

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1  
TO  
FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

**VistaGen Therapeutics, Inc.**  
(Exact name of registrant as specified in its charter)

**Nevada**

(State or Other Jurisdiction of  
Incorporation or Organization)

**20-5093315**

(I.R.S. Employer  
Identification No.)

**343 Allerton Avenue**  
**South San Francisco, California 94080**  
(Address of Principal Executive Offices)

**VistaGen Therapeutics, Inc. 1999 Stock Incentive Plan**

**VistaGen Therapeutics, Inc. Amended and Restated 2016 Equity Incentive Plan**

**VistaGen Therapeutics, Inc. 2019 Omnibus Equity Incentive Plan**

(Full title of the plan)

**Shawn K. Singh**  
**Chief Executive Officer**  
**VistaGen Therapeutics, Inc.**  
**343 Allerton Avenue**  
**South San Francisco, California 94080**  
(Name and address of agent for service)

**(650) 577-3600**  
(Telephone number, including area code, of agent for service)

*Copies to:*

**Jessica R. Sudweeks, Esq.**  
**Disclosure Law Group, a Professional Corporation**  
**655 W. Broadway, Suite 870**  
**San Diego, California 92101**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large Accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

## EXPLANATORY NOTE

VistaGen Therapeutics, Inc. (the *Registrant*) previously registered shares of the Registrant's common stock, \$0.001 par value per share (*Common Stock*), to be issued under the VistaGen Therapeutics, Inc. Amended and Restated 2016 Equity Incentive Plan, formerly the 2008 Stock Incentive Plan (the *2016 Plan*) and the VistaGen Therapeutics, Inc. 1999 Stock Incentive Plan (the *1999 Plan*). In connection with the 2016 Plan and the 1999 Plan, the Registrant previously filed with the Securities and Exchange Commission (the *Commission*) a registration statement on Form S-8 on March 9, 2018 (File No. 333-223556) (the *Prior Registration Statement*). The Prior Registration Statement also covered any additional securities that may from time to time become issuable under the 2016 Plan and the 1999 Plan by reason of any stock dividend, stock split, recapitalization, or any other similar transaction that results in an increase in the number of outstanding shares of Common Stock of the Registrant.

Since the date of the Prior Registration Statement, the 1999 Plan has terminated in accordance with its terms, and no awards remain outstanding under the 1999 Plan. On September 5, 2019 (the *Effective Date*), at the 2019 Annual Meeting of Stockholders of the Registrant, the Registrant's stockholders approved the VistaGen Therapeutics, Inc. 2019 Omnibus Equity Incentive Plan (the *2019 Plan*), and, in connection therewith, no further awards will be made under the 2016 Plan. The shares of Common Stock initially reserved for issuance under the 2019 Plan consist of (i) 7,500,000 shares of Common Stock registered pursuant to a separate registration statement on Form S-8 being filed concurrently with this Post-Effective Amendment No. 1 to the Prior Registration Statement (the *Post-Effective Amendment*), plus (ii) 1,388,412 unallocated shares of Common Stock available for issuance under the 2016 Plan that are not subject to outstanding "Awards" (as defined in the 2016 Plan) as of the Effective Date (the *Carryover Shares*). The Prior Registration Statement will cover the issuance of the Carryover Shares of the 2016 Plan once they are available for issuance under the 2019 Plan.

Therefore, in addition to filing this Post-Effective Amendment, pursuant to undertaking in Item 512(a)(1)(iii) of Regulation S-K that the Registrant disclose a material change in the plan of distribution as it was originally disclosed in the Prior Registration Statement and Commission Compliance and Disclosure Interpretation 126.43, the Registrant is filing this Post-Effective Amendment to reflect that, as of the Effective Date, the Carryover Shares of the 2016 Plan may be issued under the 2019 Plan, and to file as an exhibit hereto a copy of the 2019 Plan and a new opinion as to the validity of the Carryover Shares of the 2016 Plan that may be issued under the 2019 Plan. All other items of the Prior Registration Statement are incorporated herein by reference without change.

The Registrant is concurrently filing a separate registration statement on Form S-8 to register to total of 7,500,000 shares of Common Stock for offer or sale pursuant to the 2019 Plan, excluding the Carryover Shares. No additional securities are being registered by this Post-Effective Amendment.

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## PART I

### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

#### Item 1. Plan Information.

The information called for by Part I of Form S-8 is omitted from this Registration Statement in accordance with Rule 428 of the Securities Act of 1933, as amended (the *Securities Act*) and the instructions to Form S-8. In accordance with the rules and regulations of the Securities and Exchange Commission (the *Commission*) and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference

The following documents, which have been previously filed by the Registrant with the Commission, are hereby incorporated by reference in this Registration Statement:

- our Annual Report on Form 10-K for the year ended March 31, 2019, filed on June 25, 2019;
- our Quarterly Report on Form 10-Q for the year ended June 30, 2019, filed on August 13, 2019;
- our Current Report on Form 8-K, filed on April 4, 2019;
- our Current Report on Form 8-K, filed on May 2, 2019;
- our Current Report on Form 8-K, filed on June 21, 2019;
- our Current Report on Form 8-K, filed on July 23, 2019;
- our Current Report on Form 8-K, filed on August 16, 2019;
- our Current Report on Form 8-K, filed on August 23, 2019;
- our Current Report on Form 8-K, filed on September 6, 2019;
- our Current Report on Form 8-K, filed on September 25, 2019; and
- The description of our common stock contained in the Registration Statement on Form 8-A filed pursuant to Section 12(b) of the Exchange Act on May 3, 2016, including any amendment or report filed with the Commission for the purpose of updating this description.

Until such time that a post-effective amendment to this Registration Statement has been filed which indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold at the time of such amendment, all documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which is also deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

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**Item 4. Description of Securities**

Not applicable.

**Item 5. Interests of Named Experts and Counsel**

Not applicable.

**Item 6. Indemnification of Directors and Officers**

***Limitations of liability and indemnification***

Our amended and restated bylaws (*bylaws*) provide that we will indemnify our directors, officers and employees to the fullest extent permitted by the Nevada Revised Statutes (*NRS*).

If the NRS are amended to authorize corporate action further eliminating or limiting the personal liability of a director, then the liability of our directors will be eliminated or limited to the fullest extent permitted by the NRS, as so amended. Our Articles of Incorporation do not eliminate a director's duty of care and, in appropriate circumstances, equitable remedies, such as injunctive or other forms of non-monetary relief, will remain available under the NRS. This provision also does not affect a director's responsibilities under any other laws, such as the federal securities laws or other state or federal laws. Under our bylaws, we are empowered to enter into indemnification agreements with our directors, officers and employees to purchase insurance on behalf of any person whom we are required or permitted to indemnify.

In addition to the indemnification required in our bylaws, we have entered into indemnification agreements with each of the individuals serving on our board of directors. These agreements provide for the indemnification of our directors to the fullest extent permitted by law. We believe that these bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors, officers and employees. We also maintain directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our bylaws may discourage stockholders from bringing a lawsuit against our directors and officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and our stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against our directors and officers pursuant to these indemnification provisions.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and certain employees pursuant to the foregoing provisions, or otherwise, we have been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable.

There is no pending litigation or proceeding naming us or any of our directors or officers as to which indemnification is being sought, nor are we aware of any pending or threatened litigation that may result in claims for indemnification.

**Item 7. Exemption from Registration Claimed**

Not applicable.

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**Item 8. Exhibits**

<b>Exhibit No.</b>	<b>Document Description</b>	<b>Incorporation by Reference</b>
<a href="#">5.1</a>	Opinion of Disclosure Law Group, a Professional Corporation.	Filed herewith.
<a href="#">23.1</a>	Consent of OUM & Co., LLP, independent registered public accounting firm.	Filed herewith.
<a href="#">23.2</a>	Consent of Disclosure Law Group, a Professional Corporation.	Included in Exhibit 5.1.
<a href="#">99.1</a>	VistaGen Therapeutics, Inc. 1999 Stock Incentive Plan, as amended.	Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, filed with the Commission on May 16, 2011.
<a href="#">99.2</a>	VistaGen Therapeutics, Inc. Amended and Restated 2016 Equity Incentive Plan.	Incorporated by reference Appendix A to the Registrant's Definitive Proxy Statement, filed with the Commission on August 8, 2016.
<a href="#">99.3</a>	VistaGen Therapeutics, Inc. 2019 Omnibus Equity Incentive Plan.	Incorporated by reference to Appendix B from the Registrant's Definitive Proxy Statement, filed with the Commission on July 23, 2019.

**Item 9. Undertakings**

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act; and

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; and

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

*Provided, however,* that paragraphs (1)(i) and (1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act that are incorporated by reference in the Registration Statement.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of South San Francisco, State of California, on September 30, 2019.

### VistaGen Therapeutics, Inc.

By: /s/ Shawn K. Singh

Name: Shawn K. Singh

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title(s)</u>	<u>Date</u>
<u>/s/ Shawn K. Singh</u> Shawn K. Singh	Chief Executive Officer, and Director <i>(Principal Executive Officer)</i>	September 30, 2019
<u>/s/ Jerrold D. Dotson</u> Jerrold D. Dotson	Vice President and Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	September 30, 2019
<u>/s/ H. Ralph Snodgrass</u> H. Ralph Snodgrass, Ph. D.	President, Chief Scientific Officer and Director	September 30, 2019
<u>/s/ Jon S. Saxe</u> Jon S. Saxe	Chairman of the Board of Directors	September 30, 2019
<u>/s/ Brian J. Underdown</u> Brian J. Underdown, Ph. D.	Director	September 30, 2019
<u>/s/ Jerry B. Gin</u> Jerry B. Gin, Ph. D., MBA	Director	September 30, 2019
<u>/s/ Ann M. Cunningham</u> Ann M. Cunningham	Director	September 30, 2019

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September 30, 2019

VistaGen Therapeutics, Inc.  
343 Allerton Avenue  
South San Francisco, CA 94080

Re: Post-Effective Amendment to Registration Statement on Form S-8 for VistaGen Therapeutics, Inc.

Dear Ladies and Gentlemen:

We have acted as legal counsel to VistaGen Therapeutics, Inc., a Nevada corporation (the "*Company*"), in connection with the preparation of the Company's Post-Effective Amendment No. 1 to the Registration Statement on Form S-8 (the "*Post-Effective Amendment*"), relating to the registration under the Securities Act of 1933, as amended (the "*Act*"), of the Prior Plan Shares (as defined below) authorized for issuance under the 2019 Plan (as defined below). On September 5, 2019 (the "*Effective Date*"), the stockholders of the Company approved the VistaGen Therapeutics, Inc. 2019 Omnibus Equity Incentive Plan (the "*2019 Plan*"). The total number of shares of the Company's common stock, par value \$0.001 per share (the "*Common Stock*"), authorized for issuance under the 2019 Plan includes, in addition to 7,500,000 new shares of Common Stock registered concurrently on a new registration statement on Form S-8 being filed by the Company (the "*New Registration Statement*"), an aggregate of 1,388,412 unallocated shares of Common Stock available for issuance under the VistaGen Therapeutics, Inc. Amended and Restated 2016 Equity Incentive Plan (the "*Prior Plan*" and collectively with the 2019 Plan, the "*Plans*"), that are not subject to outstanding "Awards" (as defined in the 2019 Plan) as of the Effective Date (the "*Prior Plan Shares*").

With respect to the opinion set forth below, we have examined originals, certified copies, or copies otherwise identified to our satisfaction as being true copies, of the following: (i) the Restated Articles of Incorporation of the Company, as amended, as currently in effect; (ii) the Amended and Restated Bylaws of the Company, as currently in effect; (iii) resolutions of the Board of Directors of the Company adopting the 2019 Plan, authorizing the issuance of the shares of Common Stock under the 2019 Plan and authorizing the filing of the New Registration Statement; (iv) resolutions of the Board of Directors of the Company adopting the Prior Plan, authorizing the issuance of the shares of Common Stock under the Prior Plan and authorizing the filing of the prior registration statement on Form S-8 relating to the Prior Plan (collectively, the "*Prior Registration Statement*"); (v) the Plans; (vi) the Post-Effective Amendment, the Prior Registration Statement and the New Registration Statement; and (vii) such other documents, records and other instruments as we have deemed appropriate for purposes of the opinion set forth herein.

In making the foregoing examinations, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies and that the persons executing the documents examined by us have the legal capacity to execute such documents. We have also assumed that the offer and sale of the Prior Plan Shares complies and will comply in all respects with the terms, conditions and restrictions set forth in the Prior Registration Statements (as amended by the Post-Effective Amendment) and the 2019 Plan. As to various questions of fact material to this opinion, we have relied, to the extent we deemed reasonably appropriate, upon representations of officers or directors of the Company and upon documents, records and instruments furnished to us by the Company, without independently checking or verifying the accuracy of such documents, records and instruments.

Based upon the foregoing examination and assumptions and further assuming that (i) the Company maintains an adequate number of authorized and unissued shares of Common Stock available for issuance pursuant to the 2019 Plan and (ii) the consideration, if any, required to be paid in connection with the issuance of underlying Prior Plan Shares issued pursuant to the 2019 Plan is actually received by the Company as provided in the 2019 Plan, we are of the opinion that the Prior Plan Shares to be issued pursuant to the 2019 Plan will be duly authorized, validly issued, fully paid and nonassessable.

The opinion expressed herein is specifically limited to the Nevada Revised Statutes and the federal laws of the United States of America and speaks only as of the date hereof. Further, our opinion is based solely upon existing laws, rules, and regulations, and we undertake no obligation to update or supplement such opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur. This opinion is rendered solely in connection with the transactions covered hereby and may not be relied upon for any other purpose, without our prior written consent.

We hereby consent to the inclusion of this opinion as an exhibit to the Post-Effective Amendment. In giving such consent, we do not admit that we come within the category of persons whose consent is required under Section 7 of the Act or the rules or regulations of the U.S. Securities and Exchange Commission thereunder.

Very truly yours,

/s/ Disclosure Law Group

Disclosure Law Group, a Professional Corporation

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in this Post-Effective Amendment No. 1 to the Registration Statement on Form S-8 of VistaGen Therapeutics, Inc., pertaining to the VistaGen Therapeutics, Inc. 1999 Stock Incentive Plan and the VistaGen Therapeutics, Inc. Amended and Restated 2016 Equity Incentive Plan of our report dated June 25, 2019 (which report expresses an unqualified opinion and includes an explanatory paragraph expressing substantial doubt about the Company's ability to continue as a going concern), relating to the consolidated financial statements of VistaGen Therapeutics, Inc. appearing in the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 2019.

/s/ OUM & CO. LLP

San Francisco, California  
September 30, 2019

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