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8 JENNIFER LEIGHTON

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

12 JENNIFER LEIGHTON, on behalf of all other
13 aggrieved employees;

14 Plaintiffs,

15 v.

16 THE REALREAL, INC. and DOES 1 through
17 50, inclusive,

18 Defendants.

Case No. 21STCV11208

[Assigned for all purposes to the Hon. Theresa M.
Traber, Dept. 47]

SETTLEMENT AGREEMENT

Complaint filed: March 23, 2021

1 **PRIVATE ATTORNEYS GENERAL ACT (“PAGA”) SETTLEMENT AGREEMENT**

2 Plaintiff Jennifer Leighton (“Plaintiff” or “Leighton”) and Defendant The RealReal, Inc.
3 (“Defendant” or “TRR”) (Plaintiff and Defendant are collectively, the “Parties”), subject to the
4 approval of the Court, hereby agree to settle the claims alleged in the instant action captioned
5 *Leighton v. The RealReal, Inc.*, Los Angeles County Superior Court Case No. 21STCV11208
6 (“Action”), pursuant to the terms and conditions set forth in this Settlement Agreement
7 (“Agreement”).

8 **DEFINITIONS**

9 As used in this Agreement, the following terms shall have the meanings specified below:

10 1. “Action” means the lawsuit captioned *Leighton v. The RealReal, Inc.*, Los Angeles
11 County Superior Court Case No. 21STCV11208.

12 2. “Aggrieved Employee Counsel” means Tae Kim and Dawn Collins of CollinsKim,
13 LLP.

14 3. “Aggrieved Employee Data” means information regarding Aggrieved Employees that
15 Defendant shall in good faith compile from its records and shall be authorized by the Court to
16 transmit in a secured manner to the Settlement Administrator. Aggrieved Employee Information
17 shall be transmitted in electronic form and shall include each Aggrieved Employee’s full name, last
18 known address, social security number, and total number of Compensable Payperiods worked during
19 the PAGA period.

20 4. “Aggrieved Employees” means all current and former employees employed by TRR
21 as exempt under the outside sales exemption in the State of California during the PAGA period.

22 5. “Agreement” means this Settlement Agreement.

23 6. “Approval Hearing” means the hearing to be conducted by the Court after the filing of
24 an appropriate motion by Plaintiff, at which time Plaintiff shall request that the Court approve the
25 Settlement, enter the Judgement, and take other appropriate action.

26 7. “Attorneys’ Fees” means reasonable attorneys’ fees for Aggrieved Employee
27 Counsel’s litigation and resolution of this Action (not to exceed 33% of the Maximum Settlement
28 Amount) and Aggrieved Employee Counsel’s expenses and costs reasonably incurred in connection

1 with this action.

2 8. "Compensable Payperiod" means a pay period in which an Aggrieved Employee
3 worked for TRR as an exempt outside salesperson.

4 9. "Defendant" means defendant The RealReal, Inc.

5 10. "Defense Counsel" means Cheryl Orr, Sara Ehsani-Nia, and Kristin Halsing of Faegre
6 Drinker Biddle & Reath LLP.

7 11. "Effective Date" means the later of (a) if no appeal from the Judgement is filed, the
8 day after the deadline for any appeals expires (i.e. 60 days from when the Judgement is entered); (b)
9 if an appeal of the Judgment is filed, and the appeal is finally disposed of by ruling, dismissal, denial,
10 or otherwise, the day after the last date for filing a request for further review of the Court of Appeal's
11 decision passes, and no further review is requested; or (c) if an appeal of the Judgment is filed and
12 there is a final disposition by ruling, denial, or otherwise by the Court of Appeal, and review of the
13 Court of Appeal's decision is requested, the day after the request for review is denied with prejudice
14 and/or no further review of the Order and Judgment can be requested.

15 12. "Individual Settlement Payment" means the amount payable from the Net Settlement
16 Amount to each Aggrieved Employee.

17 13. "Information Sheet" means the form that shall be prepared by the Settlement
18 Administrator and sent to each Aggrieved Employee that sets forth the manner in which the
19 Aggrieved Employee's Individual Settlement Payment was calculated, substantially in the form
20 attached hereto as Exhibit 1.

21 14. "Judgment" means the judgment to be entered by the Court upon granting approval of
22 the Settlement and this Agreement as binding upon the Parties and Aggrieved Employees.

23 15. "LWDA" means the California Labor and Workforce Development Agency.

24 16. "LWDA Payment" means the portion of the PAGA Payment payable to the LWDA.

25 17. "Maximum Settlement Amount" means the maximum amount Defendant shall have to
26 pay in connection with this Settlement, which shall be inclusive of all Individual Settlement
27 Payments, the Aggrieved Employee Counsel Award, the Service Award, Settlement Administration
28 Costs, and the LWDA Payment. Subject to Court approval and the terms of this Agreement, the

Maximum Settlement Amount that Defendant shall be required to pay is Eight Hundred Twenty Five Dollars (\$825,000.00).

18. “Net Settlement Amount” means the Maximum Settlement Amount, less the Attorneys’ Fees award, the Service Award, and Settlement Administration Costs. Seventy-five percent (75%) of the Net Settlement Amount shall be paid to the LWDA and twenty-five percent (25%) shall be paid to the Aggrieved Employees as Individual Settlement Payments.

19. “PAGA” means the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.*

20. “PAGA Period” means the period from July 11, 2019, through the Judgment date.

21. “Parties” means Plaintiff and Defendant.

22. “Plaintiff” means plaintiff Jennifer Leighton.

23. “Released Parties” means Defendant and all of its parent, subsidiary, affiliated and related companies and entities, including all of its/their officers, directors, employees, partners, shareholders, investors, and agents, and any entities or partnerships which they are affiliated with.

24. “Settlement” means the final and complete disposition of the Action pursuant to this Agreement and the Judgment.

25. “Settlement Administration Costs” means the reasonable costs and fees of administering the Settlement to be paid from the Maximum Settlement Amount, including, but not limited to: (i) printing, mailing and re-mailing (if necessary) of Information Sheets and Individual Settlement Awards; (ii) preparing and submitting to Aggrieved Employees all appropriate tax filings and forms; (iii) computing the amount of and distributing Individual Settlement Payments, the Service Award, the Attorneys’ Fee award, and the LWDA Payment; and (iv) establishing a Qualified Settlement Fund (“QSF”), as defined by the Internal Revenue Code.

26. “Settlement Administrator” means CPT or any other third-party settlement administrator agreed to by the Parties and approved by the Court for purposes of administering this Settlement.

27. “Settlement Packet” means the packet enclosing the Individual Settlement Payment and Information Sheet.

RECITALS

28. On January 6, 2021, Plaintiff provided written notice pursuant to Cal. Labor Code § 2699.3 to the LWDA and to Defendant of specific provisions of the California Labor Code which Plaintiff alleged Defendant violated, which included Labor Code sections 201 through 204, 226, 226.3, 226.7, 510, 512(a), 558, 1174, 1194, 1197, 1197.1, 1198, and 2802. In her letter, Plaintiff alleged that Defendant knowingly misclassified her, and other outside sales employees, as exempt pursuant to the outside sales exemption, that the duties of Plaintiff and other aggrieved employees were non-exempt duties, and accordingly, Defendant failed to properly pay all wages owed, failed to pay minimum wages and overtime, failed to timely pay wages during employment and upon termination, failed to provide meal and rest breaks, failed to pay non-compliant meal and/or rest break premiums, failed to provide compliant wage statements, failed to maintain accurate payroll records, and failed to reimburse reasonable business expenses such as home office expenses and internet. Defendant adamantly denies these allegations.

29. On March 22, 2021, Plaintiff filed the Action seeking civil penalties pursuant to PAGA based on the alleged Labor Code violations in her LWDA notice. Because of a class action waiver contained in an arbitration agreement executed between Plaintiff and Defendant, Plaintiff could not assert wage claims for the underlying wage violations in the Action.

30. The Parties participated in a mediation with mediator Deborah Saxe in April 2022. The Action did not settle at that time. The Parties mediated again on April 18, 2023, this time with mediator Marisa Ratinoff, an experienced wage and hour mediator, but were not able to reach a resolution at that time. Following the mediation, Ms. Ratinoff made a mediator's proposal. The Parties accepted the mediator's proposal on April 28, 2023.

31. Plaintiff and Aggrieved Employee Counsel recognize the expense and length of continued proceedings necessary to litigate Plaintiff's claims in the Action through trial and through any possible appeals. Plaintiff also has taken into account the uncertainty and risks of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Aggrieved Employee Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto. Based

1 on the foregoing, Plaintiff and Aggrieved Employee Counsel have determined that the Settlement set
2 forth in this Agreement is fair and fulfills the PAGA's objectives.

3 32. Defendant has concluded that any further defense of the Action would be protracted
4 and expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have
5 been, and unless this Settlement is completed, shall continue to be, devoted to the defense of the
6 claims asserted by Plaintiff. Defendant has also taken into account the risks of further litigation in
7 reaching its decision to enter into this Settlement. Even though Defendant contends it is not liable for
8 any of the claims alleged by Plaintiff in the Action, Defendant has agreed, nonetheless, to settle in the
9 manner and upon the terms set forth in this Agreement and to put to rest the claims alleged in this
10 Action. Defendant has asserted and continues to assert that Plaintiff's allegations have no merit.
11 This Agreement is a compromise of disputed claims. Nothing contained in this Agreement, no
12 documents referred to herein, and no action taken to carry out this Agreement, shall be construed or
13 used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted in
14 the Action. Defendant contends that it has complied with all applicable state, federal and local laws.

15 **TERMS OF SETTLEMENT**

16 33. Payment of Maximum Settlement Amount. Defendant will pay the Maximum
17 Settlement Amount to satisfy all of its liabilities arising from this Action and the settlement of it.
18 This Settlement shall bind the Parties and Aggrieved Employees, subject to the terms and conditions
19 of the Court's approval. No later than fourteen (14) days after entry of final Court approval of the
20 settlement, Defendant shall provide to the Settlement Administrator in any feasible manner,
21 including, but not limited to, by way of a wire transfer, the Maximum Settlement Amount. The
22 Settlement Administrator shall hold the Maximum Settlement Funds in the QSF until the Effective
23 Date. If this Settlement is not approved by the Court in full, or is terminated, rescinded, canceled or
24 fails to become effective for any reason, then no portion of the Maximum Settlement Amount shall be
25 paid.

26 34. Approval of Settlement. Plaintiff shall move the Court to enter an order approving the
27 Settlement within fourteen (14) days of the date this Agreement is executed by all Parties. Plaintiff
28 will provide Defendant the opportunity to review the Motion at least two business days prior to filing

1 the Motion.

2 35. Service Award. Subject to Court approval, Plaintiff shall be paid a Service Award not
3 to exceed Ten Thousand Dollars (\$10,000.00), or any lesser amount as awarded by the Court, for her
4 time and effort in bringing and presenting the Action and for releasing her claims. Defendant shall
5 not oppose or object to Plaintiff's request for this Service Award. The Service Award shall be paid to
6 Plaintiff from the Maximum Settlement Amount no later than ten (10) days after the Effective Date.
7 The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff for the Service Award.
8 Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on the Service
9 Award and shall hold harmless Defendant, Aggrieved Employee Counsel, and Defense Counsel from
10 any claim or liability for taxes, penalties, or interest arising as a result of payment of the Service
11 Award. The Service Award shall be made in addition to Plaintiff's Individual Settlement Payment.
12 Any amount requested by Plaintiff for the Service Award and not awarded by the Court shall become
13 part of the Net Settlement Amount and shall be distributed to Aggrieved Employees as part of their
14 Individual Settlement Payments.

15 36. Aggrieved Employee Attorneys' Fees. Subject to Court approval, Aggrieved
16 Employee Counsel shall be entitled to receive reasonable attorneys' fees in an amount not to exceed
17 one-third (1/3) of the Maximum Settlement Amount, which amounts to Two Hundred Seventy Five
18 Thousand Dollars (\$275,000.00). In addition, subject to Court approval, Aggrieved Employee
19 Counsel shall be entitled to an award of reasonable costs associated with their prosecution of the
20 Action in an amount not to exceed Thirty Seven Thousand Dollars (\$37,000.00). Aggrieved
21 Employee Counsel shall provide the Settlement Administrator with a properly completed and signed
22 IRS Form W-9 in order for the Settlement Administrator to process the Attorneys' Fee Award
23 approved by the Court. Defendant shall not oppose or object to Plaintiff's request for an award of
24 attorneys' fees in an amount not to exceed Two Hundred Seventy Five Thousand Dollars
25 (\$275,000.00) and request for an award of reasonable costs not to exceed Thirty Seven Thousand
26 Dollars (\$37,000.00). In the event the Court awards Aggrieved Employee Counsel less than Two
27 Hundred Seventy Five Thousand Dollars (\$275,000.00) in attorneys' fees and/or less than Thirty
28 Seven Thousand Dollars (\$37,000.00) in costs, the difference shall become part of the Net Settlement

Amount and shall be distributed to Aggrieved Employees as part of their Individual Settlement Payments. Aggrieved Employee Counsel shall be paid any Court-awarded attorneys' fees and costs no later than ten (10) days after the Effective Date. Aggrieved Employee Counsel shall be solely and legally responsible to pay all applicable taxes on the Attorneys' Fee Award. The Settlement Administrator shall issue an IRS Form 1099 to Aggrieved Employee Counsel for the Attorneys' Fee Award. This Settlement is not conditioned upon the Court awarding Aggrieved Employee Counsel any particular amount of attorneys' fees or costs.

37. Settlement Administration Costs. The Settlement Administrator fees and expenses, which are estimated not to exceed Seven Thousand Dollars (\$7,000.00), shall be paid from the Maximum Settlement Amount. The Parties agree to cooperate in the Settlement Administration process and to make all reasonable efforts to control and minimize Settlement Administration Costs.

38. Released Claims. Upon Defendant providing the Maximum Settlement Amount to the Settlement Administrator, all Aggrieved Employees shall be deemed to have released the Released Parties from (1) all claims under the PAGA related to or arising out of their misclassification as outside sales employees, (2) all claims that were pled under the PAGA in the Action, and (3) all claims that could have been pled in the Complaint during the period covered by the settlement related to alleged misclassification, including claims for penalties, attorneys' fees and/or costs for the Covered Period.

39. Plaintiff's Released Claims. In addition to the release set forth in Paragraph 37, upon Defendant providing the Maximum Settlement Amount to the Settlement Administrator, Plaintiff on behalf of herself and her estate, executors, administrators, heirs and assigns, shall be deemed to have released the Released Parties from any and all claims, damages, costs, obligations, causes of action, actions, demands, rights, and liabilities of every kind, nature and description whatsoever, whether known or unknown, whether anticipated or unanticipated, arising on or before the date she signs this Agreement ("Plaintiff's Released Claims"). Plaintiff also acknowledges that she has read, understands, and expressly waives and relinquishes the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time

of executing the release, that if known by him or her, would have materially affected his or her settlement with the debtor or released party.” Expressly excluded from Plaintiff’s release of claims in this Agreement, are any and all claims at issue in the arbitration action pending before JAMS, Reference No. 1220067647 (“JAMS Action”), including any claims arising out of any breach of any settlement of the JAMS Action.

40. Individual Settlement Payments. Aggrieved Employees shall not be required to submit a claim in order to receive a share of the Net Settlement Amount, and no portion of the Maximum Settlement Amount shall revert to Defendant or result in an unpaid residue. Individual Settlement Payments shall be paid by the Settlement Administrator from the Net Settlement Amount pursuant to the formula set forth herein.

a. Each Individual Settlement Payment shall be calculated solely by the Settlement Administrator according to the following formula: Defendant shall provide the Settlement Administrator with the Compensable Payperiods for each Aggrieved Employee. The Settlement Administrator shall then subtract seventy-five percent from the Net Settlement Amount to pay to the LWDA. The remaining twenty-five percent of the Net Settlement Amount will be divided by the total number of Compensable Payperiods for all Aggrieved Employees resulting in a value for each pay period worked by the Aggrieved Employees during the PAGA Period (“Payperiod Value”). The Settlement Administrator shall then multiply the number of Compensable Payperiods for each Aggrieved Employee by the Payperiod Value.

b. Individual Settlement Payments shall be made by check and shall be made payable to each Aggrieved Employee as set forth in this Agreement.

c. Individual Settlement Payments shall be allocated as non-wage penalties and not subject to payroll tax withholdings. The Settlement Administrator shall issue an IRS Form 1099 to each Aggrieved Employee for this amount.

41. Settlement Administration.

a. Within fourteen (14) days of entry of the Court’s Order approving this Settlement,

1 Defendant shall provide the Settlement Administrator with the Aggrieved
2 Employee Data.

- 3 b. Individual Settlement Payments shall be made by check and shall be made payable
4 to each Aggrieved Employee as set forth in this Agreement.
- 5 c. Distribution by First Class U.S. Mail. Upon receipt of the Aggrieved Employee
6 Data, the Settlement Administrator shall perform a search based on the National
7 Change of Address Database maintained by the United States Postal Service to
8 update and correct any known or identifiable address changes. Within ten (10)
9 days after the Effective Date, the Settlement Administrator shall mail copies of the
10 Information Sheet and Individual Settlement Payment to all Aggrieved Employees
11 via regular First Class U.S. Mail. The Settlement Administrator shall exercise its
12 best judgment to determine the current mailing address for each Aggrieved
13 Employee. The address identified by the Settlement Administrator as the current
14 mailing address shall be presumed to be the most current mailing address for each
15 Aggrieved Employee.
- 16 d. Undeliverable Individual Settlement Payments. Any Information Sheet and
17 Individual Settlement Payment returned to the Settlement Administrator as non-
18 deliverable shall be re-mailed to the forwarding address affixed thereto. If no
19 forwarding address is provided, the Settlement Administrator shall promptly
20 attempt to determine a correct address by the use of skip-tracing, or other type of
21 automated search, using the name, address and/or Social Security number of the
22 Aggrieved Employee involved, and shall then perform a re-mailing to the
23 Aggrieved Employee whose Information Sheet and Individual Settlement Payment
24 was returned as non-deliverable, assuming another mailing address is identified by
25 the Settlement Administrator. The Settlement Administrator will perform only one
26 re-mailing under this subparagraph.
- 27 e. Determination of Individual Settlement Payments. The Settlement Administrator
28 shall determine the eligibility for, and the amount of, each Individual Settlement

1 Payment under the terms of this Agreement. The Settlement Administrator's
2 determination of the eligibility for and amount of each Individual Settlement
3 Payment shall be binding upon the Aggrieved Employees and the Parties, yet
4 subject to review by Aggrieved Employee Counsel, Defense Counsel, and the
5 Court. In the absence of fraud or gross negligence, Defendant's records shall be
6 presumed accurate.

7 f. Disputes Regarding Administration of Settlement. Any dispute not resolved by
8 the Settlement Administrator concerning the administration of the Settlement shall
9 be resolved by the Court. Prior to any such involvement of the Court, counsel for
10 the Parties shall confer in good faith and make use of the services of mediator
11 Marisa Ratinoff, if necessary, to resolve the dispute without the necessity of
12 involving the Court.

13 g. Individual Settlement Payment checks shall remain negotiable for one hundred
14 eighty (180) days from the date of mailing. If an Individual Settlement Payment
15 check remains uncashed after one hundred eighty (180) days from issuance, the
16 Settlement Administrator shall distribute the value of the uncashed check to the
17 State Controller's Office Unclaimed Property Fund in the name of the Aggrieved
18 Employee. In such event, Aggrieved Employees shall nevertheless remain bound
19 by the Settlement.

20 h. Monitoring and Reviewing Settlement Administration. The Parties have the right
21 to monitor and review the administration of the Settlement to verify that the
22 monies allocated under the Settlement are distributed in the correct amount, as
23 provided for in this Agreement.

24 i. The Settlement Administrator shall keep the Parties timely apprised of the
25 performance of all Settlement Administrator responsibilities required by the
26 Settlement. The Settlement Administrator shall be authorized to establish a QSF
27 pursuant to IRS rules and regulations in which the Maximum Settlement Amount
28 shall be placed and from which payments required by the Settlement shall be

made.

42. Continuing Jurisdiction of the Court. The Parties agree that, 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.

43. Best Efforts. The Parties agree to use their best efforts to carry out the terms of this Settlement.

44. No Financial Interest. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

45. Nullification of Settlement. In the event the Court does not enter an order approving the Settlement or the Settlement does not become final for any other reason, this Agreement shall be rendered null and void, any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void from the beginning and this Agreement. In the event an appeal is filed from the order granting approval, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review. Any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Judgment, or any other appellate review, shall be paid by Defendant to the Settlement Administrator.

46. No Publicity. Aggrieved Employee counsel shall do nothing to publicize this Settlement or use it for marketing purposes, including on web sites or on the internet or in any form of press whatsoever. Nothing herein, however, precludes the settlement administrator from setting up a website as part of the settlement administration process.

47. No Admission by Defendant. Defendant denies all claims alleged in this Action and denies all wrongdoing whatsoever by Defendant. Neither this Agreement, nor any of its terms and conditions, nor any of the negotiations connected with it, is a concession or admission, and none shall be used against Defendant as an admission or indication with respect to any claim of any fault, concession, or omission by Defendant.

48. Exhibits and Headings. The terms of this Agreement include the terms set forth in any

1 attached Exhibits, which are incorporated by this reference as though fully set forth herein. The
2 Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any
3 paragraphs or sections of this Agreement are inserted for convenience of reference only.

4 49. Interim Stay of Action. The Parties agree to stay and to request that the Court stay all
5 proceedings in the Action, except such proceedings necessary to implement and complete the
6 Settlement and enter the Judgment.

7 50. Amendment or Modification. This Agreement may be amended or modified only by a
8 written instrument signed by counsel for all Parties or their successors-in-interest.

9 51. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
10 agreement between the Parties, and no oral or written representations, warranties, or inducements
11 have been made to Plaintiff or Defendant concerning this Agreement or its Exhibits other than the
12 representations, warranties, and covenants contained and memorialized in this Agreement and its
13 Exhibits. No other prior or contemporaneous written or oral agreements may be deemed binding on
14 the Parties.

15 52. Authorization to Enter into Settlement Agreement. Aggrieved Employee Counsel and
16 Defense Counsel warrant and represent they are expressly authorized by the Parties whom they
17 represent to negotiate this Agreement and to take all appropriate actions required or permitted to be
18 taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
19 documents required to effectuate the terms of this Agreement. The Parties, Aggrieved Employee
20 Counsel, and Defense Counsel shall cooperate with each other and use their best efforts to effect the
21 implementation of the Settlement. In the event the Parties are unable to reach agreement on the form
22 or content of any document needed to implement the Settlement, or on any supplemental provisions
23 that may become necessary to effectuate the terms of this Settlement, the Parties may seek the
24 assistance of the Court and/or mediator Marisa Ratinoff to resolve such disagreement. The person
25 signing this Agreement on behalf of Defendant represents and warrants that he/she is authorized to
26 sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that she is authorized
27 to sign this Agreement and that she has not assigned any claim, or part of a claim, covered by this
28 Settlement to a third-party. The Parties have cooperated in the drafting and preparation of this

1 Agreement. Hence, in any construction made of this Agreement, the same shall not be construed
2 against any of the Parties.

3 53. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
4 to the benefit of, the successors and assigns of the Parties.

5 54. California Law Governs. All terms of this Agreement and the Exhibits hereto shall be
6 governed by and interpreted according to the laws of the State of California, without giving effect to
7 any law that would cause the laws of any jurisdiction other than the State of California to be applied.

8 55. Counterparts. This Agreement may be executed in one or more counterparts. All
9 executed counterparts and each of them shall be deemed to be one and the same instrument.

10 56. Jurisdiction of the Court. Following entry of the Judgment, pursuant to Code of Civil
11 Procedure section 664.6, the Court shall retain jurisdiction of this Action solely for the purpose of
12 interpretation, implementation, and enforcement of the terms of this Agreement and all orders and
13 judgments entered in connection therewith, and the Parties, Aggrieved Employee Counsel, and
14 Defense Counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing,
15 and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in
16 connection therewith.

17 57. Invalidity of Any Provision. Before declaring any term or provision of this
18 Agreement invalid, the Parties request that the Court first attempt to construe the terms or provisions
19 valid to the fullest extent possible consistent with applicable precedents so as to define all provisions
20 of this Agreement as valid and enforceable.

21 58. Tax Liability. The Parties make no representations as to the tax treatment or legal
22 effect of the payments specified herein, and Aggrieved Employees are not relying on any statement
23 or representation by the Parties, Aggrieved Employee Counsel, or Defense Counsel in this regard.
24 Aggrieved Employees and Aggrieved Employee Counsel understand and agree that they shall be
25 responsible for the payment of all taxes and penalties assessed on the payments specified herein, and
26 shall hold the Parties, Aggrieved Employee Counsel, and Defense Counsel free and harmless from
27 and against any claims resulting from treatment of such payments as non-taxable, including the
28 treatment of such payments as not subject to withholding or deduction for payroll and employment

1 taxes.

2 59. Circular 230 Disclaimer. THE PARTIES ACKNOWLEDGE AND AGREE THAT
3 (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
4 DISCLOSURE BETWEEN OR AMONG THE PARTIES, AGGRIEVED EMPLOYEE COUNSEL,
5 OR DEFENSE COUNSEL AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
6 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
7 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED
8 STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED);
9 (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR
10 ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
11 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
12 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
13 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
14 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
15 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
16 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
17 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
18 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
19 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
20 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
21 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
22 AGREEMENT.

23
24 Dated: 06 / 05 / 2023



Jennifer Leighton

25
26
27
28 Dated:

Todd Suko
On behalf of The RealReal, Inc.

1 taxes.

2 59. Circular 230 Disclaimer. THE PARTIES ACKNOWLEDGE AND AGREE THAT
3 (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
4 DISCLOSURE BETWEEN OR AMONG THE PARTIES, AGGRIEVED EMPLOYEE COUNSEL,
5 OR DEFENSE COUNSEL AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
6 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
7 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED
8 STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED);
9 (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR
10 ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
11 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
12 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
13 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
14 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
15 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
16 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
17 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
18 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
19 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
20 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
21 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
22 AGREEMENT.

23
24 Dated: _____

Jennifer Leighton

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26
27
28 Dated: 6/7/2023

DocuSigned by:



Todd Suko

On behalf of The RealReal, Inc.

1 AGREED AS TO FORM:
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3 Dated: June 5, 2023
4

COLLINS KIM, LLP

5 By: Tae Kim
6 Tae Kim
7 Attorneys for Plaintiff
8 JENNIFER LEIGHTON

9 Dated: June 14, 2023
10

FAEGRE DRINKER BIDDLE & REATH LLP

11 By: Cheryl D. Orr
12 Cheryl D. Orr
13 Attorneys for Defendant
14 THE REALREAL, INC.
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EXHIBIT 1 – INFORMATION SHEET

[Date]

[Addressee]

Re: *Jennifer Leighton v. The RealReal, Inc.*, Los Angeles County Superior Court Case No. 21stcv11208; Settlement Payment

Dear [name]:

You will find enclosed, a check made payable to you, consisting of a payment from the settlement of the lawsuit captioned *Jennifer Leighton v. The RealReal, Inc.*, which was filed in Los Angeles County Superior Court (the “Action”). You may have previously received a Notice of Disclosure of Contact Information in this Action.

The Action was filed by Jennifer Leighton (“Plaintiff”) against Defendant The RealReal, Inc. (“Defendant” or “The RealReal”) (Plaintiff and Defendant are collectively the “Parties”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (“PAGA”) (“Complaint”). The Action was brought by Ms. Leighton as a former employee of The RealReal on behalf of the State of California and all alleged “aggrieved employees,” defined as all current and former employees employed by The RealReal, Inc. as exempt under the outside sales exemption in the State of California from July 11, 2019 to [date of order approving settlement]. You have been identified as one of the employees on whose behalf the case was brought.

Plaintiff alleges that The RealReal owes civil penalties recoverable under PAGA for alleged violations of the California Labor Code including unpaid minimum and overtime wages, failure to provide compliant meal and rest breaks, failure to pay non-compliant meal and rest break premiums, failure to pay all wages owed at separation; failure to timely pay wages during employment, failure to provide complete and accurate wage statements, failure to maintain complete and accurate pay records, and failure to reimburse necessary business-related expenses such as for use of home offices (“Claims”). The RealReal denies that it did anything wrong, denies that it violated the Labor Code, and denies that it owes any civil penalties. The Parties agreed to resolve the case. The Court has not ruled on the merits of the Action. On [Approval Date], the court approved the settlement amount to be paid by Defendant for settlement of the PAGA claim for civil penalties. A portion of that settlement amount goes to the State of California’s Labor and Workforce Development Agency. Another portion of that amount goes to the alleged aggrieved employees. In agreeing to this settlement, Defendant does not admit to any wrongdoing or that it is liable in any way for any civil penalties under PAGA.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. The amount is calculated based on the number of pay periods you worked as an exempt, outside sales employee in California for The RealReal during the period from July 11, 2019, to [Approval Date].

You are not a party to this lawsuit, but you and the State of California are bound by the terms of the settlement. The settlement resolves and releases (1) any and all claims under the PAGA related to or arising out of your alleged misclassification as an outside sales employee; (2) all claims that were pled under the PAGA in the Action; and (3) all claims that could have been pled in the Complaint during the period covered by the settlement related to alleged

misclassification, including claims for penalties, attorneys' fees and/or costs for the time period covered by this settlement. This release covers claims against Defendant and Defendant's parent, subsidiary, affiliated and related companies and entities, including all of its/their officers, directors, employees, partners, shareholders, investors, and agents, and any entities or partnership which they are affiliated with.

If you have any questions, you may contact the settlement administrator, at [number/email].

Very Truly Yours,

[Claims Administrator]