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 8 **IN THE UNITED STATES DISTRICT COURT**
 9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN FRANCISCO DIVISION**

11 JOSEPH TOLA, On Behalf of Himself and
 12 All Others Similarly Situated,

13 Plaintiff,

14 v.

15 UCP, INC., MICHAEL C. CORTNEY,
 16 DUSTIN L. BOGUE, ERIC H. SPERON,
 PETER H. LORI, KATHLEEN R. WADE,
 17 MAXIM C.W. WEBB, CENTURY
 COMMUNITIES, INC., and CASA
 18 ACQUISITION CORP.,

19 Defendants.

Case No. 17-cv-02713-WHA

STIPULATION AND ~~PROPOSED~~
ORDER OF DISMISSAL

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 21 WHEREAS, plaintiff Joseph Tola (“Plaintiff”) filed the above-captioned action (the “Action”)
 22 challenging the disclosures made by UCP, Inc. (“UCP”) in connection with the proposed acquisition of
 23 UCP by Century Communities, Inc. (“Parent”), and its wholly owned subsidiary, Casa Acquisition Corp.
 24 (“Merger Sub”), pursuant to a definitive agreement and plan of merger filed with the United States
 25 Securities and Exchange Commission (“SEC”) on or around April 11, 2017 (the “Transaction”);

26 WHEREAS, the Action asserts claims for violations of Sections 14(a) and 20(a) of the Securities
 27 Exchange Act of 1934 by defendants in connection with UCP’s Form S-4 Registration Statement (the
 28

1 “Registration Statement”) filed with the SEC on or around May 5, 2017;

2 WHEREAS, on or around June 21, 2017, UCP filed an amendment to the Registration Statement
3 with the SEC that included certain additional information relating to the Transaction that addressed and
4 mooted Plaintiff’s claims (the “Supplemental Disclosures”);

5 WHEREAS, the Transaction closed on or around August 4, 2017;

6 WHEREAS, Plaintiff’s counsel intends to assert a claim for a mootness fee and expenses in
7 connection with the mooted claims (the “Fee Application”), and seek Court intervention if the parties
8 cannot resolve Plaintiff’s Fee Application;

9 WHEREAS, all of the defendants in the Action reserve all rights, arguments, and defenses,
10 including the right to oppose any potential Fee Application;

11 WHEREAS, no class has been certified in the Action;

12 WHEREAS, for the avoidance of doubt, no compensation in any form has passed directly or
13 indirectly to Plaintiff or his attorneys and no promise, understanding, or agreement to give any such
14 compensation has been made;

15 WHEREAS, defendants have denied and continue to deny any wrongdoing and contend that no
16 claim asserted in the Action was ever meritorious;

17 NOW, THEREFORE, IT IS HEREBY STIPULATED upon consent of the parties and subject to
18 the approval of the Court that:

1 1. The Action is dismissed, and all claims asserted therein are dismissed with prejudice as to
2 Plaintiff only. All claims on behalf of the putative class are dismissed without prejudice.

3 2. Because the dismissal is with prejudice as to Plaintiff only, and not on behalf of a putative
4 class, notice of this dismissal is not required.

5 3. The Court retains jurisdiction of the Action solely for the purpose of determining
6 Plaintiff's anticipated Fee Application, if filed.

7 4. This Order is entered without prejudice to any right, position, claim, or defense any party
8 may assert with respect to the Fee Application, which includes the defendants' right to oppose the Fee
9 Application.

10 5. Plaintiff's Fee Application, if filed, will comply with Local Rule 54-5.

11 6. If the parties reach an agreement concerning the Fee Application, they will notify the
12 Court. Upon such notification, the Court will close the Action.

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1 **[PROPOSED] ORDER**

2 Based on the foregoing stipulation and good cause being shown, the Court hereby GRANTS the
3 parties' Stipulation. The Court hereby orders as follows:

4 1. The Action is dismissed, and all claims asserted therein are dismissed with prejudice as to
5 Plaintiff only. All claims on behalf of the putative class are dismissed without prejudice.

6 2. Because the dismissal is with prejudice as to Plaintiff only, and not on behalf of a putative
7 class, notice of this dismissal is not required.

8 3. The Court retains jurisdiction of the Action solely for the purpose of determining
9 Plaintiff's anticipated Fee Application, if filed.

10 4. This Order is entered without prejudice to any right, position, claim, or defense any party
11 may assert with respect to the Fee Application, which includes the defendants' right to oppose the Fee
12 Application.

13 5. Plaintiff's Fee Application, if filed, shall comply with Local Rule 54-5.

14 6. If the parties reach an agreement concerning the Fee Application, they will notify the
15 Court. Upon such notification, the Court will close the Action.

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17 **SO ORDERED**

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