

1 HEATHER DAVIS, SBN 239372  
 heather@protectionlawgroup.com  
 2 AMIR NAYEBDADASH, SBN 232204  
 amir@protectionlawgroup.com  
 3 D. LUKE CLAPP, SBN 306040  
 luke@protectionlawgroup.com  
 4 **PROTECTION LAW GROUP, LLP**  
 5 237 California Street  
 El Segundo, CA 90245  
 6 Telephone: (424) 290-3095  
 7 Facsimile: (866) 264-7880

8 *Attorneys for Plaintiff*  
 9 MARIACRUZ GONZALEZ

10 Richard D. Marca, SBN 127365  
 Richard.Marca@varnerbrandt.com  
 11 Ankit H. Bhakta, SBN 312607  
 ankit.bhakta@varnerbrandt.com  
 12 **VARNER & BRANDT LLP**  
 13 3750 University Avenue, 6th Floor  
 Riverside, California 92501  
 14 Tel: (951) 274-7777 / Fax: (951) 274-7770

15 *Attorneys for Defendant*  
 16 VISTA PACIFICA ENTERPRISES, INC.

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 18 **COUNTY OF RIVERSIDE**

19 MARIACRUZ GONZALEZ, as an aggrieved  
 20 employee and private attorney general;

21 Plaintiff,

22 vs.

23 VISTA PACIFICA ENTERPRISES, INC., a  
 24 California corporation, and DOES 1 through 50,  
 inclusive,

25 Defendants.  
 26

Case No. RIC2001557

**REPRESENTATIVE ACTION**

**AMENDED JOINT STIPULATION OF  
 PAGA SETTLEMENT AND RELEASE  
 OF CLAIMS**

*Assigned to all purposes: Hon. Sunshine  
 Sykes, Department 6*

Complaint Filed: June 8, 2020

Trial Date: Not Set

1 This Joint Stipulation of PAGA Settlement and Release of Claims (“Settlement,”  
2 “Agreement,” or “Settlement Agreement”) is made and entered into by and between Plaintiff  
3 MARIACRUZ GONZALEZ (“Plaintiff”) as a Private Attorney General on behalf of the State of  
4 California and Defendant VISTA PACIFICA ENTERPRISES, INC. (“Defendant”). Plaintiff and  
5 Defendant are collectively referred to herein as “the Parties.”

6 **DEFINITIONS**

7 The following definitions are applicable to this Settlement, in addition to other terms defined  
8 elsewhere in this Settlement:

9 1. The “Action” shall mean the civil action entitled “*Mariacruz Gonzalez v. Vista*  
10 *Pacifica Enterprises, Inc.*,” pending before the Superior Court of California, County of Riverside,  
11 Case No. RIC2001557.

12 2. “Aggrieved Employee List” means a complete list of all PAGA Members that  
13 Defendant will diligently and in good faith compile from its records and confidentially provide to  
14 the Settlement Administrator no later than **thirty (30) calendar days after the date on which the**  
15 **Court enters an order granting approval of this Settlement.** The Aggrieved Employee List will be  
16 formatted in a readable Microsoft Office Excel spreadsheet containing the following information for  
17 each PAGA Member, to the extent such information is readily available: (1) full name; (2) last  
18 known home address; (3) last known telephone number; (4) social security number; (5) start and  
19 end dates of active employment as a non-exempt employee of Defendant in the State of California;  
20 (6) total pay periods during the PAGA Period; and (8) any other information required by the  
21 Settlement Administrator in order to effectuate the terms of the Settlement. This is a material term  
22 of the Settlement, and if Defendant fails to comply, Plaintiff shall have the right to void the  
23 Settlement.

24 3. “Defense Counsel” shall mean the attorneys representing Defendant in the Action,  
25 Richard D. Marca, Esq. and Ankit H. Bhakta, Esq. of Varner & Brandt LLP.

26 4. “Effective Date” shall mean the later of the following: (a) if no timely objections are  
27 filed or if all objections are withdrawn, the date upon which the Court enters an order approving the  
28

1 Settlement; (b) if there are objections to the settlement, and if an appeal, review or writ is not sought  
2 from the order granting final approval of the settlement, the 61st day after service of notice of entry  
3 of the order; or (c) if an appeal, review or writ is sought from the order, the day after the order is  
4 affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer subject to  
5 further judicial review. Prior to the Effective Date of the settlement, Defendant will not be required  
6 to fund this settlement, in whole or in part, through the Settlement Administrator or any third party.

7 5. "Gross Settlement Amount" shall mean Two Hundred and Seventy-Five Thousand  
8 Dollars and No Cents (\$275,000.00) payable by Defendant as provided by this Settlement  
9 Agreement.

10 6. "Individual Pay Periods" shall mean the number of Pay Periods for an individual  
11 PAGA Member.

12 7. "Judgment" shall mean the order granting approval of the Settlement, granting  
13 approval of the PAGA Notice, and entering judgment by the Superior Court that the Parties  
14 anticipate will be entered following a hearing for approval of the Settlement in this Action.

15 8. "LWDA Payment" shall mean the payment to the California Labor and Workforce  
16 Development Agency ("LWDA") constituting seventy-five percent (75%) of the Net Settlement  
17 Amount.

18 9. "Net Settlement Amount" shall mean the Gross Settlement Amount, less (i) the  
19 Plaintiff's Representative Payment approved by the Superior Court; (ii) the Plaintiff's Counsel Fees  
20 Payment approved by the Superior Court; (iii) the Plaintiff's Counsel Litigation Costs Payment  
21 approved by the Superior Court; (iv) the Settlement Administrator Payment approved by the  
22 Superior Court; and (v) any other fees or expenses (other than Plaintiff's Counsel Fees Payment and  
23 Plaintiff's Counsel Litigation Costs Payment) incurred in implementing the terms and conditions of  
24 this Settlement Agreement as approved by the Superior Court.

25 10. "PAGA Payment" shall mean the remaining twenty-five percent (25%) of the Net  
26 Settlement Amount to be distributed on a *pro-rata* basis based upon the number of Pay Periods  
27 worked by each PAGA Member.

28

1           11.     “PAGA Payment Share” shall mean the value of each PAGA Member’s share of the  
2 PAGA Payment as provided by this Settlement Agreement.

3           12.     “PAGA Notice” shall mean the Notice of Settlement and Approval, a sample of  
4 which is attached hereto as **Exhibit A**. The PAGA Notice shall further contain (i) a PAGA  
5 Member’s first and last name, (ii) last known address, (iii) the PAGA Member’s Individual Pay  
6 Periods; and (vi) the PAGA Member’s individual share of the PAGA Payment.

7           13.     “PAGA Period” shall mean the period of time commencing on February 13, 2019,  
8 and ending on September 18, 2021.

9           14.     “PAGA Members” shall mean all current and former non-exempt employees of  
10 Defendant employed by Defendant in the State of California at any time during the PAGA Period.

11          15.     “Pay Period” shall mean any pay period in which a PAGA Member worked at least  
12 one (1) day.

13          16.     “Plaintiff’s Counsel” shall mean the attorneys representing Plaintiff in the Action,  
14 Heather Davis, Esq., Amir Nayebdadash, Esq., and D. Luke Clapp of Protection Law Group, LLP.

15          17.     “Plaintiff’s Counsel Fees Payment” shall mean Ninety One Thousand, Six Hundred  
16 and Sixty-Five Dollars and Seventy-Five Cents (\$91,665.75) subject to approval by the Superior  
17 Court as Plaintiff’s Counsel’s attorneys’ fees incurred in connection with the Action, including fees  
18 incurred in pre-filing investigation, filing of the Action, and all related litigation activities, this  
19 Settlement, and all post-settlement compliance procedures. Defendant has agreed not to oppose  
20 Plaintiff’s Counsel’s request for fees in the amount set forth above.

21          18.     “Plaintiff’s Counsel Litigation Costs Payment” shall mean the actual litigation  
22 expenses and/or costs expended by Plaintiff’s Counsel subject to approval by the Superior Court  
23 incurred in connection with the Action, including pre-filing investigation, filing of the Action, and  
24 all related litigation activities, this Settlement, and all post-settlement compliance procedures.  
25 Plaintiff’s Counsel’s costs are not to exceed Twenty Thousand Dollars and No Cents (\$20,000.00).  
26 Defendant has agreed not to oppose Plaintiff’s Counsel’s request for costs and expenses in the  
27 amount set forth above.

28

1           19.    “Plaintiff’s Representative Payment” shall mean the payment made to Plaintiff in her  
2 capacity as the PAGA representative to compensate her for prosecuting the Action, and performing  
3 work in support of the Action, in the amount of Five Thousand Dollars and No Cents (\$5,000.00),  
4 subject to approval by the Superior Court.

5           20.    “Released Parties” shall mean Defendant together with its officers, directors,  
6 employees, and agents.

7           21.    “Settlement Administrator” shall mean Phoenix Settlement Administrators.

8           22.    “Settlement Administrator Payment” shall mean the payment to the Settlement  
9 Administrator for its fees and expenses in administering this Settlement in an amount not to exceed  
10 Three Thousand One Hundred and Fifty Dollars and No Cents (\$3,150.00).

11          23.    “Superior Court” shall mean the Superior Court of the State of California for the  
12 County of Riverside.

13    **RECITALS**

14          24.    On February 13, 2020, Plaintiff’s Counsel, on behalf of Plaintiff and PAGA  
15 Members, gave written notice to the LWDA of the Labor Code violations Defendant is alleged to  
16 have violated (“PAGA Letter”).

17          25.    On June 8, 2020, Plaintiff commenced the Action against Defendant by filing a  
18 Complaint in the Superior Court. In the Complaint, Plaintiff, on behalf of herself and all others  
19 similarly situated, alleged a cause of action for Civil Penalties pursuant to the Private Attorneys’  
20 General Act (“PAGA”).

21          26.    In connection with the Action, and in order to work toward a mediated resolution  
22 without the time and expense of formal discovery, the Parties produced voluminous documents and  
23 data (including, by Defendant, human resources documents and policies, time records, and payroll  
24 data during the PAGA Period) which were reviewed, investigated, and analyzed by Plaintiff’s  
25 Counsel.

26          27.    On July 20, 2021, the Parties in the Action participated in a full day of mediation  
27 before an experienced employment and class action mediator, Lynn Frank, Esq., which resulted in a  
28

1 settlement of the Action (the “Mediation”).

2           28. The Settlement described in this Settlement Agreement represents a compromise and  
3 settlement of highly disputed claims. Nothing in this Settlement is intended or will be construed as  
4 an admission by Defendant that Plaintiff’s claims in the Action have any merit or that it has any  
5 liability to Plaintiff, PAGA Members, or the State on those claims, or as an admission by Plaintiff  
6 that Defendant’s defenses in Action have any merit. This Settlement is intended to fully, finally, and  
7 forever compromise, release, resolve, discharge, and settle the released claims subject to the terms  
8 and conditions set forth in this Settlement.

9           29. Based on its own thorough, independent investigation and evaluation of this case,  
10 Plaintiff’s Counsel is of the opinion that the Settlement of the Action with Defendant for the  
11 consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the  
12 best interest of PAGA Members in light of all known facts and circumstances, including the risk of  
13 significant costs and delay, the defenses asserted by Defendant including the risks of adverse  
14 determinations on the merits, and numerous potential appellate issues. Although Defendant  
15 contends that they have no liability in the Action, Defense Counsel shares Plaintiff’s Counsel’s  
16 belief that the Settlement represents a fair and adequate settlement given the respective risks  
17 associated with the case.

18           30. Based on the foregoing Recitals, the Parties agree as follows:

19 **PROCEDURE FOR APPROVING SETTLEMENT**

20           31. **Motion for Approval of Settlement by the Superior Court.** Plaintiff will move the  
21 Superior Court for an order granting approval of the Settlement and approving the PAGA Notice  
22 (attached as **Exhibit A** to this Stipulation) (“Motion for Approval”).

23           32. At the hearing on the Motion for Approval, the Parties anticipate that they will  
24 jointly appear, support the granting of the Motion for Approval, and obtain an order granting  
25 approval of the Settlement, and granting approval of the PAGA Notice.

26           33. Should the Superior Court require any amendments to this Settlement Agreement or  
27 the Motion for Approval, the Parties agree to work jointly to resolve any issues in order to secure

28

1 the Superior Court’s approval.

2 34. In the event that the Court does not finally approve the Settlement as provided herein  
3 then this Settlement Agreement, and any documents generated to bring it into effect, will be null  
4 and void, and the Parties will be returned to their respective original positions. If the Court fails to  
5 approve the Settlement and the Parties are unable to work out any differences informally, the Parties  
6 agree to attend a second mediation in an effort to reach a settlement that may be approved by the  
7 Court, which cost shall be split equally between the Parties.

8 35. Upon approval of the Settlement by the Superior Court, the Parties will present for  
9 the Superior Court’s approval and entry a Proposed Final Order and Judgment.

10 36. **PAGA Notice.** After the Superior Court enters its order granting approval, every  
11 PAGA Member will be provided with the PAGA Notice (in English and Spanish), which will  
12 include the PAGA Notice completed to reflect the order granting approval of the Settlement and the  
13 PAGA Member’s information as follows:

14 (a) No later than thirty (30) calendar days after the date on which the Court  
15 enters an order granting approval of this Settlement, Defendant will provide to the Settlement  
16 Administrator the “Aggrieved Employee List” containing the following information for each PAGA  
17 Member: (1) full name; (2) last known home address; (3) last known telephone number; (4) social  
18 security number; (5) start and end dates of active employment as a non-exempt employee of  
19 Defendant in the State of California; (6) total pay periods during the PAGA Period; and (8) any  
20 other information required by the Settlement Administrator in order to effectuate the terms of the  
21 Settlement. This is a material term of the Settlement, and if Defendant fails to comply, Plaintiff  
22 shall have the right to void the Settlement.

23 (b) If a PAGA Notice is returned by the U.S. Postal Service because of an  
24 incorrect address, the Settlement Administrator will promptly, and not later than five (5) calendar  
25 days from receipt of the returned packet, search for a more current address for the PAGA Member  
26 and re-mail the PAGA Notice to the PAGA Member. The Settlement Administrator will use the  
27 Aggrieved Employee List and otherwise work with Defense Counsel or utilize its own resources

28

1 such as skip traces to find a more current address. The Settlement Administrator will be responsible  
2 for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to  
3 trace the mailing address of any PAGA Member for whom a PAGA Notice is returned by the U.S.  
4 Postal Service. These reasonable steps shall include the tracking of all undelivered mail, performing  
5 address searches for all mail returned without a forwarding address, and promptly re-mailing to  
6 PAGA Members for whom new addresses are found.

7       **37. Funding of the Gross Settlement Amount.** Within thirty (30) days of the Effective  
8 Date, Defendant will deposit the Gross Settlement Amount into a Qualified Settlement Fund  
9 (“QSF”) to be established by the Settlement Administrator.

10       **38. Payment of PAGA Payment Shares.** The Settlement Administrator shall pay to  
11 each PAGA Member his or her PAGA Payment Share by sending a check in the appropriate amount  
12 to the PAGA Member at the address indicated in the Aggrieved Employee List. Such payment, with  
13 the PAGA Notice, shall be sent by the Settlement Administrator via U.S. Mail within fourteen (14)  
14 calendar days of its receipt of the Gross Settlement Amount from Defendant.

15       **39. Uncashed PAGA Payment Share Checks.** Any checks paid to PAGA Members  
16 shall be negotiable for one hundred eighty (180) calendar days from the date of their issuance. A  
17 PAGA Member must cash his or her PAGA Payment Share check within one hundred eighty (180)  
18 calendar days after it is mailed to him or her. If a check remains uncashed after one hundred eighty  
19 (180) calendar days from the initial mailing, or if a check is returned to the Settlement  
20 Administrator as undeliverable during the one hundred eighty-day period, the Settlement  
21 Administrator shall take all reasonable efforts to identify the PAGA Member’s correct address,  
22 including the performance of a “skip-trace.” If an updated address can be identified, the Settlement  
23 Administrator shall issue another check to the PAGA Member and mail it to the PAGA Member at  
24 his or her updated address. If an updated address for the PAGA Member cannot be identified, if a  
25 reissued check is once again returned to the Settlement Administrator as undeliverable, or if the  
26 reissued check remains uncashed after one hundred eighty (180) calendar days, the Settlement  
27 Administrator will keep an accounting of such funds and shall give notice to the Parties of the total



1 balance of uncashed PAGA Payment Shares.

2 40. The funds represented by PAGA Payment Share checks remaining uncashed for  
3 more than one hundred eighty (180) calendar days after issuance shall be voided and then shall be  
4 transmitted to the Controller of the State of California to be held pursuant to the Unclaimed  
5 Property Law, California Code of Civil Procedure § 1500, *et seq.* in the names of those PAGA  
6 Members who did not cash their checks until such time they claim their property. After the  
7 expiration of the 180-calendar day check cashing period, as outlined above, the Settlement  
8 Administrator shall begin the process of transferring the funds in accordance with California Code  
9 of Civil Procedure §§ 1500-1582 and the timing requirements set forth by the Office of the State  
10 Controller. The Parties agree that this disposition results in no “unpaid residue” under California  
11 Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to the LWDA and  
12 PAGA Members, whether or not all PAGA Members cash their settlement checks. Therefore,  
13 Defendant will not be required to pay any interest on such amounts.

14 **SETTLEMENT TERMS AND CONDITIONS**

15 41. **Gross Settlement Amount.** The total value of the Settlement is Two Hundred and  
16 Seventy-Five Thousand Dollars and No Cents (\$275,000.00). The Gross Settlement Amount is non-  
17 reversionary and includes all (1) Plaintiff’s Counsel’s Fee Payment, (2) Plaintiff’s Counsel  
18 Litigation Costs Payment, (3) Settlement Administration Costs, (4) Plaintiff’s Representative  
19 Payment; and (5) Payment of PAGA penalties to be paid to the LWDA and PAGA Members. The  
20 Gross Settlement Amount is based on Defendant's representation that the PAGA Members worked  
21 approximately 11,774 Pay Periods during the PAGA Period through the dates analyzed prior to the  
22 Mediation. The Parties anticipate approximately 14,133 Pay Periods through the PAGA Period.  
23 Should the qualifying Pay Periods worked by the PAGA Members during the PAGA Members  
24 ultimately increase by more than 10% (i.e., by more than 1,413 Pay Periods), Defendant shall  
25 increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the  
26 number of Pay Periods worked by the PAGA Members above 10%. For example, if the number of  
27 Pay Periods increases by 11 % the Gross Settlement Amount will increase by 1%.

1           42.     **Total Payment Amount.** Except as set forth herein as the result of an increase in the  
2 number of pay periods within the PAGA Period, in no other event will Defendant be required to pay  
3 more than the Gross Settlement Amount for distribution to the Plaintiff, Plaintiff’s Counsel, PAGA  
4 Members, LWDA, Settlement Administrator, or for any other costs or expenses not otherwise  
5 enumerated.

6           43.     **Payments to Plaintiff, Plaintiff’s Counsel, and Others.** Subject to the terms and  
7 conditions of this Settlement, the Settlement Administrator will make the following payments out of  
8 the Gross Settlement Amount as follows:

9                   (a)     **To Plaintiff:** In addition to her PAGA Payment Share, Plaintiff will apply to  
10 the Superior Court for a Plaintiff’s Representative Payment in an amount not to exceed Five  
11 Thousand Dollars and No Cents (\$5,000.00). Defendant will not oppose Plaintiff’s Representative  
12 Payment. The Settlement Administrator will pay the Plaintiff’s Representative Payment approved  
13 by the Superior Court out of the Gross Settlement Amount. Payroll tax withholding and deductions  
14 will not be taken from the Plaintiff’s Representative Payment, and an IRS Form 1099 will be issued  
15 to Plaintiff for this payment. Any amount of the Plaintiff’s Representative Payment not approved by  
16 the Court shall become part of the Net Settlement Amount.

17                   (b)     **To Plaintiff’s Counsel:** Plaintiff’s Counsel will apply to the Superior Court  
18 for the Plaintiff’s Counsel Fees Payment in an amount not to exceed Four Hundred Eleven  
19 Thousand Two Hundred Fifty Dollars and No Cents (\$91,665.75), or one-third (33.333%) of the  
20 Gross Settlement Amount. Plaintiff’s Counsel will also submit to the Superior Court a  
21 memorandum of costs for the Plaintiff’s Counsel Litigation Costs Payment in an amount not to  
22 exceed Twenty Thousand Dollars and No Cents (\$20,000.00) as requested reasonable costs incurred  
23 in the Action to be paid from the Gross Settlement Amount. Defendant will not oppose these  
24 requests. The costs and fees provided under the Settlement Agreement and approved by the Court  
25 shall be the total costs and attorneys’ fees recoverable in the Action. Plaintiff’s Counsel shall not  
26 seek additional costs or fees arising from the litigation of the Action. The Settlement Administrator  
27 will pay the amounts approved by the Superior Court out of the Gross Settlement Amount.

28

1 Withholding and deductions will not be taken from the Plaintiff's Counsel Fees Payment or  
2 Plaintiff's Counsel Litigation Costs Payment, and one or more IRS Forms 1099 will be issued to  
3 Plaintiff's Counsel with respect to those payments. Any amount from the Plaintiff's Counsel's Fee  
4 Payment or Plaintiff's Counsel Litigation Costs Payment not approved by the Court shall become  
5 part of the Net Settlement Amount.

6 (c) **To the Settlement Administrator:** The Settlement Administrator will be  
7 paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the  
8 Superior Court, which are estimated to be Three Thousand One Hundred and Fifty Dollars and No  
9 Cents (\$3,150.00).

10 (d) **Distribution of the Net Settlement Amount:** As part of their Motion for  
11 Approval, the Parties will jointly apply to the Superior Court to approve the distribution of the Net  
12 Settlement Amount to the LWDA and PAGA Members. Seventy-five percent (75%) of the Net  
13 Settlement Amount shall be distributed to the LWDA ("LWDA Payment"). The remaining 25% of  
14 the Net Settlement Amount shall be distributed to the PAGA Members on a *pro-rata* basis based  
15 upon the number of pay periods worked by each PAGA Member ("PAGA Payment").

16 44. **PAGA Payment Shares.** Subject to the terms and conditions of this Settlement, the  
17 Settlement Administrator will calculate the PAGA Payment Shares for each PAGA Member within  
18 ten (10) calendar days after Defendant provides the Settlement Administrator with the Aggrieved  
19 Employee List. The PAGA Payment Share for each PAGA Member will be calculated as follows,  
20 understanding that the formulas below do not constitute an admission by either Party, and are  
21 intended only to provide a practical means to simplify and administer the claims process:

22 (a) **Number of PAGA Members and Pay Periods.** Defendant shall determine  
23 the total number of PAGA Members and the aggregate number of Pay Periods for those PAGA  
24 Members during the PAGA Period. This information shall be provided to the Settlement  
25 Administrator along with the Aggrieved Employee List as described above.

26 (b) **Calculation of the Pay Period Value.** The Settlement Administrator shall  
27 determine the value of a Pay Period ("Pay Period Value") by taking the PAGA Payment amount

1 (i.e., 25% of the Net Settlement Amount) and dividing it by the sum of all PAGA Members' Pay  
2 Periods.

3 (c) **Calculation of PAGA Payment Shares.** The Settlement Administrator shall  
4 assign to each PAGA Member a PAGA Payment Share which shall be equal to the Pay Period  
5 Value multiplied by each PAGA Member's Individual Pay Periods. Upon calculation of the PAGA  
6 Members' PAGA Payment Shares, the Settlement Administrator shall furnish to Plaintiff's Counsel  
7 and Defense Counsel a worksheet containing a list of employee identification numbers for the  
8 PAGA Members with their corresponding Individual Pay Periods and PAGA Payment Shares.  
9 Personal contact information of Defendant's employees, including but not limited to, employee  
10 names, phone numbers, addresses, social security number, and/or other personal identifying  
11 information shall not be shared by the Settlement Administrator with Plaintiff's Counsel without  
12 prior written authorization from Defendant, or its counsel.

13 45. **Taxes and Withholdings.** One hundred percent (100%) of each PAGA Payment  
14 Share shall represent civil penalties. The PAGA Payment Share shall be paid to the PAGA Member  
15 in full without deductions or withholdings, and the Settlement Administrator shall issue an IRS  
16 Form 1099 to each PAGA Member for that amount. Each PAGA Member shall be individually  
17 responsible for their own share of applicable income tax withholdings and deductions for his or her  
18 PAGA Payment Share.

19 46. **Appointment of Settlement Administrator.** The Parties will ask the Superior Court  
20 to appoint Phoenix Settlement Administrators a qualified and experienced administrator based in  
21 California where the Action is venued, to serve as the Settlement Administrator, which, as a  
22 condition of appointment, will agree to be bound by this Settlement Agreement with respect to the  
23 performance of its duties and its compensation. The Settlement Administrator's duties will include  
24 (i) calculating PAGA Payment Shares; (ii) preparing, translating, printing, and mailing the PAGA  
25 Notice to all PAGA Members; (iii) using reasonable measures to contact all PAGA Members,  
26 including conducting a National Change of Address search on all PAGA Members before mailing  
27 the PAGA Notice to each PAGA Member's address; (iv) re-mailing the PAGA Notice to the PAGA  
28

1 Member’s new address for those PAGA Members whose address had changed; (v) setting up a toll-  
2 free telephone number to receive calls from PAGA Members; (vi) issuing the checks to effectuate  
3 the payments due under the Settlement; (vii) using reasonable measures to deliver issued checks to  
4 PAGA Members, including use of a “skip-trace” for undeliverable checks; and (viii) otherwise  
5 administering the Settlement pursuant to this Settlement Agreement. The Settlement Administrator  
6 will have the final authority to resolve all disputes concerning the calculation of a PAGA Member’s  
7 PAGA Payment Share, subject to the terms set forth in this Settlement Agreement. The Settlement  
8 Administrator’s reasonable fees and expenses are estimated to be Three Thousand One Hundred and  
9 Fifty Dollars and No Cents (\$3,150.00) and will be paid out of the Gross Settlement Amount, as set  
10 forth herein, subject to Court approval.

11 **RELEASE OF CLAIMS**

12       47.     **Released Claims.** Upon remittance of the Gross Settlement Amount by Defendant to  
13 the Settlement Administrator, Plaintiff and the State of California will fully and finally release and  
14 discharge Defendant and the Released Parties from any and all claims for the recovery for civil  
15 penalties, attorneys’ fees and costs permissible under PAGA which Plaintiff and/or the Aggrieved  
16 Employees had, or may claim to have, against the Released Parties, arising out of the violations  
17 alleged in the Complaint and/or the PAGA Notice, or reasonably could have been alleged based on  
18 the facts contained in the Complaint and/or PAGA Notice, including but not limited to, allegations  
19 regarding unpaid straight and overtime wages (including any off-the-clock work), failure to pay  
20 employees all minimum wages and overtime wages owed including by failing to pay all overtime  
21 and double time at the correct regular rate of pay, failure to provide compliant meal and rest breaks,  
22 failure to pay them all premium wages owed for short, late or missed meal and rest periods, failure  
23 to pay all wages owed at discharge or resignation; failure to timely pay wages within the times  
24 permissible under Labor Code section 204; failure to provide complete and accurate wage  
25 statements; failure to keep complete and accurate payroll records; failure to reimburse necessary  
26 business-related expenses; and violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.2,  
27 226.3, 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2698, et seq., 2800, and  
28

1 2802, (collectively, the “Released Claims”). This release shall apply to claims arising during the  
2 PAGA Period. Pursuant to applicable law, the Parties understand and agree that State remains  
3 bound by this release regardless of whether the Aggrieved Employees cash and/or otherwise  
4 negotiate their individual PAGA Payment.

5 48. The Released Claims expressly exclude all claims made by PAGA Members for  
6 individual wage claims, vested benefits, wrongful termination, unemployment insurance, disability,  
7 social security, workers’ compensation, claims while classified as exempt, and claims outside of the  
8 PAGA Period.

9 49. **Plaintiff’s General Release of Claims.** Upon the funding of the Gross Settlement  
10 Amount, in exchange for the consideration set forth in this Settlement Agreement, Plaintiff—on  
11 behalf of herself only—will agree to the additional following General Release: In consideration of  
12 Defendant’s promises and agreements as set forth herein, Plaintiff hereby releases all claims related  
13 to her employment or alleged employment with the Defendant including all claims alleged in the  
14 Action, and all claims known and unknown, without exception, except as may be prohibited by law.  
15 Plaintiff agrees to execute a separate, formal general release of claims in exchange for the  
16 consideration set forth in this Settlement Agreement.

17 50. **Plaintiff’s Waiver of California Civil Code § 1542.** Upon the funding of the Gross  
18 Settlement Amount, in exchange for the consideration set forth in this Settlement Agreement,  
19 Plaintiff also agrees to expressly waive the provisions of California Civil Code § 1542, which  
20 provides as follows:

21  
22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
23 WHICH THE CREDITOR OR RELEASING PARTY DOES NOT  
24 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
25 THE TIME OF EXECUTING THE RELEASE AND THAT, IF  
26 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
27 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR  
28 OR RELEASED PARTY.

26 Plaintiff’s general release and waiver of California Civil Code §1542 shall cover the time  
27 period from the start of her employment with Defendant up to the Effective Date. This release  
28

1 general release and waiver of California Civil Code §1542 by Plaintiff is not intended to release any  
2 claims that cannot be waived or released as a matter of law, including specifically, without  
3 limitation, any claim under the California workers' compensation statute.

4 **MISCELLANEOUS PROVISIONS**

5       **51. Effect on Other Benefit Plans.** The payment of PAGA Payment Shares made to  
6 PAGA Members under this Settlement will not be used to calculate any additional benefits under  
7 any benefit plans to which any PAGA Member may be eligible, including, but not limited to profit-  
8 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,  
9 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement  
10 Agreement will not affect any rights, contributions, or amounts to which any PAGA Member may  
11 be entitled under any benefit plans.

12       **52. No Prior Assignments.** The Parties and their counsel represent, covenant, and  
13 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to  
14 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,  
15 action, cause of action or right herein released and discharged.

16       **53. Continued Jurisdiction.** After entry of the Judgment, the Superior Court will have  
17 continuing jurisdiction over the Action and the Settlement solely for purposes of addressing: (i) the  
18 interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters,  
19 and (iii) such post-dismissal matters as may be appropriate under court rules or as set forth in this  
20 Settlement.

21       **54. Stay of Litigation.** The Parties agree that upon the signing of this Agreement, the  
22 continuing litigation of this action shall be stayed absent any filings necessary to obtain approval of  
23 the settlement, and the time to bring this action to trial shall be extended pending the outcome of the  
24 settlement process.

25       **55. Integrated Agreement.** After this Settlement is signed and delivered by all Parties  
26 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the  
27 Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties,  
28

1 covenants, or inducements have been made to any Party concerning this Settlement or its exhibits  
2 other than the representations, warranties, covenants, and inducements expressly stated in this  
3 Settlement and its exhibits.

4       **56. Amendment or Modification of Agreement.** This Settlement Agreement may be  
5 amended or modified only by a written instrument signed by counsel for all Parties or their  
6 successors-in-interest.

7       **57. Waiver of Certain Appeals.** The Parties agree to waive appeals; except, that either  
8 Party may appeal any court order that materially modifies the Settlement Agreement's terms.

9       **58. Authorization to Enter into Settlement Agreement.** Counsel for all Parties warrant  
10 and represent they are expressly authorized by the Parties whom they represent to negotiate this  
11 Settlement Agreement and to take all appropriate action required or permitted to be taken by such  
12 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other  
13 documents required to effectuate the terms of this Settlement Agreement. The Parties and their  
14 counsel will cooperate with each other and use their best efforts to affect the implementation of the  
15 Settlement. If the Parties are unable to reach agreement on the form or content of any document  
16 needed to implement the Settlement, or on any supplemental provisions that may become necessary  
17 to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve  
18 such disagreement.

19       **59. Settlement Binding on Successors and Assigns.** This Settlement Agreement will be  
20 binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as  
21 previously defined.

22       **60. California Law Governs.** All terms and conditions of this Settlement and its  
23 exhibits will be governed by and interpreted according to the laws of the State of California.

24       **61. Execution and Counterparts.** This Settlement Agreement is subject only to the  
25 execution of all Parties. However, the Settlement Agreement may be executed in one or more  
26 counterparts. All executed counterparts and each of them, including facsimile and scanned copies of  
27 the signature page, will be deemed to be one and the same instrument provided that counsel for the  
28



1 Parties will exchange among themselves original signed counterparts.

2       62.     **Acknowledgment that the Settlement is Fair and Reasonable.** The Parties and  
3 their respective counsel believe and warrant that this Settlement is a fair, reasonable, and adequate  
4 settlement of the Action and have arrived at this Settlement after arms-length negotiations by  
5 experienced counsel, taking into account all relevant factors, current and potential.

6       63.     **Invalidity of Any Provision.** Before declaring any provision of this Agreement  
7 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible  
8 consistent with applicable precedents so as to define all provisions of this Agreement valid and  
9 enforceable.

10       64.     **Captions.** The captions of any section or paragraph of this Agreement are inserted  
11 for the reader’s convenience and in no way define, limit, construe or describe the scope or intent of  
12 the provisions of this Agreement.

13       65.     **Waiver.** No waiver of any condition or covenant contained in this Settlement  
14 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to  
15 imply or constitute a further waiver by such party of the same or any other condition, covenant,  
16 right or remedy.

17       66.     **Enforcement Action.** In the event that one or more of the Parties institutes any legal  
18 action or other proceeding against any other Party or Parties arising out of that other Party’s or  
19 Parties’ breach of this Agreement, the successful Party or Parties will be entitled to recover from the  
20 unsuccessful Party or Parties reasonable attorneys’ fees and costs, including expert witness fees  
21 incurred in connection with any enforcement actions.

22       67.     **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms  
23 and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly  
24 against one Party than another merely by virtue of the fact that it may have been prepared by  
25 counsel for one of the Parties, it being recognized that, because of the arms-length negotiations  
26 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

27       68.     **Representation By Counsel.** The Parties acknowledge that they have been  
28

1 represented by counsel throughout all negotiations that preceded the execution of this Agreement,  
2 and that this Agreement has been executed with the consent and advice of counsel and reviewed in  
3 full. The Parties further acknowledge that they have had an opportunity to consult with their counsel  
4 regarding the fairness and reasonableness of this Settlement.

5       **69. Cooperation and Execution of Necessary Documents.** The Parties will cooperate  
6 in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of  
7 this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of  
8 any document needed to implement the Settlement, or on any supplemental provisions that may  
9 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of  
10 the Court to resolve such disagreement.

11       **70. Voluntary Agreement.** The Parties acknowledge that they have entered into this  
12 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress,  
13 or undue influence of any Party, and not in reliance on any promises, representations, or statements  
14 made by the other Parties other than those contained in this Settlement Agreement. Each of the  
15 Parties hereto expressly waives any right she/they might ever have to claim that this Settlement  
16 Agreement was in any way induced by fraud.

17       **71. Binding Agreement.** The Parties warrant that they understand and have full  
18 authority to enter into this Settlement, and further intend that this Settlement Agreement will be  
19 fully enforceable and binding on all Parties and agree that it will be admissible and subject to  
20 disclosure in any proceeding to enforce its terms.

21       **72. Non-Admission of Liability.** The Parties enter into this Agreement to resolve the  
22 dispute that has arisen between them and to avoid the burden, expense, and risk of continued  
23 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, that it  
24 violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant  
25 to any statute or any other applicable laws, regulations or legal requirements; breached any contract;  
26 violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any  
27 other unlawful conduct with respect to its employees. Neither this Agreement, nor any of its terms  
28

1 or provisions, nor any of the negotiations connected with it, shall be construed as an admission or  
2 concession by Defendant of any such violations or failures to comply with any applicable law.  
3 Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its  
4 terms and provisions shall not be offered or received as evidence in any action or proceeding to  
5 establish any liability or admission on the part of Defendant or to establish the existence of any  
6 condition constituting a violation of, or a non-compliance with, federal, state, local or other  
7 applicable law.

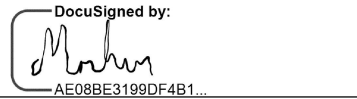
8 73. **Neutral Employment Reference.** Defendant agrees that it will adopt a neutral  
9 reporting policy regarding any future employment references related to Plaintiff. In the event that  
10 any potential or future employers of Plaintiff request a reference regarding Defendant’s  
11 employment of Plaintiff, Defendant shall only provide Plaintiff’s dates of employment, job titles  
12 during employment, and final rate of pay. Defendant shall not refer to the Action or this Settlement.

13 74. **Confidentiality.** Prior to the filing of the PAGA approval motion, Plaintiff and her  
14 Counsel agree not to discuss the terms or the fact of the Settlement with third parties other than (1)  
15 their immediate family members, (2) their respective accountants or lawyers as necessary for tax  
16 purposes; or (3) other PAGA Members. Plaintiff and PAGA Counsel agree not to publish any of the  
17 terms or conditions of this settlement other than as necessary for approval of this agreement.

18  
19 APPROVED AS TO FORM AND CONTENT:

20  
21 DATED: 2/16/2022 \_\_\_\_\_

**PLAINTIFF MARIACRUZ GONZALEZ**

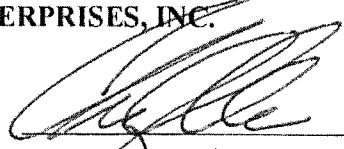
22  
23  DocuSigned by:  
AE08BE3199DF4B1...

24  
25  
26  
27  
28

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

DATED: March 7, 2022

**DEFENDANT VISTA PACIFICA ENTERPRISES, INC.**


By: 

Its: President

APPROVED AS TO FORM ONLY:

DATED: February 16, 2022


**PROTECTION LAW GROUP LLP**

By:   
Heather Davis, Esq.  
Amir Nayebdadash, Esq.

*Attorneys for Plaintiff*  
**MARIACRUZ GONZALEZ**

DATED: 3/7/22

**VARNER & BRANDT LLP**

By:   
Richard D. Marca, Esq.  
Ankit H. Bhakta, Esq.

*Attorneys for Defendant*  
**VISTA PACIFICA ENTERPRISES, INC.**