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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF FRESNO**

13 **ANGELIQUE TELLY, an individual,**

14 **Plaintiff,**

15 **v.**

16 **CENTURY COMMUNITIES, INC.;**
17 **JAMES MOORE; and DOES 1-20,**
18 **inclusive,**

19 **Defendants.**

20 **CASE NO: 23CEG00112**

21 **DECLARATION OF WILLIAM J.**
22 **GORHAM, III IN SUPPORT OF MOTION**
23 **FOR AN ORDER APPROVING**
24 **SETTLEMENT OF CLAIMS BROUGHT**
25 **PURSUANT TO THE PRIVATE**
26 **ATTORNEYS GENERAL ACT OF 2004,**
27 **AWARDING REIMBURSEMENT OF**
28 **SETTLEMENT ADMINISTRATION**
EXPENSES, AND DISMISSING EIGHTH
CAUSE OF ACTION WITH PREJUDICE

Date: February 29, 2024

Time: 3:30 p.m.

Dept.: 503

1 I, William J. Gorham III, declare:

2 1. I have personal knowledge of the matters set forth herein and, if called upon to
3 testify, could and would competently testify thereto.

4 2. I am counsel for Plaintiff, Angelique Telly, who is the Plaintiff herein.

5 3. With this motion the Parties to this action are seeking the court approval of the
6 Parties' PAGA settlement and the dismissal with prejudice of the Eighth Cause of Action to
7 Plaintiff's First Amended Complaint, which was brought under the Private Attorneys General
8 Act, California Labor Code section 2699 *et seq.*

9 4. On September 22, 2023, the parties to this action mediated before Russ J. Wunderli,
10 Esq., of Judicate West, and reached settlement of the PAGA claims. The terms of the settlement
11 are set forth in **Exhibit 1**, which is a true and correct copy of the Parties' proposed PAGA
12 Settlement Agreement.

13 5. The Complaint, First Amended Complaint, the Parties' proposed PAGA
14 Settlement Agreement and this motion, have all been served upon the California Labor and
15 Workforce Development Agency. A true and correct copy of the confirmation email from the
16 LWDA of submission of the aforementioned documents is attached hereto as **Exhibit 2**.

17 6. Plaintiff Telly filed a Notice of Violation letters to the Labor and Workforce
18 Development Agency ("LWDA"), one on January 11, 2023. The LWDA Notice and complaint
19 include potential PAGA claims under Labor Code sections 201, 202, 203, 218, 218.5, 226, 226.3,
20 226.7, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, and the applicable
21 Wage Order. The PAGA period in this action commenced on January 11, 2022 ("PAGA Period").
22 A true and correct copy of the LWDA Notice is attached hereto as Exhibit 2 and is incorporated
23 by this reference thereto.

24 7. It is my professional opinion that the settlement reached under the PAGA in this
25 matter is fair, reasonable and just, and that the Court should approve of the proposed order. I have
26 reached that opinion based on the following:

a. The settlement seeks the resolution of claims by Plaintiff Telly under the PAGA seeking civil penalties of all current and former non-exempt employees for alleged violations of Labor Code sections 201, 202, 203, 218, 218.5, 226, 226.3, 226.7, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, and the applicable Wage Order. The PAGA period in this action commenced on January 11, 2022 (“PAGA Period”).

b. By far, the strongest PAGA claims derive from Defendant CCI's payment of quarterly bonuses to non-exempt employees. At all times, Defendant CCI has disputed that there is any merit to the claims alleged in this lawsuit, or that any amounts are due to the allegedly aggrieved employees. Its primary defense is that it was under no obligations to include the bonus payments into the regular rate for the payment of overtime and sick time paid to non-exempt employees because the bonus payments were discretionary. A true and correct copy of the offer letter presented to Plaintiff is attached hereto as **Exhibit 3**.

c. After investigation of the claims through informal discovery, and through the mediation before Russ J. Wunderli, Esq., of Judicate West, I learned the following the regular rate claims during the PAGA Period:

i. 61 employees, including Plaintiff, were issued at least 1 quarterly bonus during the PAGA Period.

ii. Of these 61 employees, 58 also were paid for overtime and/or sick time during the pay period in which the bonus was paid, and this occurred over a total of approximately 375 pay periods in the PAGA Period.

iii. Of the employees who were paid a bonus and were paid for overtime or sick time during the same pay period as the bonus payment, 21 are former employees.

iv. Thus, based on the regular rate related violations, there would be a maximum total of approximately 375 instances in which a violation occurred. There would be a concomitant number of inaccurate wage statements.

v. My investigation led me to conclude that the maximum value of the regular rate PAGA claims was \$ \$58,650, assuming the court follows the trend at law that the 226.3 penalty of \$250 only applies to the failure to provide any wage statement, as opposed to an inaccurate wage statement. *See Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355.

d. The other claims that I believe to be of certain value relate to Defendant CCI's failure to timely provide records requested by my office in violation of Labor Code sections 226(b) and 1198.5. I believe these violations would fall under the PAGA civil penalty of \$100 each pursuant to Labor Code section 2699(f), for a total of \$200 in additional civil penalties.

e. I do not ascribe value to the meal and rest claims for the following reasons. First, in absence of a non-compliant written meal and rest break policy (such as the case here), I consider meal and rest break claims to be individualized and difficult to prove. This type of individualized analysis creates manageability issues. Judicial authority to dismiss unmanageable PAGA claims is currently before the California Supreme Court in *Estrada v. Royalty Carpet Mills, Inc.* 76 Cal.App.5th 685 (2022). Here, these claims are further undercut because non-exempt employees provided the time at work information (including times in and out for the meal periods) that was relied upon by Defendant CCI's payroll department. Consequently, I concluded that these claims are of no meaningful value.

f. Consequently, I believe the realistic maximum value of the PAGA claims to be \$ 58,650.

g. This settlement in fact is more valuable than the typical PAGA settlement of \$7,500 because I am not seeking compensation for my fees.

8. For these reasons, Plaintiff concluded the \$7,500.00 PAGA settlement, which represents about 12.8 percent of my assessment of maximum value is fair and just.

Experience of Counsel

9. I became a member of the California State Bar in December of 1990, after graduating *Magna Cum Laude* from Santa Clara University School of Law in 1990 and passing the California State Bar Exam that same year. Since that time, I have practiced as a litigator, including in the area of employment law. I have handled hundreds of employment cases in my career, representing both employers and employees. I have tried cases under the Fair Employment and Housing Act and the PAGA.

10. I have also been certified as class counsel, class action and PAGA matters that have been handled by Mayall Hurley, P.C. over the past several years. For instance, Mayall Hurley P.C. has been approved as class counsel in numerous cases, including:

- a. *Markson, et al. v. CRST International, Inc, et al.*, Eastern District of California Case No. 5:17-cv-01261-VAP-SP;
- b. *Jacques v. Mike's Mobile, Inc.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2022-2329;
- c. *Schmeirer v. Arc Document Solutions, LLC*, San Joaquin County Superior Court Case No. STK-CV-UOE-2019-2008;
- d. *Starr, et al. v. Schell and Kampeter, Inc.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2021-4585;
- e. *Maldonado, et al. v. Wine & Roses, LLC*, San Joaquin County Superior Court Case No. STK-CV-UOE-2019-2629;
- f. *Flores v. Dart Container Corp., et al*, Eastern District of California Case No. 2:19-cv-00083-WBS-EFB;

- 1 g. *Rodriguez v. J-M Manufacturing, Inc.*, San Joaquin County Superior Court Case
2 No. STK-CV-UOE-2019-6065;
- 3 h. *Arata v. Cozad Trailer Sales, LLC*, San Joaquin County Superior Court Case No.
4 STK-CV-UOE-2020-1774;
- 5 i. *Modica v. Iron Mountain Information Management Svcs., Inc.*, United States
6 District Court, Eastern District of California Case No. 2:19-cv-00370-TLN-JDP;
- 7 j. *Magee v. Thyssenkrupp Materials, N.A., et al.*, Alameda County Superior Court
8 Case No. RG19027231;
- 9 k. *Basinger v. Il Palio Restaurant Group, Inc.*, San Diego County Superior Court
10 Case No. 37-2018-00004296-CU-OE-CTL;
- 11 l. *Pacheco v. Bushfire Grill, Inc., et al*, United States District Court, Southern
12 District of California, Case No. [3:18-cv-01696-JAH-WVG](#);
- 13 m. *Wise v. ULTA Salon, Cosmetics & Fragrance, Inc.*, United States District Court,
14 Eastern District of California, Case No. 1:17-cv-00853-DAD-EPG;
- 15 n. *Fernando and Kalaveras v. Burroughs, Inc.*, Alameda County Superior Court,
16 Case No. RG18906875;
- 17 o. *Mansur v. Owens-Brockway Glass Container, Inc.*, San Joaquin County Superior
18 Court, Case No. STK-CV-UOW-2018-14631;
- 19 p. *Alderson v. Alameda County Agricultural Fair Association*, Alameda County
20 Superior Court, Case No. RG18912654;
- 21 q. *Terry v. Mare Island Dry Dock, LLC*, Solano County Superior Court, Case No.
22 FCS051650;
- 23 r. *Mettler, Bender, and Rojas v. Les Schwab Tire Centers of California, Inc.*, San
24 Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476;
- 25 s. *Escalera v. La Tapatia Mexican Market, Inc.*, San Joaquin County Superior Court,
26 Case No., ST-CV-UOE-2017-5296;
- 27
- 28

- 1 t. *Garcia, et al. v. HMS Host USA, Inc.*, United States District Court, Northern
2 District of California, Case No. 17-cv-03069-RS;
3
4 u. *Ali v. Sutter Valley Medical Foundation, Inc.*, Sacramento County Superior Court,
5 Case No. 34-2017-00217486;
6
7 v. *Grady, et al. v. People 2.0 dba The Hire Source, et al.*, San Joaquin County Case
8 No. STK-CV-UOE-2017-13867;
9
10 w. *Kumar v. Forty Niners Stadium Management Company*, Santa Clara County
11 Superior Court, Case No. 17CV3121427;
12
13 x. *Gast v. Flooring Liquidators, Inc.*, Stanislaus County Superior Court, Case No.
14 2026223;
15
16 y. *Russell v. KeHe Distributors, Inc.*, United States District Court, Eastern District of
17 California, Case No. 2:17-at-00592;
18
19 z. *Smith v. Wal-Mart Stores, Inc. et al.*, United States District Court, Northern
20 District of California, Case No. 3:16-cv-02832-JD;
21
22 aa. *Titus v. The Martin-Brower, LLC*, United States District Court, Eastern District of
23 California, Case No. 2:17-cv-00558-JAM-GGH;
24
25 bb. *Hugues v. The Morning Star Trucking Company, LLC, et al.*, Yolo County
26 Superior Court Case No. CV16-1215;
27
28 cc. *Ahmed v. Beverly Health and Rehabilitation Services, Inc., et al.*, United States
District Court, Eastern District of California, Case No. 2:16-cv-01747-WBS-KJN;
dd. *Guzman-Padilla, et al. v. Gerard Van De Pol, et al.*, United States District Court,
Eastern District of California, Case No. 2:17-cv-00196-JAM-KJN;
ee. *Jaime v. Walt Disney Parks and Resorts U.S., Inc.*, United States District Court,
Central District of California, Case No. SACV 15-01618-CJC(DFMx);
ff. *Stevens v. Suncrest Solar, Inc.*, Fresno County Superior Court, Case No.
16CECG03355;

1 gg. *Cardoza v. Blazona Concrete Construction, Inc.*, Alameda County Superior Court
2 Case No. RG17866256;
3
4 hh. *Maasrani v. Waterton Hospitality Management*, San Mateo County Superior
5 Court, Case No. 17CIV05470;
6
7 ii. *Huynh v. Parker-Hannifin Corporation*, Stanislaus County Superior Court, Case
8 No. 2022325;
9
10 jj. *Moser v. O'Connor Woods Housing Corporation*, San Joaquin County Superior
11 Court, Case No. STK-CV-UOE-2014-0009861;
12
13 kk. *Bastami v. Semiconductor Components Industries, LLC*, Santa Clara County
14 Superior Court, Case No. 16cv297447;
15
16 ll. *Davis v. Balfour Beatty Infrastructure, Inc.*, Los Angeles County Superior Court,
17 Case No. BC592580;
18
19 mm. *Van Lith v. iHeartmedia + Entertainment, Inc. et al.*, United States District
20 Court, Eastern District of California, Case No. 1-16-cv-00066-SKO;
21
22 nn. *Clark v. Arrow Sign Co.*, San Joaquin County Superior Court, Case No. STK-CV-
23 UOE-2016-6457;
24
25 oo. *Moreno v. B.R. Funsten & Co.*, Solano County Superior Court Case No.
26 FCS046149;
27
28 pp. *Taylor v. Meadowbrook Meat Company, Inc.*, United States District Court,
Northern District of California, Case No. 3:15-cv-00132-LB;
qq. *Perez et al. v. Abbate Family Farms Limited Partnership et al.*, San Joaquin
County Superior Court, Case No. 39-2012-00288653-CU-OE-STK
rr. *Bice v. Vensure HR, Inc., et al.*, San Joaquin County Superior Court, Case No.
STK-CV-UOE-2016-1264.

///

1 I declare the foregoing is true and correct under penalty of perjury under the laws of the State
2 of California. Executed this 10th day of January, 2024, in Lodi, California.

3
4 
5 WILLIAM J. GORHAM III

Exhibit 1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“PAGA Agreement”) is made by and between plaintiff ANGELIQUE TELLY (“Telly” or “Plaintiff”) and CENTURY COMMUNITIES, INC. (“CCI”). The Agreement refers to the Plaintiff and CCI collectively as “Parties.” The Parties agree that the Agreement will be submitted to the Labor and Workforce Development Agency at the same time that it is submitted to the Court.

1 DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against CCI captioned *Angelique Telly v. Century Communities, Inc. and James Moore*, Fresno County Superior Court, Case No. 23CECG00112, initiated on January 11, 2023, for which a First Amended Complaint was filed on March 27, 2023, to add a PAGA cause of action.
- 1.2 “Administrator” means ILYM Group, Inc., or any other third-party class action Settlement Administrator agreed to by the Parties.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement. The Administration Expenses Payment is estimated to be \$2,950.00.
- 1.4 “Aggrieved Employee” means all persons employed by CCI in California classified as non-exempt employees who worked for CCI during the PAGA Period and were paid a bonus during a pay period in which an employee also earned overtime, sick time or meal/rest period premiums.
- 1.5 “Aggrieved Employee Data” means Aggrieved Employee identifying information in CCI’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods for which a bonus was paid and the employee also earned overtime, sick time or meal/rest period premiums (“PAGA Pay Periods at issue”).
- 1.6 “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7 “Court” means the Superior Court of California, County of Fresno.
- 1.8 “Defense Counsel” means:

G. Michael Brown (State Bar No. 085997)
m.brown@musickpeeler.com

Elaine M. Vukadinovich (State Bar No. 187315)
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MUSICK, PEELER & GARRETT LLP
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Telephone (714) 668-2400
Facsimile (714) 668-2490

- 1.9 “Effective Date” means the date by when the Court enters a Judgment and Order Approving the PAGA Settlement.
- 1.10 “Gross Settlement Amount” means \$7,500.00, which is the total amount CCI agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, and the Administrator’s Expenses Payment.
- 1.11 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods at issue for each Aggrieved Employee during the PAGA Period.
- 1.12 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.13 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.14 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.15 “PAGA Counsel” means the attorneys representing the Plaintiff in the Action:

MAYALL HURLEY P.C.
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- 1.16 “PAGA Pay Period at issue” means any Pay Period during which an Aggrieved Employee worked for CCI in which a bonus was paid and the employee also earned overtime, sick time or meal/rest period premiums during the PAGA Period.

- 1.17 “PAGA Period” means the period from January 11, 2022 to September 22, 2023.
- 1.18 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.19 “PAGA Notice” means Plaintiff Telly's January 11, 2023 letter to CCI and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.20 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and 75% to the LWDA.
- 1.21 “Plaintiff” means Angelique Telly, the named Plaintiff in the Action.
- 1.22 “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.23 “Released PAGA Claims” means the claims being released by Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.24 “Released Parties” means: CCI and James Moore and their respective past and present parents, subsidiaries, affiliates, associates, owners, divisions, related companies, business concerns, agents, and attorneys, and each of them, and their respective past and present successors and predecessors in interest, and all of their respective past and present and future officers, directors, employees, shareholders, owners, members, administrators, fiduciaries, trustees, beneficiaries, agents, attorneys, principals, heirs, assigns, representatives, accountants, auditors, consultants, insurers, and reinsurers.
- 1.25 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.26 “CCI” means named Defendant Century Communities, Inc.

2 RECITALS.

- 2.1 On January 11, 2023, Plaintiff commenced this Action by filing a Complaint in Fresno County Superior Court, Case No. 23CECG00112, alleging causes of action against CCI and Defendant James Moore for (1) sexual harassment - FEHA, (2) gender discrimination - FEHA, (3) retaliation - FEHA, (4) failure to prevent discrimination and retaliation – FEHA , (5) unequal pay - CEPA; (6) retaliation - CEPA, and (7) failure to pay all wages due at cessation of employment – LC §§ 201, & 218. On March 27, 2023, Plaintiff filed a First Amended Complaint to allege an eighth cause of action for Violation of Labor Code § 2698 et. seq. (PAGA). The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”).
- 2.2 CCI denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint, denies any and all

liability for the causes of action alleged, and denies the existence of any aggrieved employees.

- 2.3 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to CCI and the LWDA by sending the PAGA Notice.
- 2.4 After discovery was exchanged and informally responded to by the Parties for purposes of mediation, the Parties attended a full-day mediation on September 22, 2023, before Russ J. Wunderli, Esq., of Judicate West. The settlement was negotiated in light of all known facts and circumstances and the uncertainty associated with litigation, including the risk of Plaintiff not being able to maintain representative claims, the difficulty of proving Plaintiff's PAGA claims in a manageable trial, the merits of CCI's potential defenses, and the significant delay and potential appellate issues inherent to litigation.
- 2.5 The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of another pending matter or action asserting claims that would be extinguished or affected by the Settlement.

3 MONETARY TERMS.

- 3.1 Gross Settlement Amount. CCI promises to pay \$7,500.00 and no more as the Gross Settlement Amount. CCI has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to CCI.
- 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Approval Judgment and Order:
 - 3.2.1 To the Administrator: An Administrator Expenses Payment not to exceed \$2,950.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$2,950.00, the Administrator will retain the remainder in the Net Settlement Amount.
 - 3.2.2 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$4,550.00 to be paid from the Gross Settlement Amount of \$7,500.00, with 75% (\$3,412.50) allocated to the LWDA PAGA Payment and 25% (\$1,137.50), allocated to the Individual PAGA Payments.
 - 3.2.2.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total

number of PAGA Pay Periods at issue for all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each individual Aggrieved Employee's PAGA Pay Periods at issue. The Parties agree that the Individual PAGA Payment distributed to Aggrieved Employees will be considered civil penalties and interest, and will be, if required, reported as such to Aggrieved Employees on IRS Form 1099 misc., if applicable. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.2.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4 SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 Aggrieved Employee Pay Periods at Issue. Based on a review of its records, CCI estimated there are 58 Aggrieved Employees who worked approximately 375 pay periods in the PAGA period where those employees were paid for overtime, or sick time, or meal/rest period premiums, during a pay period in which a quarterly or other bonus was paid.
- 4.2 Aggrieved Employee Data. Within or by fifteen (15) days after the Effective Date, CCI will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. CCI has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which CCI must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data. No identifying information or contact information is to be forwarded to Plaintiff's counsel for any aggrieved employee.
- 4.3 Funding of Gross Settlement Amount. CCI shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 15 days after the Effective Date.

4.4 Payments from the Gross Settlement Amount. Within 15 days after CCI funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, and the Administration Expenses Payment.

4.4.1 The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. The Administrator will include with each Individual PAGA Payment check a Notice of PAGA Settlement and Release of Claims, a copy of which will first be submitted to the Court for approval along with the Parties' Stipulation, Motion and/or Application for Settlement Approval as further discussed in paragraph 6, informing the recipient of the scope of the released claims, and as to the recipient's responsibility, for any taxes payable on the amount received. The Notice of PAGA Settlement and Release of Claims, shall be substantially in the form attached as Exhibit A to this Settlement Agreement.

4.4.2 The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4 The payment of Individual PAGA Payments shall not obligate CCI to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5 RELEASES OF CLAIMS. Effective on the date when CCI fully funds the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to, all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"), including, but not limited to, the following:

(a) Any claims for unpaid wages (including minimum, regular, and overtime wages), untimely wage payments both during and at the end of employment, non-compliant meal periods, non-compliant rest periods, non-compliant wage statements, non-compliant recordkeeping, unpaid commissions and bonuses, unpaid vacation, failure to pay sick leave, failure to pay meal or rest period premiums, failure to pay the regular rate of pay, failure to for accrued vacation time, unlawful deduction of wage, and claims for interest, penalties (including but not limited to waiting time penalties), or premiums in connection therewith, as well as any claims under the Fair Labor Standards Act, the California Labor Code, California Industrial Welfare Commission Wage Orders, Prevailing Wage Determinations made by the Director of Industrial Relations, and corresponding California Code of Regulations;

(b) Any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages.

(c) Any and all other claims under California common law, the California Labor Code including but not limited to the Private Attorneys General Act, the Fair Labor Standards Act, California Industrial Welfare Commission Wage Orders, Prevailing Wage Determinations made by the Director of Industrial Relations, corresponding California Code of Regulations, and the California Business and Professions Code

Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remains effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2 Release by Aggrieved Employees:

Plaintiff, individually and as the representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, in this Action, agrees to release, and all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice, for claims under Labor Code sections 201, 202, 203, 218, 218.5, 226, 226.3, 226.7, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, and the applicable Wage Order.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6 STIPULATION, MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and for Plaintiff to file an application or Motion (Ex Parte or noticed) and proposed order for approval of this Settlement.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) an invoice from the Administrator attaching its bid for administering the Settlement; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), and this Agreement (Labor Code section 2699, subd. (1)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator.

- 6.2 Responsibilities of PAGA Counsel. PAGA Counsel is responsible for expeditiously finalizing and filing the application and/or Motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date if required by the Court and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator. Should the Court require a noticed motion, the Parties are jointly responsible for expeditiously filing such within 30 days after any such Court order or stated requirement and, if necessary, obtaining a prompt hearing date for any motion and appearing in court to advocate for any motion.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7 SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8 **AGGRIEVED EMPLOYEE SIZE ESTIMATES.** Based on its records, CCI estimates that, for settlement purposes, (1) there are 58 Aggrieved Employees who worked approximately 375 pay periods during the PAGA Period where those employees were paid for overtime, or sick time, or meal/rest period premiums, during a pay period in which a quarterly or other bonus was paid.

9 **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, pursuant to California Code of Civil Procedure § 664.6, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 **Waiver of Right to Appeal.** Provided the Order and/or Judgment is consistent with the terms and conditions of this Agreement or any executed addendum thereto, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10 **ADDITIONAL PROVISIONS.**

10.1 **No Admission of Liability or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by CCI that any of the allegations in the Operative Complaint have merit or that CCI has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that CCI's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, CCI reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest CCI's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2 **Integrated Agreement.** Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

10.3 **Attorney Authorization.** PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and CCI, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to

this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. Aside from the Gross Settlement Amount, In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will continue to meet and confer to see if an agreement can be reached.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, CCI, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by CCI in connection with the mediation, other settlement negotiations, or in connection with the Settlement,

may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from CCI unless, prior to the Administrator's payment of all Settlement Funds, CCI makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

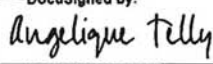
MAYALL HURLEY P.C.
WILLIAM J. GORHAM III (SBN: 151773)
wgorham@mayallaw.com
VLADIMIR J. KOZINA (SBN: 284645)
vjkozina@mayallaw.com
2453 Grand Canal Boulevard
Stockton, California 95207-8253
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

To CCI:

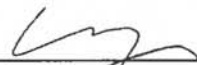
G. Michael Brown (State Bar No. 085997)
m.brown@musickpeeler.com
Elaine M. Vukadinovich (State Bar No. 187315)
e.vukadinovich@musickpeeler.com
MUSICK, PEELER & GARRETT LLP
650 Town Center Drive, Suite 1200
Costa Mesa, California 92626-1925
Telephone (714) 668-2400
Facsimile (714) 668-2490

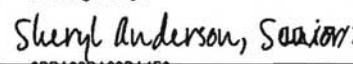
10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

DocuSigned by:
 11/6/2023
EECB21703FAA41D...
Angelique Telly

MAYALL HURLEY P.C.

 11/6/2023
Vladimir J. Kozina
Counsel For Plaintiff

DocuSigned by:
 Sheryl Anderson, ~~Senior~~ President of Human Res.
6CBA90DA22DA4E0...
For CCI

MUSICK, PEELER & GARRETT LLP

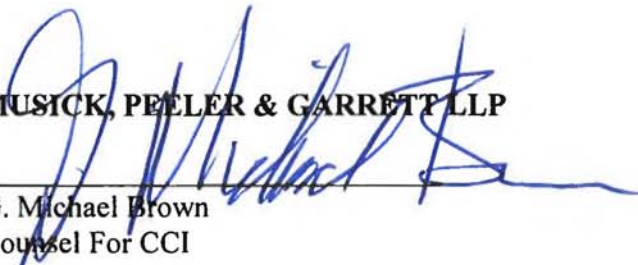

G. Michael Brown
Counsel For CCI

EXHIBIT A

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Dear Current or Former Employee of Century Communities, Inc.

You have received this notice because Century Communities, Inc. (“CCI”) records indicate that you have worked for Century Communities Inc. at some time between January 11, 2022 to September 22, 2023 (“the PAGA Period”). The parties to the lawsuit titled *Angelique Telly v. Century Communities, Inc. and James Moore*, Fresno County Superior Court, Case No. 23CECG00112 (the “Action”), have reached a settlement that affects you. Plaintiff Angelique Telly (“Plaintiff”), as a proxy of the State of California and on behalf of current and former non-exempt employees who worked for CCI, and earned a bonus, during the PAGA Period (“Aggrieved Employees”), sued CCI for civil penalties under the California Private Attorneys General Act (“PAGA”) for alleged Labor Code violations. Generally, Plaintiff claims that CCI failed to pay all wages owed, including minimum wage, overtime, failed to timely pay such wages, failed to provide meal and rest breaks, failed to issue accurate itemized wage statements, and failed to pay all wages due at the time of termination.

CCI strongly disputes Plaintiff’s allegations and maintain that it has fully complied with all applicable wage and hour laws. The Court has not issued any ruling regarding the merits of the Action. However, to avoid the time and expense associated with further litigation, Plaintiff and CCI, on its behalf and on behalf of all Released Parties, agreed to settle the case, which settlement has been approved by the Court.

Pursuant to the release approved by the Court, Plaintiff, as a proxy for the State of California and on behalf of all Aggrieved Employees, released the Released Parties from any and all claims, rights, demands, liabilities, and causes of action for civil penalties under PAGA arising between January 11, 2022 through September 22, 2023 that were asserted in the Action or that are reasonably related to the facts alleged in the Action, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice, for claims under Labor Code sections 201, 202, 203, 218, 218.5, 226, 226.3, 226.7, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, and the applicable Wage Order.

The Released Parties are CCI and James Moore and their respective past and present parents, subsidiaries, affiliates, associates, owners, divisions, related companies, business concerns, agents, and attorneys, and each of them, and their respective past and present successors and predecessors in interest, and all of their respective past and present and future officers, directors, employees, shareholders, owners, members, administrators, fiduciaries, trustees, beneficiaries, agents, attorneys, principals, heirs, assigns, representatives, accountants, auditors, consultants, insurers, and reinsurers.

According to CCI’s records, you are an Aggrieved Employee and are therefore entitled to a share of the settlement. Enclosed is a check representing your share of the settlement. The check

shall remain valid for one hundred and eighty (180) days. Checks that are not cashed within 180 calendar days of issuance will be voided and the funds will be distributed to the California State Controller's Unclaimed Property Fund in the name of the employee who did not cash the check. You will not be retaliated against for cashing your check. One hundred percent (100%) of your share of the settlement shall be deemed penalties and reported as miscellaneous income for which an IRS Form 1099 will be issued, if required by law. You shall be solely and legally responsible for paying any and all applicable taxes on your share of the settlement.

The Net Settlement Amount of the PAGA penalties, after administrative costs, is \$4,550.00. Under the PAGA statutes, penalties are divided between the State of California and PAGA employees, with the State receiving 75% of the penalties. The Labor and Workforce Development Agency of California shall receive \$3,412.50 and the 58 PAGA Aggrieved Employees shall receive an estimated payment of \$1,137.50 distributed on a pro-rata basis based on the respective number of pay periods during which an Aggrieved Employee worked for CCI in which a bonus was paid and the employee also earned overtime, sick time or meal/rest period premiums during the PAGA Period. The Settlement Administrator calculated your individual PAGA payment by (a) dividing the amount of the 25% share of PAGA penalties (\$1,137.50) by the total number of PAGA Pay Periods at issue for all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each individual Employee's PAGA Pay Periods at issue.

Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Lawsuit.

If you have any questions, please contact:

Settlement Administrator

Name

Address

Telephone

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THE LAWSUIT. PLEASE DO NOT CONTACT THE COURT OR CLERK REGARDING THE CASE.

Exhibit 2

Exhibit 3



September 21, 2021

Angelique Telly
[REDACTED]

Dear Angelique,

Congratulations! It is my pleasure to extend a conditional offer of employment on behalf of Century Communities, Inc. (the "Company" or "Century") for the position of Assistant Construction Manager with our Central Valley Division. Your proposed start date will be on or before October 11, 2021.

Century Communities, Inc. offers a competitive compensation package which includes health, retirement and personal time off benefits subject to the terms in the benefit plan guide. Century reserves the right to modify salaries and benefits from time to time as it deems appropriate. A summary and guide of current benefits are enclosed.

Compensation

- Your hourly pay rate is \$25.00 paid semi-monthly.
- Monthly auto/cell allowance in the amount of \$500.00.

Bonus

- You will be eligible to earn a quarterly bonus, outlined to you following your start date. Whether a bonus is paid and the amount and timing of any bonus payment is at the Company's sole discretion.

Benefits

- Health insurance benefits are effective on the 1st day of the month following your start date.
- Eligibility to enroll in the Company's 401(k) plan is immediate upon your first day of employment; your contributions will begin as soon as administratively possible. The plan matches up to 50% of the first 6% contributed on a per pay period basis and is subject to a 3-year vesting schedule.
- Personal time off pursuant to the Company's policy.

As a condition of employment, we will require you to sign our Confidentiality & Non-Solicitation, Arbitration Agreement, Insider Trading Policy, and Code of Business Conduct & Ethics. You further represent and warrant that, in the course of working for the Company, you will not use or share with the Company any confidential information or documents belonging to any third party unless authorized to do so by such third party. The Company reserves the right to revoke this conditional offer at any time and for any or no reason including, without limitation, if the requirements of this paragraph are not met.

The employment relationship is at will, and the Company and the Employee have the right to terminate the employment relationship at any time, for any reason. The at will nature of the employment relationship cannot be altered unless it is done in a written agreement executed by one of the two Chief Executive Officers.



By signing this letter, you confirm you (i) are not subject to or bound by any non-competition, non-disclosure, non-solicitation or other similar agreements that would impact the performance of the required job functions of the position being offered, (ii) do not have any conflicts of interest regarding your employment, such as your involvement in other real estate activities, construction, homebuilding activities, or other employment and (iii) agree that this letter contains the only terms and conditions of your employment and that you have not relied upon any other promises or representation and (iv) acknowledge that any payments to you will be subject to applicable payroll taxes and withholdings.

Upon reviewing and accepting the terms and conditions of this offer, please provide your signature and date below no later than 5:00 pm mountain time September 23, 2021 and we will begin the pre-employment process. Should you have any questions regarding this offer or any of its enclosures, please feel free to contact me.

We are excited to have you join our team.

Sincerely,

Mark Selleck
Corporate Recruiter
303-910-8976

Understood and Accepted by:

DocuSigned by:
A handwritten signature in blue ink that reads "Angelique Telly".
EECB21703FAA41D...

Angelique Telly

9/21/2021

Date

Enclosures: Benefits Summary
 Benefits Guide