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13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **DISTRICT OF ARIZONA**
16

17
18 GEOFF CHAMBERS, individually, on
behalf of others similarly situated,

19 Plaintiff,

20 v.

21 ZOCDOC, Inc.,

22 Defendant.

Case No. 2:16-cv-03382-SPL

**JOINT MOTION FOR SETTLEMENT
APPROVAL**

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1 The parties move this Court for an order approving the parties' settlement
2 agreement as a reasonable compromise of a *bona fide* dispute over Plaintiffs' entitlement
3 to overtime under the FLSA. Plaintiff also requests approval for payment of attorneys'
4 fees, costs and Plaintiff incentive awards, to be paid from the settlement amount.

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I. INTRODUCTION

Named Plaintiff Geoff Chambers (“Chambers”), together with the opt-in Plaintiffs (collectively “Plaintiffs”) and Defendant, Zocdoc Inc. (“Defendant”), come before the Court requesting approval of the parties’ collective action settlement and closure of this case. A copy of the Parties’ Final Settlement Agreement and Release (the “Agreement”) is attached as Exhibit 1.

This settlement calls for Defendant to pay a defined Settlement Amount to 174 current and former employees to resolve claims for alleged unpaid overtime. Plaintiffs alleged that up through November 2015, Zocdoc improperly classified Inside Sales Representatives as exempt from the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.* (“FLSA”), and therefore failed to properly compensate them for overtime work. Defendant has denied these allegations, asserting that it properly classified Plaintiffs as exempt employees based on the retail, administrative, and outside sales exemptions to the overtime requirements of the FLSA, that Plaintiffs did not work over 40 hours per week, and that the majority of Plaintiff waived their claims. Notice of the settlement has been distributed, and all but two¹ of the 174 (99%) Plaintiffs included in the settlement have returned a signed Settlement Offer and Release form. No objections or requests for exclusion have been received. (Brome Decl. ¶ 2.) The parties respectfully submit that the terms of the settlement are fair and reasonable, and resolve a *bona fide* dispute between the parties with respect to liability and damages.

II. PROCEDURAL AND FACTUAL HISTORY

A. The Litigation

Chambers first filed a demand in arbitration for FLSA claims before the American Arbitration Association (“AAA”) on August 5, 2016. (Brome Decl. ¶ 3.) Plaintiff styled

¹ Two Plaintiffs were completely non-responsive. Under the terms of the settlement, their claims will be dismissed with prejudice and the amounts allocated to these individuals will be re-allocated to the accepting Plaintiffs. Plaintiffs’ Counsel has performed the calculations to re-allocate these amounts. (Brome Decl. ¶ 2.)

1 the arbitration demand as a class action pursuant to the AAA's rules. (*Id.*) Zocdoc did not
2 answer in arbitration, but instead filed a complaint for declaratory and injunctive relief
3 challenging the class arbitration proceedings. *Zocdoc, Inc. v. Chambers*, S.D.N.Y. Case
4 No. 1:16-cv-06940. Chambers moved to dismiss that case, but the New York court has
5 not ruled; therefore, as part of this settlement, the parties agreed to voluntarily dismiss the
6 New York action.

7 On October 4, 2016, Chambers voluntarily dismissed his arbitration, and filed this
8 case alleging that Defendant improperly classified its Inside Sales Representatives as
9 overtime exempt under the FLSA. Chambers defined Inside Sales Representatives at
10 Zocdoc as individuals with multiple titles, including "Business Origination Associate,"
11 "Sales Associate," "Sales Executive," "Inside Sales Executive," "Account Manager,"
12 "Account Development Representative," and others. Plaintiff alleged that he and other
13 Inside Sales Representatives received only a salary and commission with no overtime
14 pay, and thus were improperly compensated for their overtime hours. Defendant filed an
15 Answer denying Plaintiff's allegations on November 15, 2016. (ECF No. 23). That same
16 day, Plaintiff filed a motion for conditional certification. (ECF No. 26). Defendant
17 opposed Plaintiff's motion for conditional certification on December 19, 2016. (ECF No.
18 48). The Court granted Plaintiff's motion for conditional certification on May 5, 2017.
19 (ECF No. 70.)

20 Following the grant of conditional certification, Zocdoc provided a class list, and
21 Plaintiff's Counsel distributed notice by mail and email to the Inside Sales
22 Representatives included in the class list. Ultimately, 189 individuals filed consent forms
23 to assert claims for unpaid overtime. (Brome Decl. ¶ 4.)

24 Both before and after the Court's ruling on conditional certification, the parties
25 conducted substantial discovery. Defendant sought written discovery from 27 opt-in
26 Plaintiffs, and deposed five Plaintiffs. (Brome Decl. ¶ 5.) Plaintiff deposed Defendant's
27 corporate representative and Human Resources director. (*Id.*) The parties exchanged
28 thousands of pages of documents. (*Id.*) Plaintiffs' Counsel conducted detailed interviews

1 with the opt-in plaintiffs as part of discovery and to prepare for mediation. Plaintiffs
2 obtained electronic records showing timestamped data recorded by Defendant's phone
3 system, security badge system, and internal customer database. (*Id.*)

4 **B. Settlement Negotiations and Agreement**

5 On August 10, 2017, the parties engaged in mediation with Carol Wittenberg of
6 JAMS. These settlement discussions were at arms-length and in good faith. At
7 approximately 8 p.m., the parties finalized a written settlement agreement. (Brome Decl.
8 ¶ 6.) The Settlement Agreement is provided in as Exhibit 1 to the Brome Declaration.

9 The settlement provides for individual settlement offers to each Plaintiff.
10 (Settlement Agreement 9) Each Plaintiff has been notified of the settlement and of his or
11 her individual offer; Plaintiffs' Counsel made efforts to reach Plaintiffs by mail, email,
12 and telephone, and conducted skip traces where mail was returned. (Brome Decl. ¶ 2.)
13 The settlement notices disclosed to each Plaintiff their individualized settlement amount,
14 the requested attorneys' fees and costs, the total amount of service payments for the
15 named Plaintiff and deposed Plaintiffs, and the scope of release agreed to by accepting
16 the settlement offer. (*Id.*) As previously mentioned, 172 of the 174 Plaintiffs who were
17 allocated a payment responded to the settlement and accepted it. (*Id.*) Plaintiffs' Counsel
18 did not receive any objections or opt-outs. (*Id.*)

19 **C. Settlement Allocations**

20 Of the total settlement amount, and subject to Court approval, 25% is allocated to
21 attorneys' fees and up to \$30,000 is allocated to Plaintiffs' Counsel's litigation costs. The
22 Named Plaintiff and the five Plaintiffs who were deposed are allocated service payments.
23 If any amount allocated for costs, fees, or service payments is not approved, it will be
24 reallocated to the Settling Plaintiffs on a pro rata basis.

25 The remainder of the total settlement amount will be distributed to the Plaintiffs.
26 Plaintiffs' Counsel calculated the total damages for the collective using Defendant's
27 payroll records and their estimate of hours worked. Settling Plaintiffs will receive an
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1 apportioned pro rata share of the settlement fund determined by Plaintiffs’ Counsel
2 according to each Plaintiff’s individualized damages calculation.

3 **D. Other Terms**

4 In addition to the monetary terms of the settlement, there are several other
5 important elements of the Settlement Agreement that support Court approval:

- 6 • It allows each Plaintiff to reject the settlement and retain all rights, if they
7 so desire. (Settlement Agreement 10.)
- 8 • The release period ends August 10, 2017, the date the settlement was
9 reached. (*Id.* 6.)
- 10 • The scope of the release for Opt-in Plaintiffs is tailored to wage and hour
11 claims during Plaintiffs’ employment at Zocdoc. The Named Plaintiff is
12 agreeing to a general release, but is receiving a service award that provides
13 additional consideration for that release. (*Id.* 6.)
- 14 • The settlement is non-reversionary. No amount will revert to Defendant.
15 (*Id.* 8)

16 **III. THE COURT SHOULD APPROVE THE SETTLEMENT AND ENTER**
17 **JUDGMENT**

18 This settlement provides real benefit to the Plaintiffs, while avoiding the
19 uncertainty and delay of further litigation. The settlement represents a reasonable
20 compromise of multiple *bona fide* disputes. Here, all but two Plaintiffs who are allocated
21 payment have accepted their individual offers. The Court should approve the settlement
22 so that payments can be distributed and the case can be closed.

23 Settlements of opt-in collective actions under the FLSA must be supervised by the
24 Department of Labor or reviewed by a court or other judicial officer for fairness in order
25 to be enforceable. *Fontes v. Drywood Plus, Inc.*, 2013 WL 6228652, at *5 (D. Ariz. Dec.
26 2, 2013) (citing *Lynn’s Food Stores, Inc. v. U.S.*, 679 F.2d 1350, 1352–53 (11th Cir.
27 1982)). When reviewing FLSA settlement agreements, “the court’s obligation is not to
28 act as caretaker but as gatekeeper” and “ensure that private FLSA settlements are

1 appropriate given the FLSA’s purposes.” *Goudie v. Cable Commc’ns, Inc.*, 2009 WL
2 88336, at *1 (D. Or. Jan. 12, 2009). “A district court may approve [an FLSA] settlement
3 agreement if it reflects a ‘reasonable compromise over the issues.’” *Fontes*, 2013 WL
4 6228652, at *5 (quoting *Lopez v. Arizona Public Serv. Co.*, 2010 WL 1403873, at * 1 (D.
5 Ariz. Jan. 27, 2010)). FLSA settlements must reflect “a fair and reasonable resolution of a
6 bona fide dispute over FLSA provisions.” *Lynn’s Food Stores*, 679 F.2d at 1355. Court
7 approval is favored “to promote the policy of encouraging settlement of litigation,” where
8 the settlement reflects a “reasonable compromise over issues” that are “actually in
9 dispute.” *Id.* at 1354.

10 Court approval serves as a safeguard that an FLSA settlement is not “a mere
11 waiver of statutory rights brought about by an employer’s overreaching.” *Id.* However,
12 FLSA collective actions are not class actions, and the Rule 23 settlement review process
13 does not apply because there are no absent class members relying on the Court’s
14 stewardship. *Campanelli v. Hershey Co.*, 2011 WL 3583597, at *1 (N.D. Cal. May 4,
15 2011). Instead, here, Plaintiffs’ Counsel has been in contact with Plaintiffs throughout the
16 case, and the 174 participating Plaintiffs have each affirmatively agreed to the settlement
17 and its terms. The decision to approve an FLSA settlement lies within the trial court’s
18 discretion. *Lynn’s Food*, 679 F.2d at 1350.

19 The settlement here reflects a reasonable compromise of the issues including:
20 Plaintiffs’ allegations that they were entitled to overtime, the appropriate method for
21 calculating overtime hours worked, the actual number of overtime hours allegedly
22 worked by each Plaintiff, and the appropriate statute of limitations. The settlement
23 satisfies the *Lynn’s Food* standard, and the Court should approve the settlement of
24 Plaintiffs’ FLSA claims.

25 **A. This Case Presented *Bona Fide* Disputes Over the Availability and**
26 **Amount of Overtime Wages**

27 From the beginning of this case, Plaintiffs’ Counsel has vigorously pursued
28 Plaintiffs’ rights in multiple venues. Before filing this case, Plaintiff filed an arbitration

1 demand, and defended the New York action brought by Zocdoc. Plaintiff then filed suit
2 here in the District of Arizona. Once the parties entered mediation, Plaintiff and
3 Defendant were able to negotiate a settlement agreement that provides recovery on the
4 claims while accounting for the risk of continued litigation.

5 This is a favorable result compared to the prospects of continued litigation. If this
6 case had continued in litigation, Plaintiffs would have had to continue nationwide
7 discovery, which would be time consuming and expensive. Plaintiffs would have to
8 defend against a motion to decertify the collective. On the merits, Plaintiffs would need
9 to establish their entitlement to overtime, and defeat Defendant's waiver argument² as
10 well as its administrative, retail sales, and outside sales exemption arguments. Plaintiffs
11 would need to prove the amount of overtime worked, which could be a difficult task. For
12 example, Defendant has indicated that records from its internal database show minimal
13 overtime. Additionally, Plaintiffs would also have to prevail in disputes over the
14 applicable statute of limitations, and the appropriateness of fluctuating workweek
15 calculations for damages.

16 This settlement reflects a reasonable compromise regarding these very real
17 disputes. For example, Plaintiffs contend that they worked substantial overtime, and
18 Defendant disputes whether some Plaintiffs worked *any* overtime. As explained below,
19 compromise on these and other disputed issues favors settlement approval.

20 1. Continued Certification

21 Defendant fought conditional certification in this case, and intended to later move
22 for decertification of the collective. Plaintiffs would have borne the burden of
23 maintaining collective certification despite differing job titles, work locations, earnings
24 history, and hours worked by individual Plaintiffs. Additionally, Defendant had indicated
25 that it would seek to compel arbitration as to some or all of the Plaintiffs. This settlement
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27
28 ² Defendant asserted many Plaintiffs waived their claims through a severance agreement.

1 provides favorable resolution for all Plaintiffs, without the need for litigating
2 decertification or motions to compel arbitration.

3 2. Entitlement to Overtime

4 Defendant argued that Plaintiffs were overtime exempt under both the
5 administrative exemption and the retail sales exemptions. Plaintiffs' ability to recover
6 overtime compensation would depend on defeating these exemption defenses. Defendant
7 relied heavily on its commission compensation structure as evidence that Inside Sales
8 Representatives qualify for exemption under the retail exception. (Def.'s Opp'n to Mot.
9 for Cond. Cert. 3, ECF No. 48.) While Plaintiffs dispute that Zocdoc has a "retail"
10 character to qualify under 7(i), the industry is relatively new, so there has been little
11 opportunity for the development of case law on the applicability of the retail sales
12 exemption to it. As such, there is legal uncertainty with regard to the retail sales
13 exemption's applicability to Plaintiffs, and therefore a *bona fide* dispute.

14 Defendant also argued that Plaintiffs' FLSA claims were subject to waiver, i.e.,
15 employees who were subject to severance agreements waived their right to overtime.
16 Most former employees received some separation pay in exchange for signing severance
17 agreements that contain broad release language. Plaintiffs dispute that those severance
18 agreements include a release of FLSA claims, but further litigation would be necessary
19 on this issue absent this settlement. The *bona fide* dispute over Plaintiffs' entitlement to
20 overtime, based on waiver and exemption defenses, supports settlement approval.

21 3. Amount of Overtime

22 Even if Plaintiffs established their entitlement to overtime wages, they would need
23 to demonstrate how much overtime was worked. Although Defendant did not have exact
24 time records, it argued that its internal software demonstrated Plaintiffs' work hours and
25 showed little, if any, overtime work. According to Defendant, these records typically only
26 showed one or two hours of overtime per person per week. Plaintiffs, on the other hand,
27 explained that those records did not capture all their work, and asserted that they generally
28 worked many hours of overtime per week. Plaintiffs contend that their testimony, together

1 with other Zocdoc records, would show substantial overtime. However, proving hours
2 worked is inherently fact-intensive, and would likely require a trial. The amount of
3 Plaintiffs' hours worked is a *bona fide* dispute.

4 4. Applicable Statute of Limitations

5 Assuming that Plaintiffs established that they are entitled to overtime, and proved
6 that they worked overtime hours, the FLSA would only allow two years of damages
7 unless Plaintiffs could show that Zocdoc's violation was willful. Plaintiffs contend that the
8 violation was willful, and that a three-year statute is therefore appropriate. This dispute
9 could dramatically impact Plaintiffs' recovery: applying a two-year statute would cut
10 Plaintiffs' wage loss in half, and would mean that many individuals' claims are time-
11 barred altogether. (Brome Decl. ¶ 6.) Resolution of this issue could be complicated by the
12 fact that many of the individuals who were employed when the Inside Sales
13 Representative positions were created and classified as exempt are no longer at the
14 company. The statute of limitations presents a *bona fide* dispute that favors settlement
15 approval.

16 5. Calculation of Overtime

17 If Plaintiffs established that they were entitled to overtime, they still faced a legal
18 dispute as to the appropriate method for calculating damages. Defendant contended that
19 any award of overtime should be calculated under the "fluctuating workweek" method, in
20 which overtime hours are paid at a rate which multiplies the regular rate by .5, instead of
21 1.5. Applying the fluctuating workweek would dramatically reduce Plaintiffs' damages.
22 The Ninth Circuit has not yet ruled on retroactive application of the fluctuating
23 workweek in misclassification cases. District courts have come out both ways on the
24 issue. *Compare Blotzer v. L-3 Commc'ns Corp.*, 2012 WL 6086931, at *10 (D. Ariz. Dec.
25 6, 2012) ("Application of the FWW method in a misclassification case is contrary to the
26 FLSA's rationale.") *with Tumulty v. FedEx Ground Package Sys., Inc.*, 2005 WL
27 1979104, at *5 (W.D. Wash. Aug. 16, 2005) (holding that the fluctuating workweek
28

1 method of calculation was appropriate where FedEx drivers “clearly understood that they
2 would be paid a fixed weekly salary regardless of the number of hours”).

3 Plaintiffs contend this Court would follow *Blotzer* and other similar precedent
4 from district courts in the Ninth Circuit. However, Defendant would vigorously litigate
5 this issue and the calculation of overtime poses another *bona fide* legal issue in dispute.

6 **B. The Settlement is Not a Result of Employer Over-Reach**

7 At the core of *Lynn’s Food* is the concept that FLSA settlements must “reflect a
8 reasonable compromise of disputed issues [rather] than a mere waiver of statutory rights
9 brought about by an employer’s overreaching.” *Lynn’s Food Stores*, 679 F.2d at 1354.
10 “Settlements may be permissible in the context of a suit brought by employees under the
11 FLSA for back wages because initiation of the action by the employees provides some
12 assurance of an adversarial context.” *Id.* It is clear from the record that this settlement is
13 not a “mere waiver of statutory rights brought about by an employer’s overreaching.”

14 *Lynn’s Foods* involved an employer who abandoned its negotiations with the
15 Department of Labor and on its own convinced fourteen employees to split a \$1,000
16 settlement amount in exchange for release of over \$10,000 in claims. 679 F. 2d at 1352.
17 The settlement here is far from an employer overreach. Plaintiffs’ Counsel advocated for
18 Plaintiffs’ right to recovery in three different venues, eventually reaching a settlement.

19 **C. The Settlement is a Reasonable Compromise of Disputed Issues**

20 The Court should approve this Settlement because it represents a fair compromise
21 of disputed issues. Plaintiffs’ ability to maintain conditional certification, their
22 entitlement to overtime despite alleged exemptions, the amount of overtime, possible
23 waiver, arbitration, and proper calculation of damages including the applicability of the
24 fluctuating workweek standard are all disputed. This settlement reflects compromise on
25 these issues, and takes into account both the continued risk and expense of litigation.
26 Generally “unless the settlement is clearly inadequate, its acceptance and approval are
27 preferable to lengthy and expensive litigation with uncertain results.” *Nat’l Rural*
28 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004). This

1 settlement avoids expenditures of resources for all parties and the Court, and provides
2 “significant benefit that [Plaintiffs] would not receive if the case proceeded— certain and
3 prompt relief.” *Barbosa v. Cargill Meat Sol. Corp.*, 297 F.R.D. 431, 446 (E.D. Cal.
4 2013).

5
6 Because the settlement represents a fair and reasonable resolution of a *bona fide*
7 dispute over wages, as opposed to employer overreaching, the Court should approve the
8 settlement.

9 **D. The Court Should Approve the Requested Attorneys’ Fees and Costs**

10 Plaintiffs’ Counsel seeks approval of attorneys’ fees of 25% of the total settlement
11 amount. The court should approve this request because it is less than the one-third
12 contingency fee Plaintiffs’ Counsel has with Plaintiffs, and because it is in line with the
13 “baseline” for Ninth Circuit fee awards.

14 The resolution of this case “is a privately negotiated settlement.” *Campanelli*, 2011
15 WL 3583597, at *1. Unlike a Rule 23 class where the Court must protect absent class
16 members, each Plaintiff in this litigation affirmatively chose to join the case and
17 affirmatively agreed to the terms of the settlement. Plaintiffs were represented by
18 Plaintiffs’ Counsel on a contingency basis. (Brome Decl. ¶ 7.). Plaintiffs’ Counsel did not
19 receive any payment for time spent litigating the case, nor did they receive reimbursement
20 for their out of pocket costs during the litigation. (*Id.*) Plaintiffs’ Counsel alone undertook
21 the financial risk of unsuccessful litigation.

22 When clients do not pay an ongoing hourly fee to their counsel, they typically
23 negotiate an agreement in which counsel’s fee is based on a percentage of any recovery.
24 Here, Plaintiffs’ Counsel has legal services agreements that provide for payment of
25 attorneys’ fees in the amount of one-third of any settlement. (*Id.*) Notwithstanding that
26 agreement, Plaintiffs’ Counsel only seeks approval for fees in the amount of 25% of the
27 total settlement amount.

28

1 While Rule 23 class action approval standards do not apply to collective actions, it
2 is worth noting that 25% is considered the benchmark for attorneys' fees in class cases in
3 the Ninth Circuit. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000). In group
4 litigation, many class members benefit from the ultimate settlement, but they may not
5 have played a large role in the litigation that led to the payment. *Boeing v. Van Gemert*,
6 444 U.S. 472, 478 (1980). The common fund approach "thus spread[s] fees
7 proportionately among those benefited by the suit." *Id.* Awarding a percentage of the
8 total fund is routinely approved as a fair way to calculate a reasonable fee when
9 contingency fee litigation has produced a common fund. *See, e.g., Paul, Johnson, Alston*
10 *& Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989); *Vizcaino v. Microsoft Corp.*, 290
11 F.3d 1043, 1050 (9th Cir. 2002). Here, awarding a percentage of the total settlement is
12 appropriate because Plaintiffs' Counsel has secured a settlement that will be pay a group
13 of 174 plaintiffs. The Court should approve the requested fees.

14 The requested fee amount is also reasonable when compared to Plaintiffs'
15 Counsel's lodestar. The Court has discretion to check the amount or attorneys' fees
16 requested through the percentage method against a "rough calculation" of the lodestar.
17 *E.g., Aguilar v. Wawona Frozen Foods*, 2017 WL 2214936, at *5 (E.D. Cal. May 19,
18 2017) (quotations omitted). A lodestar crosscheck is not required. *See Villareal*, 2016
19 WL 5938705, at *2 (awarding fees as percentage of common fund settlement without
20 lodestar analysis).

21 Here, Plaintiffs' Counsel spent 1240.1 hours litigating this case, including 490.4
22 hours of attorney time and 749.7 hours of staff time. (Brome Decl. ¶ 7.) These hours are
23 reasonable considering that amount of work required to litigate the case effectively,
24 including multiple contested motions in this matter and the New York case, substantial
25 discovery, and successfully mediating. These hours are also less than other courts have
26 found reasonable in similar cases. For example, the recent *Aguilar* case entailed 1,600
27 billable attorney hours. 2017 WL 2214936, at *5. A brief review of similar cases shows
28 that the hours expended here are below those approved in similar cases. *See Adoma v.*

1 *Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 983–84 (E.D. Cal. 2012) (1760 hours
2 reasonable); *Franco v. Ruiz Food Products, Inc.*, 2012 WL 5941801, at *19 (E.D. Cal.
3 Nov. 27, 2012) (1,345.7 hours “reasonable in light of the legal issues and the amount of
4 discovery conducted, the number of Defendant's employees included in the Settlement
5 Classes, the mediation preparation required, and motion practice with respect to the
6 Settlement Agreement”). Based on current billing rates, Plaintiffs’ Counsel’s current
7 lodestar is over \$325,000.³ This amount supports awarding fees at 25% of the settlement.
8 This results in a small multiplier, well within the range of accepted lodestar multipliers.
9 “Beyond simply the multiplication of a reasonable hourly rate by the number of hours
10 worked, a lodestar multiplier is typically applied.” *Aguilar*, 2017 WL 2214936, at *5.
11 Courts apply lodestar multipliers to attorneys’ fee awards to compensate attorneys for the
12 risk of nonpayment associated with contingency cases. *Barbosa*, 296 F.R.D. at 453.
13 Courts typically approve fee awards with lodestar multipliers between 1.9 and 5.1. *See* 4
14 NEWBERG ON CLASS ACTIONS § 14.7.⁴ The fee request here represents a smaller
15 multiplier than this range, and is therefore reasonable, in light of the favorable results
16 obtained for the Plaintiffs.

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18
19 ³ Specifically, Michele Fisher, the partner who worked on this case, has 17 years of
20 experience, and billed her time at \$525 per hour; associate time was billed at \$350 per
21 hour; non-attorney time was billed at \$175 per hour. (Brome Decl. ¶ 7.) These rates are
22 reasonable. *Aguilar*, 2017 WL 2214936, at *6 (“This court has previously accepted as
reasonable for lodestar purposes hourly rates of between . . . \$545 and \$695 for senior
counsel and partners.”).

23 ⁴ Courts may approve higher multipliers in common fund cases. *See e.g. Taylor v. FedEx*
24 *Freight, Inc.*, 2016 WL 6038949, at *7 (E.D. Cal. Oct. 13, 2016) (approving a 2.26
25 multiplier); *Vizcaino*, 290 F. 3d at 1050 & no. 5 (finding no abuse of discretion for award
26 with 3.65 multiplier); *Craft v. Cty. of San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D.
27 Cal. 2008) (approving a multiplier of 5.2 and collecting cases); *Steiner v. Am. Broad. Co.*,
28 248 F. App'x 780, 783 (9th Cir. 2007) (approving a multiplier of 6.85). Further,
“[m]ultipliers in the 3–4 range are common in lodestar awards for lengthy and complex
class action litigation.” *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298
(N.D. Cal. 1995) (citing *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 549 (S.D. Fla.
1988)).

1 Plaintiffs' Counsel also requests approval of litigation costs from the settlement.
2 Payment of these costs is already factored into the allocations which have been
3 communicated to Plaintiffs. Plaintiffs' Counsel has incurred these unreimbursed costs
4 during this litigation, which were advanced on behalf of Plaintiffs. (Brome Decl. ¶ 8,
5 Exh. A.) Defendant does not oppose Plaintiffs' Counsel's request.

6 The amount is also appropriate because Plaintiffs' Counsel's private agreements
7 with their clients provide for reimbursements of litigation costs in addition to payment of
8 attorneys' fees. (*Id.* ¶ 8.)

9 **IV. CONCLUSION**

10 This FLSA collective action settlement is a product of arms-length negotiation
11 between counsel for the parties and has resolved a *bona fide* dispute over FLSA
12 coverage. The Settlement provides all accepting Plaintiffs with monetary relief that
13 represents a reasonable compromise of the parties' dispute. For these reasons, and those
14 set forth above, the Court should approve the parties' settlement and dismiss this action,
15 with prejudice.

16
17 Dated: October 6, 2017

NICHOLS KASTER, LLP
By: s/ Daniel S. Brome
Daniel S. Brome
Michele R. Fisher
Attorneys for Plaintiff
and the FLSA Collective

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 235 Montgomery St., Suite 810, San Francisco, California, 94104.

On October 6, 2017 I served true copies of the following document(s)

MOTION FOR SETTLEMENT APPROVAL

DECLARATION IN SUPPORT OF MOTION FOR SETTLEMENT

APPROVAL

on the interested party(ies) below, using the following means:

Tracy Miller
Tracy.miller@ogletreedeakins.com
Douglas Calvin Lynn
Trey.Lynn@ogletreedeakins.com
Esplanade Center III
2415 East Camelback
Phoenix, AZ, 85016
Tel: (602)778-3704
Fax:(602)778-3750

BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION:

I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the Court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Dated: October 6, 2017, at San Francisco, California

By: s/ Daniel S. Brome
Daniel S. Brome

1 David E. Schlesinger, AZ Bar No. 025224
schlesinger@nka.com
2 Michele R. Fisher, MN Bar No. 303069*
NICHOLS KASTER, PLLP
3 4600 IDS Center
4 80 South Eighth Street
Minneapolis, MN 55402
5 Tel: (612) 256-3200
6 Fax: (612) 215-6870
(**pro hac vice* application forthcoming)

7 Daniel S. Brome, CA Bar No. 278915*
8 dbrome@nka.com
9 NICHOLS KASTER, LLP
One Embarcadero Center
10 Suite 720
San Francisco, CA 94111
11 Tel: (415) 277-7235
12 Fax: (415) 277-7238
(**pro hac vice* application pending)

13 Attorneys for Plaintiff and others similarly situated
14

15 **IN THE UNITED STATES DISTRICT COURT**

16 **DISTRICT OF ARIZONA**

17
18 Geoff Chambers, individually and on
19 behalf of all others similarly situated,

20
21 Plaintiff,

22 vs.

23 ZocDoc, Inc.,

24 Defendant.
25

Case No.: 2:16-cv-03382-SPL

**DECLARATION OF DANIEL S.
BROME IN SUPPORT OF JOINT
MOTION FOR SETTLEMENT
APPROVAL**

1 I, DANIEL S. BROME, declare:

2 1. I am an attorney with the law firm of Nichols Kaster, counsel of record for the
3 named Plaintiff and opt-in Plaintiffs in this matter. I make this declaration based upon my
4 personal knowledge, and could so testify if called to do so.

5 2. Each Plaintiff has been notified of the settlement and of his or her individual offer;
6 Plaintiffs' Counsel made efforts to reach Plaintiffs by mail, email, and telephone, and
7 conducted skip traces where mail was returned. The settlement notices disclosed to each
8 Plaintiff their individualized settlement amount, the requested attorneys' fees and costs, the
9 total amount of service payments for the named Plaintiff and deposed Plaintiffs, and the
10 scope of release agreed to by accepting the settlement offer. 172 of the 174 Plaintiffs who
11 were allocated a payment has responded to the settlement and accepted it. Two Plaintiffs,
12 Damaso Diaz and Luis Segarra, were completely non-responsive. Under the terms of the
13 settlement, their claims will be dismissed with prejudice and the amounts allocated to these
14 individuals will be re-allocated to the accepting Plaintiffs. Plaintiffs' Counsel has
15 performed the calculations to re-allocate these amounts. Plaintiffs' Counsel did not receive
16 any objections or opt-outs.

17 3. Chambers first filed a demand in arbitration for FLSA claims before the American
18 Arbitration Association ("AAA") on August 5, 2016. Plaintiff styled the arbitration
19 demand as a class action pursuant to the AAA's rules.

20 4. Following the grant of conditional certification in this action, Zoedoc provided a
21 class list, and Plaintiffs' Counsel distributed notice by mail and email to the Inside Sales
22 Representatives included in the class list. Ultimately, 189 individuals filed consent forms
23 to assert claims for unpaid overtime.

24 5. Both before and after the Court's ruling on conditional certification, the parties
25 conducted substantial discovery. Defendant sought written discovery from 27 opt-in
26 Plaintiffs, and deposed five Plaintiffs. Plaintiff deposed Defendant's corporate
27 representative and Human Resources director. The parties exchanged thousands of pages
28 of documents. Plaintiffs' Counsel conducted detailed interviews with the opt-in plaintiffs

1 as part of discovery and to prepare for mediation. Plaintiffs obtained electronic records
2 showing timestamped data recorded by Defendant's phone system, security badge system,
3 and internal customer database.

4 6. On August 10, 2017, the parties engaged in mediation with Carol Wittenberg of
5 JAMS. These settlement discussions were at arms-length and in good faith. At
6 approximately 8 p.m., the parties finalized a written settlement agreement. A true and
7 correct copy of the final agreement is attached as **Exhibit 1**.

8 7. Plaintiffs were represented by Plaintiffs' Counsel on a contingency basis. Our firm
9 did not receive any payment for time spent litigating the case, nor did we receive
10 reimbursement for out of pocket costs during the litigation. Our firm has legal services
11 agreements that provide for payment of attorneys' fees in the amount of one-third of any
12 settlement. We spent over 1240 hours litigating this case, including over 490 hours of
13 attorney time and 749.7 hours of staff time. Michele Fisher, the partner who worked on this
14 case, has 17 years of experience, and billed her time at \$525 per hour; associate time was
15 billed at \$350 per hour; non-attorney time was billed at \$175 per hour.

16 8. Plaintiffs' Counsel has incurred unreimbursed costs during this litigation, which
17 were advanced on behalf of Plaintiffs. A true and correct copy of the report of our costs
18 incurred to date is attached as **Exhibit 2**. Payment of our costs is already factored into the
19 allocations which have been communicated to Plaintiffs. Our private agreements with our
20 clients provide for reimbursements of litigation costs in addition to payment of attorneys'
21 fees.

22 The foregoing statement is made under penalty of perjury and is true and correct to the best
23 of my knowledge and belief.

24 Dated: October 6, 2017

s/Daniel S. Brome
Daniel S. Brome

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Geoff Chambers, individually and on)	
behalf of all other similarly situated,)	
)	Case No. 2:16-cv-03382-SPL
Plaintiff,)	
)	
v.)	
)	
ZocDoc, Inc.,)	
)	
Defendant.)	
)	

FINAL SETTLEMENT AGREEMENT AND RELEASE

Subject to the approval of the United States District Court for the District of Arizona (the “Court”), and pursuant to 29 U.S.C. § 216(b) of the federal Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”), Geoff Chambers, individually and on behalf of all others similarly situated, and ZocDoc, Inc. (“the Parties”), by and through their counsel, agree to the following Final Settlement Agreement and Release (“Final Settlement Agreement”).

RECITALS

A. On October 4, 2014, the Named Plaintiff Geoff Chambers (the “Named Plaintiff”) filed an action entitled *Chambers v. ZocDoc, Inc.*, No. 2:16-cv-03382-SPL in the United States District Court for the District of Arizona (the “Action”).

B. In the Action, the Named Plaintiff alleged that Defendant Zocdoc, Inc. (“Defendant” or “Zocdoc”) violated the FLSA by failing to pay overtime for certain hours worked. The Named Plaintiff sought damages, penalties, attorneys’ fees, and costs, on his own behalf and on behalf of similarly situated individuals.

C. Plaintiff filed a motion for conditional certification on November 16, 2016. (ECF No. 26.) On May 5, 2017, the Court granted conditional certification. (ECF No. 70.) Plaintiff’s

counsel sent notice of the lawsuit to the putative collective class on May 15, 2017. This case consists of a total of one hundred and eighty-nine (189) plaintiffs, including the Named Plaintiff.

D. Over the next several months, the Parties exchanged information, including payroll records and time records. Counsel for both Parties reviewed and analyzed the records for purposes of calculating Plaintiffs' potential damages.

E. On August 10, 2017, the Parties engaged in mediation with Carol Wittenberg of JAMS acting as the mediator. Ms. Wittenberg is experienced in mediating wage and hour collective actions. After extensive arm's length negotiations, the Parties reached an agreement to settle the claims asserted in the Action.

F. Based upon the investigation of Plaintiffs' Counsel, and taking into account the contested factual and legal issues involved, the expense and time necessary to prosecute the action through trial, the risks and costs of further prosecution of the Action, the uncertainties of complex litigation, and the benefits to be received pursuant to this Final Settlement Agreement, Plaintiffs' Counsel and the Settling Plaintiffs (defined in Paragraph 1.C. below) have concluded that a settlement with Defendant on the terms set forth in this Final Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settling Plaintiffs. The Settling Plaintiffs and Plaintiffs' Counsel have agreed to settle this Action with Defendant on the terms set forth in this Final Settlement Agreement.

G. Defendant Zocdoc denies the claims asserted in the Action and makes no admission whatsoever of liability or violation of any statute. Defendant nevertheless desires to settle the Action on the terms set forth in this Final Settlement Agreement for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation, and for the purpose of putting to rest the controversies engendered by the Action.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED among the Parties, by and through their respective attorneys of record, and subject to the approval of the Court, that in consideration of the foregoing and of the promises and mutual covenants contained herein, and other good and valuable consideration, the Action shall be settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions:

1. DEFINITIONS

For purposes of this Final Settlement Agreement, the following definitions shall apply, in addition to the definitions set forth in other sections of this Final Settlement Agreement:

A. “Opt-in Plaintiffs” shall mean all individuals who filed consent forms with the Court requesting to participate in the Action.

B. “Acceptance Deadline” means the date that is thirty (30) calendar days after the date that notice of this settlement is sent to the Named Plaintiff and Opt-in Plaintiffs.

C. “Settling Plaintiffs” shall mean the Named Plaintiff and all Opt-in Plaintiffs who timely execute and return a Release of Claims Form (defined in Paragraph D. below) by the Acceptance Deadline.

D. “Release of Claims Form” means the form through which a Settling Plaintiff releases the claims set forth therein.

E. “Rejecting Plaintiff” shall mean any Opt-in Plaintiff who submits a written rejection by the Acceptance Deadline.

F. “Nonresponding Settlement Plaintiff” shall mean any Opt-in Plaintiff who does not timely return a Release of Claims Form by the Acceptance Deadline and does not meet the definition of a Rejecting Plaintiff.

G. “Plaintiffs’ Counsel” shall mean the law firm of Nichols Kaster, PLLP.

H. “Defendant’s Counsel” shall mean the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

I. “Settlement Effective Date” shall mean the date upon which the Court enters an Order granting approval of the Final Settlement Agreement.

J. “Released Claims” has the meaning set forth in Section 4, *infra*.

K. “Released Parties” means Zocdoc, Inc. (including its successors and its past, present, and future officers, directors, employees, agents, insurers, and attorneys) and other affiliated persons and entities.

2. SETTLEMENT AMOUNT

A. In consideration for the actions, promises and mutual covenants, and releases described herein, the total gross sum of \$1,750,000 (the “Settlement Amount”) shall be paid by Defendant to resolve all Settling Plaintiffs’ Released Claims as described in Section 4, *infra*. The Settlement Amount includes all amounts to be paid by Defendant, including amounts for payments to the Settling Plaintiffs, attorneys’ fees, litigation costs, and expenses of Plaintiffs’ Counsel, costs incurred by Plaintiffs’ Counsel in administering this settlement, and service fees to the Named Plaintiff and the five Opt-In Plaintiffs deposed. Under no circumstances shall Defendant be obligated to pay an amount in excess of One Million Seven Hundred and Fifty Thousand Dollars (\$1,750,000). For each Settling Plaintiff, Defendant will issue a W-2 for half of the settlement amount as wages, and report the other half of the settlement amount as liquidated damages on IRS Form 1099. Defendant will deduct applicable withholding taxes from the wage payments, and Defendant is separately responsible for any employer-side payroll taxes.

B. Under no circumstances, other than amounts allocated to a Rejecting Plaintiff under Section 9(B) or a voiding of this agreement under Sections 9(D) or Section 12, *infra*, shall

any part of the \$1,750,000 Settlement Amount revert to Defendant. In the event there are any Rejecting Plaintiffs under Section 9(B), *infra*, it is the Parties' intention that the any Rejecting Plaintiff's allocation of the Settlement Amount shall be retained by Defendant, and that the Rejecting Plaintiff shall be restored with all rights that he/she possessed prior to the execution of this Final Settlement Agreement. In the event that this Final Settlement Agreement is voided under Sections 9(D) or Section 12, *infra*, it is the Parties' intention that the full Settlement Amount shall revert to Defendant, and that the Settling Plaintiffs shall be restored with all rights that they possessed prior to the execution of this Final Settlement Agreement.

C. As further consideration for this Final Settlement Agreement, within ten (10) calendar days of the Settlement Effective Date, the Parties will move and stipulate to dismiss the pending action in New York federal court, each side to bear their own attorneys' fees and costs.

3. **NO ADMISSION OF LIABILITY; INADMISSIBILITY OF THIS AGREEMENT; PARTIES' AUTHORITY**

A. Nothing contained in this Final Settlement Agreement shall be construed as or deemed an admission of liability, damages, culpability, negligence, wrongdoing, or other unlawful behavior on the part of Defendant. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged and the allegations contained in the Complaint.

B. This Final Settlement Agreement is a compromise of disputed claims and shall not be construed as an admission of liability at any time or for any purpose, under any circumstances, by the Parties, the Released Parties, or by any third-party. The Parties further acknowledge and agree that neither this Final Settlement Agreement nor the settlement shall be used to suggest an admission of liability in any dispute the Parties or any third-parties may have now or in the future with respect to any person or entity, including Defendant and/or Released Parties. Neither this Final Settlement Agreement nor anything in it, nor any part of the

negotiations that occurred in connection with the creation of this Final Settlement Agreement, shall constitute evidence with respect to any issue or dispute in any lawsuit, legal proceeding, or administrative proceeding, and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce its terms.

4. RELEASED CLAIMS

Each and every Settling Plaintiff, on his/her behalf, and on behalf of his/her respective heirs, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, successors-in-interest, and assigns, hereby knowingly and voluntarily releases and discharges the Released Parties from all known and unknown claims for overtime compensation, minimum wages, liquidated damages, penalties and interest under the FLSA or applicable wage and hour state laws (including statutory and common law claims for breach of contract, unjust enrichment or other common law claims relating to wage and hour issues) arising from the Settling Plaintiff's employment with Defendant up to August 10, 2017.

The Named Plaintiff, on his behalf and on behalf of his heirs, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, successors-in-interest, and assigns, also hereby knowingly and voluntarily releases and discharges the Released Parties from any and all claims and rights of any kind that he may have, whether now known or unknown, including, but not limited to, arising out of or in any way connected with his employment with Defendant. These claims and rights released include, but are not limited to, claims under Title VII of the Civil Rights Act of 1964 (as amended); 42 U.S.C. § 1981 (as amended); the Age Discrimination in Employment Act; the Equal Pay Act; the Americans With Disabilities Act (as amended); Sections 503 and 504 of the Rehabilitation Act of 1973; the Family Medical Leave Act; the Employee Retirement Income Security Act; the

Occupational Safety and Health Act; the Workers' Adjustment and Retraining Notification Act, as amended; any state, civil or statutory laws, including any and all human rights laws and laws against discrimination, any other federal, state or local fair employment statute, code or ordinance, common law, contract law, tort, including, but not limited to, fraudulent inducement to enter into this contract, and any and all claims for attorneys' fees.

5. CONFIDENTIALITY PROVISIONS

Defendant will request that the Final Settlement Agreement and Release and the amounts to be paid under this settlement be filed under seal and reviewed by the Court *in camera*, and Plaintiffs will not oppose this request. Plaintiffs' Counsel agrees that it will not disclose the Settlement Amount to anyone other than the Named Plaintiff and Opt-in Plaintiffs, and then only if Named Plaintiff or Opt-in Plaintiffs specifically inquire as to the Settlement Amount. Plaintiffs' Counsel will post on its case website that the case has been settled, but not the terms of the agreement. The Named Plaintiff and Settling Opt-in Plaintiffs will agree to keep all settlement terms and conditions confidential, with the exception of disclosure to his or her spouse, financial advisor, tax preparer, or attorney.

6. DISTRIBUTION OF SETTLEMENT AMOUNT

A. Of the \$1,750,000 Settlement Amount, \$437,500 will be allocated as attorneys' fees, and up to \$30,000 as reimbursement of litigation costs and expenses. To the extent the FLSA requires Court approval of the amount of attorneys' fees and litigation costs and expenses in an FLSA settlement, these attorneys' fees and litigation costs and expenses will be subject to Court approval.

B. Defendant will not oppose Plaintiffs' Counsel's application to the Court for approval of attorneys' fees and litigation costs in the amounts set forth in Section 6(A) above.

C. Plaintiffs' Counsel may apply to the Court to allocate a service payment from the Settlement Amount for the time and effort the Named Plaintiff of \$10,000, and the five Plaintiffs who were deposed of \$1,000 each, incurred in securing the Settlement in this Action (in addition to compensating him or her for his or her portion of the overall settlement proceeds). Defendant will not oppose this service payment request.

D. Within fifteen (15) business days of the Settlement Effective Date, Defendant shall deliver the attorneys' fees and litigation costs and expenses approved by the Court to Plaintiffs' Counsel via wire transfer or by check. Defendant will issue Nichols Kaster, PLLP an IRS Form 1099 for the attorneys' fees and litigation costs and expenses approved by the Court.

E. If the Court does not approve any portion of the attorneys' fees and litigation costs or service payments outlined in this Section 6, such funds that are not approved shall not revert to Defendant under any circumstances other than a voiding of this Final Settlement Agreement under Sections 9(D) or Section 12, *infra*. Rather, the difference between the requested attorneys' fees and litigation costs or service payments and what is actually awarded by the Court will be reallocated to the Settling Plaintiffs on a pro rata basis.

F. Except as otherwise provided in Sections 6(A–E) of this Final Settlement Agreement, the Parties shall bear their own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Action. The Settling Plaintiffs, Plaintiffs' Counsel, Defendant, and Defendant's Counsel shall not seek an award of attorneys' fees, costs, or expenses in the Action except as set forth in Sections 6(A–E) above.

7. CALCULATION OF SETTLEMENT OFFERS TO PLAINTIFFS

After the payment for attorneys' fees, the payment for litigation costs and expenses, and the service payment to the Named Plaintiff as outlined in Section 6, the amount allocated from

the Settlement Amount to Plaintiffs in the scope of the settlement class is at least \$1,267,500 (the “Allocation Fund”). Each Class Member will be apportioned a pro rata share of the Net Settlement Amount. Plaintiffs’ Counsel will perform the Individual Settlement Award calculations. Disputes as to individual amounts shall be resolved between Plaintiffs’ Counsel and Settling Plaintiffs, and there shall be no recourse against Defendants.

Within fifteen (15) calendar days following the Settlement Effective Date, Defendants will deliver the Individual Settlement Award checks to Plaintiffs’ Counsel for distribution to the Settling Plaintiffs.

8. NO TAX ADVICE

Each Settling Plaintiff shall be obligated to obtain his or her own independent tax advice concerning the proper income reporting and tax obligations regarding any and all payments and/or other remuneration he or she receives or obtains pursuant to this Final Settlement Agreement, and shall further assume the responsibility of remitting to the Internal Revenue Service and any other relevant taxing authorities any and all amounts required by law to be paid out of any monies received, or other remuneration obtained, under this Final Settlement Agreement, without any contribution whatsoever from any of the Released Parties or Plaintiffs’ Counsel. Nothing in this Final Settlement Agreement shall be construed as Defendant or Plaintiffs’ Counsel providing any advice regarding the reporting or payment of taxes or the tax consequences of a Settling Plaintiff’s participation in any portion of this Final Settlement Agreement.

9. COMMUNICATING SETTLEMENT OFFERS; REJECTING PLAINTIFFS AND NONRESPONDING SETTLEMENT PLAINTIFFS.

A. Plaintiffs’ Counsel shall be responsible for distributing the notice of this settlement to the Named Plaintiff and Opt-in Plaintiffs. Plaintiffs’ Counsel will send the notice

of settlement and Release of Claims Form, to be reasonably agreed to by the Parties, to all Plaintiffs by August 17, 2017. To be eligible to receive his/her individual settlement offer, each Named Plaintiff and Opt-In Plaintiff must sign and return a Release of Claims Form, attached to the notice of settlement, no later than the Acceptance Deadline specified in the notice.

B. Each Opt-in Plaintiff shall have the opportunity to accept or reject his/her individual settlement offer. Such rejection must be in writing and must be received by Plaintiffs' Counsel no later than 5:00 pm on the Acceptance Deadline specified in the notice. A Rejecting Plaintiff shall be dismissed without prejudice. Rejecting Plaintiffs will not be bound by the Release outlined in Section 4, *supra*. Plaintiffs' Counsel will advise Defendant's counsel of the receipt of any such rejections within seven (7) days of receipt of the written rejection or by 5:00 p.m. Pacific Time on the business day after the Acceptance Deadline, whichever is earlier. The individual settlement amount(s) allocated to Rejecting Plaintiffs will be retained by Defendant. The Final Settlement Agreement shall remain binding unless Defendant voids this agreement under Sections 9(D) or Section 12, *infra*.

C. Plaintiffs' Counsel shall inform Defendant's Counsel by 5:00 p.m. Pacific Time on the business day after the Acceptance Deadline whether there are any Nonresponding Settlement Plaintiffs. Nonresponding Settlement Plaintiffs will be dismissed from the Action with prejudice. The individual settlement amount(s) allocated to Nonresponding Settlement Plaintiffs will be reallocated pro-rata to each Settling Plaintiff.

D. Defendant retains the right to void the Final Settlement Agreement if either the Named Plaintiff or more than ten (10) of the Opt-in Plaintiffs, or both, is a Rejecting Plaintiff. Defendant shall communicate its desire to exercise this option in writing via email to Daniel

Brome at dbrome@nka.com. If Defendant desires to exercise this option, it must do so by 5:00 p.m. PST, on the third business day after the Acceptance Deadline.

E. Provided that the Court approves the settlement, the claims of any Settling Plaintiffs asserted in the Lawsuit will be dismissed with prejudice and the Settling Plaintiffs will be bound by the release outlined in Section 4, *supra*.

F. Plaintiffs will draft the Motion for Settlement Approval and provide it to Defendant within thirty (30) days of the mailing of the Notice of Settlement and Release. Defendant will provide Plaintiffs with any edits within ten (10) days. Within five (5) days after receiving edits from Defendant, the Parties shall file the Motion for Settlement Approval with the Court.

10. SETTLEMENT PAYMENT AND DISTRIBUTION OF CHECKS

A. Within fifteen (15) calendar days after the Settlement Effective Date Defendant shall deliver to Plaintiffs' Counsel the settlement checks for each Settling Plaintiff. Checks to Settling Plaintiffs shall indicate on their face that they will be void after ninety (90) days. Accordingly, Settling Plaintiffs shall have ninety (90) days to cash, deposit, or otherwise negotiate each of their settlement checks.

B. Settlement checks that have not been cashed, deposited, or otherwise negotiated within 90 days shall be null and void. Defendant shall provide Plaintiffs' Counsel with a list of the Settling Plaintiffs who have not cashed their checks within fifteen (15) days prior to the expiration of this 90-day period. Any funds from such settlement checks shall be donated within 30 days of check expiration to a legal aid organization(s) or 501(c)(3) charitable organization agreed upon by the parties, with a copy to Plaintiffs' Counsel.

11. REASONABLE COMPROMISE OF BONA FIDE DISPUTE

The Parties agree that the terms of this Final Settlement Agreement represent a reasonable compromise of disputed issues, arising from a bona fide dispute over FLSA coverage and the merits of Plaintiffs' claims and alleged damages and agree to represent the same to the Court. The Parties further agree that the settlement is a fair, reasonable, and adequate resolution of Plaintiffs' claims and is in the best interests of the Plaintiffs.

12. VOIDING THE AGREEMENT

A. If this Final Settlement Agreement is terminated as provided in Section 9(D), *supra*, then this Final Settlement Agreement shall be deemed null and void, of no force and effect, inadmissible as evidence and of no probative value, and the Parties hereto represent, warrant, and covenant that it will not be used or referred to for any purpose whatsoever.

B. Counsel for any party to this Final Settlement Agreement shall have the right to terminate this Final Settlement Agreement by providing written notice of their election to do so to counsel for the other party hereto within seven (7) calendar days after any of the following occurs: (i) the Court refuses to approve the Final Settlement Agreement or any material part of it; or (ii) the Court declines in any material respect to enter an Order Granting Approval to Final Settlement Agreement and Dismissal of Claims in the form provided in the Final Settlement. If, in approving this Agreement, the Court reduces the amount of payment that will be made to Plaintiffs' Counsel for attorneys' fees or costs, such reduction shall not be considered a material change to this Agreement, this Agreement shall remain enforceable, and such funds that are not approved will be reallocated on a pro rata basis to the Settling Plaintiffs.

C. In the event that Counsel for any party exercises the right of termination set forth in Section 12(B), *supra*, then this Final Settlement Agreement shall be deemed null and void, of

no force and effect, inadmissible as evidence and of no probative value, and the Parties hereto represent, warrant, and covenant that neither the Agreement nor any discussions, conversations, or negotiations leading to execution of the Agreement, will be used or referred to for any purpose whatsoever.

13. DISMISSAL OF ACTION

If the Court approves this Final Settlement Agreement, the Parties shall request the Court to enter a Final Approval Order and Judgment that specifically includes provisions that:

- a. Dismiss with prejudice all claims by Settling Plaintiffs and Nonresponding Settlement Plaintiffs against Defendant in this Action;
- b. Dismiss without prejudice all claims by Rejecting Plaintiffs against Defendant in this Action; and
- c. Reserve continuing jurisdiction over the construction, interpretation, implementation, and enforcement of this Final Settlement Agreement and over the administration and distribution of the benefits provided by this Final Settlement Agreement.

14. NO PRESS RELEASES OR PUBLIC STATEMENTS

Plaintiffs' Counsel will not issue a press release or make public statements regarding the terms of the settlement.

15. MUTUAL FULL COOPERATION

Counsel for the Parties agree to and shall use their best efforts to fully cooperate with each other in good faith and to take all actions reasonably necessary to implement the terms of this Final Settlement Agreement.

16. CONSTRUCTION

The Parties agree that the terms and conditions of this Final Settlement Agreement are the result of lengthy and intensive arm's-length negotiations between the Parties and that this Final Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her, or its counsel participated in the drafting of this Final Settlement Agreement. The Parties request that before declaring any provision of this Final Settlement Agreement invalid, the Court shall first attempt to construe all provisions valid to the fullest extent possible consistent with applicable precedents and the intent expressed in this Final Settlement Agreement.

17. MEDIATION OF DISPUTES

Any dispute that may arise under this Final Settlement Agreement, including any dispute with respect to administration of the settlement benefits to Settling Plaintiffs, shall be submitted by mutual agreement of the Parties to Carol Wittenberg for mediation or to another mediator as may be agreed to by the parties.

18. CAPTIONS AND INTERPRETATIONS

Section titles or captions contained in this Final Settlement Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Final Settlement Agreement or any of its provisions.

19. MODIFICATION

This Final Settlement Agreement may not be changed, altered, or modified, except in a writing signed by counsel for the Parties. This Final Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by counsel for the Parties and approved by the Court.

20. INTEGRATION CLAUSE

This Final Settlement Agreement contains the entire agreement between the Parties relating to the settlement of the Action, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged in this Final Settlement Agreement. No rights under this Final Settlement Agreement may be waived except in a writing signed by the counsel for the Parties as set forth in Section 12 or 19, *supra*.

21. BINDING ON ASSIGNS

This Final Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

22. COUNTERPARTS & SIGNATURES

This Final Settlement Agreement may be executed in counterparts, and when counsel have signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Final Settlement Agreement. This Final Settlement Agreement may be executed by facsimile signatures, PDF, or email, which shall be deemed to be originals.

23. APPLICABLE LAW

This Final Settlement Agreement shall be governed by and construed in accordance with federal law and the law of the State of Arizona, to the extent federal law does not apply.

24. RETENTION OF JURISDICTION

The Parties intend to request that the Court retain jurisdiction with respect to the implementation and enforcement of the terms of the Final Settlement Agreement, and all Parties

submit to the jurisdiction of the Court for purposes of implementing and enforcing the terms of this Final Settlement Agreement.

[THIS SPACE IS INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

IT IS SO STIPULATED.

Dated: 01/10/17

NICHOLS KASTER, PLLP

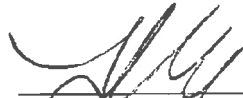
By:


Michele Fisher
Attorney for Plaintiffs

Dated: 8/10/17


OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By:


Tracy A. Miller
Attorney for Defendant Zocdoc, Inc.

Dated: 8/10/17

By:


Zocdoc, Inc.
Name: YADIN GAMBAA
Title: COO, CMO & HEAD OF NEW BUSINESSES

30745286.2

EXHIBIT 2

Date	Work_Description	Hours	Rate	Amount
8/3/2016	Check issued to Daniel Brome - Flight reimbursement	0	0	\$207.96
8/3/2016	Check issued to Daniel Brome - Cab fare reimbursement	0	0	\$24.00
8/3/2016	Check issued to Daniel Brome - Meals reimbursement	0	0	\$9.23
8/3/2016	Check issued to Daniel Brome - Cab fare reimbursement	0	0	\$13.87
8/3/2016	Check issued to Daniel Brome - Parking reimbursement	0	0	\$36.00
8/8/2016	Check issued to 24-7 Press Release - Press release	0	0	\$139.00
8/24/2016	Check issued to American Arbitration Association - Filing fee	0	0	\$1,675.00
8/30/2016	Check issued to Google.com -	0	0	\$137.77
8/31/2016	Postage	0	0	\$54.54
9/9/2016	Check issued to Ace Attorney Service, Inc - SF courier service - Corporation Service Company	0	0	\$250.00
9/30/2016	Postage	0	0	\$14.79
9/30/2016	Postage	0	0	\$3.21
9/30/2016	Check issued to Google.com - Advertising	0	0	\$310.13
10/3/2016	Check issued to The State Bar of California - COGS for PHV	0	0	\$25.00
10/6/2016	Westlaw	0	0	\$100.00
10/18/2016	Check issued to Facebook, Inc - Advertising	0	0	\$64.48
10/19/2016	Check issued to Federal Express - SF weekly shipping - Hon Steven Logan	0	0	\$34.11
10/23/2016	Check issued to Facebook, Inc - Advertising	0	0	\$306.21
10/23/2016	Check issued to Facebook, Inc - Advertising	0	0	\$8.16
10/24/2016	Check issued to Ace Attorney Service, Inc - SF courier service - Zocdoc Phoenix	0	0	\$250.00
10/27/2016	PACER	0	0	\$14.70
10/27/2016	Check issued to US Bank - MRF Supreme Court lawyer registration	0	0	\$28.15
10/31/2016	Postage	0	0	\$3.21
10/31/2016	Postage	0	0	\$12.09
10/31/2016	Check issued to Google.com - Advertising	0	0	\$301.27
11/3/2016	Check issued to American Arbitration Association - Refund ck 3440432	0	0	(\$1,475.00)
11/9/2016	Check issued to Federal Express - SF weekly shipping - SJW to JND - AAA refund check	0	0	\$16.27
11/10/2016	Check issued to American Express - Complaint filing fee	0	0	\$400.00
11/10/2016	Check issued to American Express - MRF COGS	0	0	\$18.00
11/10/2016	Check issued to American Express - DSB COGS	0	0	\$18.00
11/15/2016	Check issued to Clerk, US District Court Arizona - PHV	0	0	\$35.00
11/16/2016	Westlaw	0	0	\$58.02

11/29/2016	Check issued to US Bank - Supreme Court lawyer registration MRF COGS	0	0	\$28.15
11/29/2016	Check issued to Google.com - Advertising	0	0	\$302.36
11/30/2016	Postage	0	0	\$7.27
11/30/2016	PACER	0	0	\$6.30
11/30/2016	Postage	0	0	\$59.61
12/7/2016	Westlaw	0	0	\$49.05
12/27/2016	PACER	0	0	\$0.10
12/30/2016	Check issued to Google.com - Advertising	0	0	\$292.77
12/30/2016	Postage	0	0	\$25.58
12/30/2016	Photocopies	352	0.25	\$88.00
12/30/2016	Postage	0	0	\$3.25
1/6/2017	Check issued to The State Bar of California - DSB COGS	0	0	\$25.00
1/9/2017	Check issued to Pacer Service Center - DSB PACER usage	0	0	\$1.40
1/10/2017	Westlaw	0	0	\$100.00
1/31/2017	Postage	0	0	\$2.93
1/31/2017	Postage	0	0	\$1.40
1/31/2017	Check issued to Google.com - Advertising	0	0	\$265.68
2/28/2017	Postage	0	0	\$24.84
2/28/2017	Check issued to Google.com - Advertising	0	0	\$170.90
3/16/2017	Westlaw	0	0	\$1.03
3/22/2017	Check issued to Michele R Fisher - Meals reimbursement	0	0	\$38.42
3/22/2017	Check issued to Michele R Fisher - Cab fare reimbursement	0	0	\$45.28
3/24/2017	Check issued to American Express - MRF flight	0	0	\$305.00
3/29/2017	Check issued to Daniel Brome - Mileage reimbursement	0	0	\$34.67
3/29/2017	Check issued to Daniel Brome - Parking reimbursement	0	0	\$72.00
3/29/2017	Check issued to Daniel Brome - Cab fare reimbursement	0	0	\$34.15
3/29/2017	Check issued to Daniel Brome - Meals reimbursement	0	0	\$15.64
3/29/2017	Check issued to Daniel Brome - Hotel reimbursement	0	0	\$341.09
3/29/2017	Check issued to Daniel Brome - Flight reimbursement	0	0	\$277.89
3/31/2017	Postage	0	0	\$33.71
3/31/2017	Check issued to Google.com - Advertising	0	0	\$205.56
4/4/2017	Check issued to Paradigm Reporting & Captioning Inc - Transcript copies - Evan Bartlett	0	0	\$1,283.80
4/19/2017	PACER	0	0	\$0.50
4/26/2017	Check issued to American Express - MRF flight, cab fare, parking, hotel, inflight internet	0	0	\$1,023.55

4/28/2017	Check issued to Pay.Gov - MRF PHV	0	0	\$35.00
4/28/2017	Postage	0	0	\$36.80
4/28/2017	Check issued to Google.com - Advertising	0	0	\$138.48
5/15/2017	Check issued to Daniel Brome - Flight reimbursement	0	0	\$98.98
5/16/2017	Check issued to Daniel Brome - Meals reimbursement	0	0	\$94.70
5/24/2017	Check issued to Michele R Fisher - Cab fare reimbursement	0	0	\$125.00
5/24/2017	Check issued to Herder & Associates - Video depo - Geoff Chambers	0	0	\$706.65
5/25/2017	Check issued to American Express - MRF flight, parking, hotel	0	0	\$1,246.70
5/31/2017	Photocopies	545	0.25	\$136.25
5/31/2017	Postage	0	0	\$378.12
5/31/2017	Check issued to Google.com - Advertising	0	0	\$237.38
5/31/2017	Postage	0	0	\$0.46
6/9/2017	Check issued to Paradigm Reporting & Captioning Inc - Transcript copies - Colleen Gangl	0	0	\$814.85
6/25/2017	Check issued to Accurate Press, Inc - 600 postcards printed	0	0	\$533.49
6/26/2017	Check issued to Accurate Press, Inc - Postage for notice mailing	0	0	\$294.00
6/26/2017	PACER	0	0	\$3.70
6/27/2017	Westlaw	0	0	\$9.93
6/30/2017	Postage	0	0	\$116.38
6/30/2017	Check issued to Google.com - Advertising	0	0	\$312.28
7/10/2017	Check issued to JAMS - Mediation services	0	0	\$5,250.00
7/18/2017	Check issued to Daniel Brome - Flight reimbursement	0	0	\$540.40
7/18/2017	Check issued to Daniel Brome - Meals reimbursement	0	0	\$38.21
7/18/2017	Check issued to Daniel Brome - Parking reimbursement	0	0	\$108.00
7/18/2017	Check issued to Daniel Brome - Cab fare reimbursement	0	0	\$76.37
7/18/2017	Check issued to Daniel Brome - Mileage reimbursement	0	0	\$14.12
7/18/2017	Check issued to Daniel Brome - Hotel reimbursement	0	0	\$218.43
7/25/2017	PACER	0	0	\$0.50
7/31/2017	Check issued to The State Bar of California - DSB COGS PHV SDNY	0	0	\$25.00
7/31/2017	Check issued to Herder & Associates - Transcript copies - Lawrence Joseph	0	0	\$229.20
7/31/2017	Check issued to Herder & Associates - Transcript copies - Farren Neuhauser	0	0	\$309.85
8/1/2017	Check issued to Pay.Gov - DSB PHV	0	0	\$200.00
8/3/2017	Check issued to Daniel Brome - Transit reimbursement	0	0	\$24.00
8/3/2017	Check issued to Daniel Brome - Meals reimbursement	0	0	\$27.53
8/3/2017	Check issued to Daniel Brome - Cab fare reimbursement	0	0	\$105.50

8/3/2017	Check issued to Daniel Brome - Flight reimbursement	0	0	\$639.40
8/3/2017	Check issued to Daniel Brome - Hotel reimbursement	0	0	\$739.11
8/8/2017	Westlaw	0	0	\$33.01
8/9/2017	Check issued to Daniel Brome - Transit reimbursement	0	0	\$11.50
8/9/2017	Check issued to Daniel Brome - Parking reimbursement	0	0	\$50.00
8/10/2017	Check issued to Michele R Fisher - Cab fare reimbursement	0	0	\$170.00
8/10/2017	Check issued to Michele R Fisher - Meals reimbursement	0	0	\$41.00
8/29/2017	PACER	0	0	\$10.60
8/31/2017	Postage	0	0	\$90.62
8/31/2017	Check issued to Nationwide Legal - SF courier service - Supreme Court San Francisco	0	0	\$15.10
9/1/2017	Check issued to American Express - MRF flight, parking, and hotel	0	0	\$1,358.74
9/6/2017	Check issued to Daniel Brome - Flight reimbursement	0	0	\$98.98
9/6/2017	Check issued to Daniel Brome - Hotel reimbursement	0	0	\$206.37
9/6/2017	Check issued to Daniel Brome - Flight reimbursement	0	0	\$94.10
9/13/2017	Westlaw	0	0	\$6.17
				\$24,311.01

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

GEOFF CHAMBERS, individually, on
behalf of others similarly situated,

Plaintiff,

v.

ZOCDOC, Inc.,

Defendant.

Case No. 2:16-cv-03382-SPL

[proposed] ORDER

Having considered the parties' Joint Motion for Settlement Approval, and for good cause appearing therefore, the Court hereby grants the Motion in full.

Plaintiffs' Counsel distributed notice of the settlement to all Plaintiffs. The Notice informed Plaintiffs of their settlement share, and the requested fees, costs, and service awards. 172 out of 174 Plaintiffs allocated payments have returned claims forms and are participating in this settlement. Plaintiffs' Counsel did not receive any objections or requests for exclusion.

IT IS HEREBY ORDERED that the Settlement, as provided to the Court, is approved in full.

The Courts finds that this settlement reflects a "reasonable compromise over issues" that are "actually in dispute." *Lynn's Food Stores, Inc. v. U.S.*, 679 F.2d 1350, 1354 (11th Cir. 1982). The Court finds that the settlement reflects a reasonable

1 compromise as to entitlement to overtime, amount of overtime, and calculation of
2 overtime, and therefore warrants approval.

3 The Court approves Plaintiffs' Counsel's requested attorneys' fees and costs. Here,
4 the settlement agreement provides for, and the Court grants, attorneys' fees of 25% of the
5 total settlement amount, as well as litigation costs.

6 The Court approves the requested service awards for the Named Plaintiff and the
7 Plaintiffs who were deposed. The amount of these awards are reasonable in light of the
8 effort expended, the global results obtained, the average payments to Plaintiffs, the risk of
9 reputational harm, and the general release that the Named Plaintiff has signed.

10 As of the Effective Date, all of the Released Claims as defined in the Settlement
11 Agreement are hereby released against the Released Parties, and the claims of all
12 Plaintiffs shall be dismissed with prejudice. Without affecting the finality of this
13 Judgment and Order in any way, the Court retains jurisdiction over the interpretation,
14 implementation, and enforcement of this settlement and the payments to be made under
15 the settlement.

16 Except as otherwise provided in the Settlement Agreement and this Order, the
17 parties shall bear their own attorneys' fees and costs.

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