

EXHIBIT D

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14 *Class Counsel*

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 ATUL SINGH DEORA, *et al.*,

19 Plaintiffs,

20 v.

21 NANTHEALTH, *et al.*,

22 Defendants.

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

**DECLARATION OF GINO
BENEDETTI 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 I, Gino Benedetti, Esq., hereby declare under penalty of perjury as follows:

2 1. I am the General Counsel to Southeastern Pennsylvania Transportation
3 Authority (“SEPTA”), the Court-appointed Lead Plaintiff and Class Representative in
4 the above-captioned class action (the “Action”).

5 2. SEPTA is the principal transit provider for the Pennsylvania counties of
6 Philadelphia, Delaware, Montgomery, Bucks and Chester, operating regional commuter
7 trains, rapid transit subway and elevated trains, trolleys and buses. SEPTA serves
8 approximately 3.9 million people in these counties making it the 6th largest rapid transit
9 system by ridership and 5th largest transit system overall in the United States.

10 3. I have personal knowledge of the matters set forth herein based on my
11 active supervision and participation in the Action, and settlement of the claims asserted
12 on behalf of SEPTA and the Classes.

13 4. I respectfully submit this declaration in support of: (i) SEPTA’s motion for
14 final approval of the proposed Settlement; (ii) Class Counsel’s motion for an award of
15 attorneys’ fees and reimbursement of expenses; and (iii) approval of SEPTA’s request to
16 recover the reasonable costs SEPTA incurred in connection with its representation of the
17 Classes in the prosecution of this litigation.

18 5. I make this declaration with the benefit of having reviewed the
19 (i) Memorandum in Support of SEPTA’s Motion for Final Approval of Class Settlement
20 and for an Award of Attorneys’ Fees, Litigation Costs, and Compensatory Award
21 (“Memorandum”); and (ii) the Declarations of David Stein, John A. Kehoe, and Javier
22 Bleichmar in support the Motion.

23 6. I am aware of and understand the requirements and responsibilities of a
24 representative plaintiff in a securities class action, including those set forth in the Private
25 Securities Litigation Reform Act of 1995 (“PSLRA”). I have personal knowledge of the
26 matters set forth in this declaration, as I have been directly involved in monitoring and
27 overseeing the prosecution of the Action, as well as the negotiations leading to the
28 Settlement, and I could and would testify competently to these matters.

1 7. By order dated May 31, 2017, the District Court appointed SEPTA as Co-
2 Lead Plaintiff, and appointed the Gibbs Law Group LLP (“GLG”) and Kehoe Law Firm,
3 P.C. (“KLF”) as Lead Counsel. On September 20, 2018, SEPTA filed a motion for class
4 certification, appointment of class representative, and appointment of Class Counsel. On
5 July 30, 2019, the District Court issued its Opinion and Order granting SEPTA’s motion.
6 The District Court certified a Securities Act class and an Exchange Act class, appointed
7 SEPTA as Class Representative, and appointed GLG and KLF as Class Counsel. In
8 fulfillment of SEPTA’s responsibilities as Class Representative, I have worked closely
9 with Class Counsel to obtain a favorable result in this case.

10 **I. SEPTA’S OVERSIGHT OF THE LITIGATION**

11 8. Throughout the litigation, SEPTA received status reports from Class
12 Counsel on case developments and participated in frequent discussions concerning the
13 prosecution of the Action, the strengths of and risks to the claims, and potential
14 settlement. In particular, throughout the course of the Action, SEPTA: (a) regularly
15 communicated and met with Class Counsel regarding the posture and progress of the
16 case; (b) reviewed and discussed all significant pleadings, motions, and briefs filed in
17 the Action; (c) reviewed and discussed significant decisions in the Action;
18 (d) coordinated SEPTA’s document production; (e) prepared for and attended a
19 deposition of SEPTA pursuant to Fed. R. Civ. P. 30(b)(6); (f) consulted with Class
20 Counsel regarding settlement negotiations; and (g) evaluated and approved the proposed
21 Settlement.

22 **II. APPROVAL OF THE SETTLEMENT**

23 9. Through its active participation in the Action, SEPTA was kept informed of
24 the progress of the settlement negotiations in this litigation. Before, during, and after the
25 mediation process presided over by Robert A. Meyer, Esq., a mediator with JAMS,
26 SEPTA conferred with Class Counsel regarding the parties’ respective positions and
27 comments made by the mediator.

1 10. Based on its involvement throughout the prosecution and resolution of the
2 claims asserted in the Action, SEPTA's belief is that the Settlement provides an
3 excellent recovery for the Classes, particularly considering the risks of continued
4 litigation. It is SEPTA's understanding that the Settlement represents a recovery that, in
5 terms of the percentage of damages recovered, is significantly higher than the average
6 recovery in securities class actions.

7 11. From my understanding of the progress of the Action, the circumstances
8 surrounding the Action and taking into account the arguments set out in the
9 Memorandum as well as my discussions with Class Counsel, I believe that the proposed
10 Settlement is fair, reasonable, and adequate to the Classes and I endorse approval of the
11 Settlement by the District Court.

12 **III. CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES**
13 **AND REIMBURSEMENT OF EXPENSES**

14 12. SEPTA believes that Class Counsel's request for an award of attorneys'
15 fees of \$4,125,000 is fair and reasonable considering the work Class Counsel performed
16 on behalf of the Classes. SEPTA has evaluated Class Counsel's request by considering
17 the arguments set out in the Memorandum and the Declarations, the work performed, the
18 recovery obtained for the Classes, and the risks of the Action, and has authorized this fee
19 request for the District Court's ultimate determination.

20 13. SEPTA further believes that the litigation expenses being requested for
21 reimbursement to Class Counsel are reasonable and represent expenses necessary for the
22 prosecution and resolution of the claims in the Action. Based on the foregoing, and
23 consistent with SEPTA's obligation to the Classes to obtain the best result at the most
24 efficient cost, SEPTA fully supports Class Counsel's request for reimbursement of
25 litigation expenses.

26 14. SEPTA understands that reimbursement of a class representative's
27 reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. § 78u-4(a)(4).
28 For this reason, in connection with Class Counsel's request for reimbursement of

1 litigation expenses, SEPTA is seeking reimbursement for the costs that SEPTA incurred
2 directly relating to SEPTA's representation of the Classes in the Action.

3 15. The time that my colleagues and I devoted to the representation of the
4 Classes in this Action was time that we otherwise would have spent on other activities at
5 SEPTA, and thus, represented a cost to SEPTA. Accordingly, SEPTA seeks
6 reimbursement in the amount of \$25,000.00 which represents a significant discount to
7 the time that SEPTA's employees devoted to participating in this Action, which SEPTA
8 estimates to be approximately 43 hours, including myself as General Counsel who
9 devoted the majority of the time. SEPTA believes that this request for reimbursement is
10 fair and reasonable.

11 16. As stated above, I am General Counsel for SEPTA and personally worked
12 approximately 35 hours during the pendency of the Action performing the tasks set forth
13 above. In my capacity as General Counsel, I provide legal advice and guidance on a
14 broad range of areas, including regulatory, corporate, transactional matters, and
15 litigation, am a member of several internal committees, and provide counsel to SEPTA's
16 board of directors. Approximately 120 employees report to me, including the Deputy
17 General Counsel, 14 trial lawyers, two team leaders, and approximately a 12 paralegals
18 and legal assistants.

19 17. Among other responsibilities, I oversee the legal department at SEPTA,
20 provide legal advice to SEPTA's executive officers and the board of directors, work on
21 policy development, engage in litigation support, and perform other legal work as
22 necessary. Prior to joining SEPTA in November 2013, I worked in the private sector
23 practicing law since 1992, including serving as a partner and Chief Human Resources
24 Officer for a regional law firm that conducts a broad and diverse regional law practice
25 representing non-profit foundations, and clients ranging from Fortune 500 companies to
26 closely-held businesses, governmental entities and individuals. I have been a practicing
27 attorney since having graduated from Widener University School of Law in 1990. I
28

1 estimate that my current billable rate in the private sector is approximately \$650.00 per
2 hour.

3 18. Since its inception in May 2017 to the present, approximately 35 hours of
4 my professional time has been spent overseeing this litigation. Such time includes, *inter*
5 *alia*: (i) participating in several in person meetings and multiple telephone calls with
6 Class Counsel; (ii) reviewing and editing multiple briefs and supporting material that
7 SEPTA filed; (iii) analyzing points and authorities argued in pleadings that NantHealth
8 filed; (iv) participating in responses to all facets of written discovery directed at SEPTA,
9 including multiple document requests, requests for admissions, and interrogatories; (v)
10 assisting in the search for and production of paper and electronic documents in response
11 to NantHealth's document requests; (vi) prepared with Class Counsel for the deposition
12 of SEPTA pursuant to Fed. R. Civ. P. 30(b)(6); (vii) attended a daylong 30(b)(6)
13 deposition on behalf of SEPTA; and (viii) participated in discussions with Class Counsel
14 regarding mediation and settlement.

15 19. Since January 2016, Thomas J. McFadden ("McFadden") has served as
16 SEPTA's Chief Financial Officer ("CFO"). He is responsible for financial services,
17 revenue, ridership and sales, capital and operating budgets, accounting, payroll, public
18 finance and pensions for SEPTA. He previously served as Assistant Treasurer and was
19 responsible for financial services, public finance as well as pensions, billings, revenue
20 and fixed asset accounting. Prior to joining SEPTA, McFadden worked at Conrail for
21 over 25-years as an employee and consultant, serving increasingly responsible financial
22 positions including Corporate Treasurer.

23 20. McFadden, assisted by my staff and his, spent approximately 8.0 hours
24 performing various tasks related to the Action, such as (i) searching SEPTA's paper and
25 electronic files in response to Defendants' multiple document requests, and (ii) assisting
26 me to prepare to testify on behalf of SEPTA in connection with the a daylong deposition
27 taken of SEPTA pursuant to Fed. R. Civ. P. 30(b)(6). SEPTA estimates that
28 McFadden's billable rate is approximately \$300.00 per hour.

1 21. In conclusion, SEPTA was closely involved throughout the prosecution and
2 settlement of the claims in this Action, strongly endorses the Settlement as fair,
3 reasonable, and adequate, and believes that the Settlement represents a significant
4 recovery for the Classes. SEPTA respectfully appreciates the District Court’s attention
5 to the facts presented in my declaration and, in light of the contents of the Memorandum
6 and the Declarations; our experience in the Action; and our discussions with Class
7 Counsel, respectfully requests that the District Court approve SEPTA’s Motion for Final
8 Approval of Class Settlement and for an Award of Attorneys’ Fees, Litigation Costs, and
9 Compensatory Award.

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11 I declare under penalty of perjury under the laws of the United States of America
12 that the foregoing is true and correct to the best of my knowledge.

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14 Executed this 23rd day of March, 2020, in Philadelphia, Pennsylvania.

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Gino Benedetti (Mar 23, 2020)

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Gino Benedetti, Esq.
20 General Counsel
21 Southeastern Pennsylvania Transportation
22 Authority
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