258 (N.D. Cal. Apr. 24, 2019); *In re Anthem, Inc. Data Breach Litig.*, No. 15-md-02617, 2018 WL 3960068 (N.D. Cal. Aug. 17, 2018); *In re Hyundai Sonata Engine Litig.*, Case No. 15-cv-01685, ECF No. 85 (N.D. Cal. Jan 23, 2017); *In re Adobe Systems Inc. Privacy Litig.*, No. 13-cv-05226, ECF No. 107 (N.D. Cal. Aug. 13, 2015); and *Edwards v. Ford Motor Co.*, No. 11-cv-01058, ECF 181 (S.D. Cal. May 2, 2016).

41. The attorneys at Gibbs Law Group have had considerable success over the course of many years prosecuting complex class actions such as this one. Additional information about Gibbs Law Group and its attorneys can be found in the firm resume, attached as **Exhibit A**.

**III. Kehoe Law Firm Attorneys’ Hourly Rates and Lodestar**

42. Over the past three years, Kehoe Law Firm has spent 411.25 hours prosecuting the Classes’ claims. This time was contributed by two lawyers at the firm:

- John Kehoe: Partner John Kehoe served as primary client contact with SEPTA and Mr. Fontaine at inception and throughout the litigation. In addition to working on the Amended Complaint, related pleadings and SEPTA’s class certification motion, Mr. Kehoe assisted on responses to Defendants’ discovery requests, led the search for and collected documents in response to Defendants’ requests and Mr. Kehoe defended both SEPTA’s and Mr. Fontaine’s depositions. Mr. Kehoe also attended both mediation sessions and interfaced with SEPTA to achieve the settlement.
- Michael Yarnoff: Partner Michael Yarnoff worked on the analysis of individual client and classwide damages related matters and assisted in the settlement process and impact upon SEPTA, Mr. Fontaine, and the Classes. Mr. Yarnoff also participated in preparing the Amended Complaint, and the class certification briefing and process.

43. The following table lists the time contributed by each of these attorneys, their titles, the date they were admitted to the bars where they are admitted to practice, their hourly rates, and the total lodestar associated with their time.

Name	Title	Bar Date	Hours	Rate	Lodestar
John Kehoe	Partner	1999 (NY) 2010 (PA)	392.5	\$850	\$333,625.00
Michael Yarnoff	Partner	1991 (PA) 1991 (NJ) 1995 (DE)	18.75	\$850	\$15,937.50
<b>Total</b>			<b>411.25</b>		<b>\$349,562.50</b>

1 44. While reviewing Kehoe Law Firm's billed time in this matter, we  
2 exercised billing judgment and reduced the total number of hours billed by the  
3 attorneys and professional staff at the firm.

4 45. Based on years of experience in class action and complex litigation, we  
5 believe Kehoe Law Firm's hourly billing rates are commensurate with the rates  
6 charged by other firms with similar experience and expertise.

7 46. Kehoe Law Firm attorneys bring extensive securities class action  
8 experience, and their billing rates have regularly been evaluated and approved by  
9 courts throughout country, including in *In re Petrobras Sec. Litig.*, 14-cv-9662  
10 (S.D.N.Y.); *In re Lehman Brothers Equity/Debt Sec. Litig.*, 08-cv-5523 (S.D.N.Y.); *In re*  
11 *Bank of America Corporation Sec. Litig.*, 09-md-2058 (S.D.N.Y.); *In re Wachovia Corp.*  
12 *Preferred Sec. and Bond/Notes Litig.*, 09-cv-6351 (S.D.N.Y.); *In Re Delphi Corporation*  
13 *Sec., Deriv. & "ERISA" Litig.*, MDL No. 1725 (E.D. Mich.); *In Re Tyco International*  
14 *Ltd. Securities Litig.*, No. 02-md-1335 (D.N.H); *CVS Corp. Sec. Litig.*, 01-cv-11464 (D.  
15 Mass.); *In re Marvell Technology Group, Ltd. Sec. Litig.*, 06-cv-6286 (N.D. Cal.); *In re*  
16 *Brocade Sec. Litig.*, 05-cv-2042 (N.D. Cal.).

17 47. The attorneys at Kehoe Law Firm have had considerable success over  
18 the course of many years prosecuting complex securities class actions such as this  
19 one. Additional information about Kehoe Law Firm and its attorneys can be found  
20 in the firm resume, attached as **Exhibit B**.

#### 21 **IV. Summary of Expenses**

22 48. Over the three years this case has been pending, we and additional  
23 counsel have advanced \$349,073.67 to see this case through to its successful  
24 resolution. See **Exhibit C**, ¶ 9.

25 49. As shown below, the largest single expenditure was for expert fees.  
26 Given the complex nature of this action, and the hurdles Plaintiff faced at class  
27 certification and summary judgment, it was necessary to retain an experienced and  
28 well-qualified economic expert to opine on market efficiency, create a classwide

1 damages model, and help devise the plan of allocation for the settlement proceeds.  
2 The expert submitted a report in support of class certification, and had begun work  
3 on a merits report in anticipation of the deadline to serve expert reports.

4 50. We also devoted more than \$50,000 to establishing and maintaining an  
5 online document review platform, a necessary undertaking given the scale of  
6 electronic discovery in this action, which featured over one million pages of  
7 documents from over a dozen parties.

8 **A. Gibbs Law Group Expenses**

9 51. Gibbs Law Group has incurred \$283,929.52 in litigation expenses to  
10 prosecute this case on behalf of the Classes, as reflected in the following table:

<b>Cost Category</b>	<b>Amount</b>
Airfare	\$8,576.39
Copies	\$2,461.01
Experts	\$168,946.78
Filing Fees	\$409
Ground Transportation	\$1,346.42
Litigation Support (including document review platform)	\$57,991.97
Lodging	\$5,370.03
Meals	\$1,122.57
Mediation Fees	\$7,898.88
Parking	\$178
Postage and Delivery	\$147.82
Records Fees	\$429
Research	\$ 14,545.55
Transcripts	\$14,414.50
Witness Fees	\$91.60
<b>Total</b>	<b>\$283,929.52</b>

**B. Kehoe Law Firm Expenses**

52. Kehoe Law Firm has incurred \$9,149.25 in litigation expenses to prosecute this case on behalf of the Classes, as reflected in the following table

<b>Cost Category</b>	<b>Amount</b>
Airfare	\$4,453.97
Ground Transportation	\$1,184.81
Litigation Support	\$79.12
Lodging	\$2,812.24
Meals	\$461.11
Parking	\$158
<b>Total</b>	<b>\$9,149.25</b>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 23, 2020, in San Francisco, California.

/s/ David Stein

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 23, 2020, in Statesville, North Carolina.

/s/ John A. Kehoe



**ATTESTATION**

I attest that for all conformed signatures indicated by an “/s/,” the signatory has concurred in the filing of this document.

March 23, 2020

Respectfully submitted,

/s/ David Stein

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28