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8 *Attorneys for Plaintiffs Melissa Morris*
9 *and Stephanie Dougal*

10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF ALAMEDA**

12 **UNLIMITED JURISDICTION**

13 MELISSA MORRIS and STEPHANIE
14 DOUGAL, individually and on behalf of
aggrieved employees and the State of California,

15
16 Plaintiffs,

17 v.

18 THE REALREAL, INC. and DOES 1 through 10,
19 inclusive,

20 Defendant.
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Case No.: 23CV025851

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Keith Fong
Department 517

**DECLARATION OF XINYING
VALERIAN IN SUPPORT OF
UNOPPOSED MOTION TO APPROVE
PAGA SETTLEMENT**

Date: August 13, 2024
Time: 2:30 PM
Dept: 517

Reservation No.: 467308311340

Complaint Filed: January 17, 2023
Trial Date: October 14, 2024

1 I, Xinying Valerian, hereby declare as follows:

2 1. I am a member in good standing of the bar of the State of California and founder of
3 Valerian Law, P.C., counsel of record representing Plaintiffs Melissa Morris and Stephanie
4 Dougal in this case. I make these statements based on personal knowledge and would so testify if
5 called as a witness.

6 2. My firm first began our investigation of Plaintiffs' claims regarding wages and
7 working conditions at The RealReal, Inc., including the allegedly defective commission contracts,
8 in March 2022.

9 3. Plaintiff Stephanie Dougal filed her class and representative PAGA action against
10 TRR on June 24, 2022, in the San Francisco County Superior Court, alleging claims for failure to
11 pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to
12 provide accurate wage statements, waiting time penalties, and unfair competition. Prior to filing
13 the complaint, Ms. Dougal provided LWDA notice of these violations and violations of Labor
14 Code section 2751 on May 10, 2022. TRR filed a motion to compel arbitration and dismiss the
15 class claims. The court granted the motion, dismissed the class claims, and stayed the
16 representative PAGA claims pending arbitration of Dougal's individual claims.

17 4. Plaintiff Melissa Morris filed a representative PAGA action against TRR on
18 January 17, 2023, in the Alameda County Superior Court, alleging a single cause of action
19 pursuant to PAGA for violations of Labor Code section 2751. Ms. Morris provided LWDA with
20 notice of these violations on October 28, 2022.

21 5. Settling the case took substantial effort. Negotiations spanned two separate
22 mediations that eventually resulted in a mediator's proposal. Plaintiffs first mediated the case on
23 April 18, 2023, with Marisa Ratinoff without reaching resolution. Plaintiff Dougal and TRR
24 thereafter agreed to dismiss her PAGA claims other than those based on Labor Code section 2751
25 because the other PAGA claims had been resolved by a court-approved settlement in another
26 PAGA action in Los Angeles County. After that partial dismissal, the only claims that remained
27 pending in court were Dougal's and Morris' claims under PAGA for violations of Labor Code
28 section 2751.

6. After the parties exchanged further discovery, the parties once again mediated the remaining claims limited to Labor Code section 2751 violations on May 28, 2024, this time with experienced mediator Kevin T. Barnes, Esq. At the mediation, I estimated that the best-case scenario had Plaintiffs been able to run the board across all the claims and obtain legal rulings in their favor on every issue—including the accrual of subsequent penalties for each pay period of employment—would be approximately \$2,422,523. Though the parties did not reach a settlement at the mediation, the parties continued their discussions and eventually agreed to a mediator’s proposal that the parties reduced first to a memorandum of understanding and then to the final agreement attached hereto as Exhibit 1. These additional negotiations spanned nearly a month. In the end, the settlement represents approximately 13% of the soaking wet civil penalties. This compares favorably to other PAGA settlements involving similar claims, especially given the Court’s discretion to reduce penalties.

7. Throughout this litigation, my firm has vigorously prosecuted the case. My firm has engaged in extensive formal and informal discovery preceding the final mediation. Plaintiffs propounded 23 document requests, seven special interrogatories, six requests for admission, and one set of form interrogatories on TRR. In addition to this formal discovery, the parties also exchanged substantial information under the mediation privilege in advance of each of the two mediations that spanned the Dougal and Morris Actions

8. Plaintiffs Dougal and Morris advanced the interests of the LWDA and the aggrieved employees by regularly meeting with counsel in person and over the telephone, gathering documents, assisting counsel in identifying potential claims and in preparing for two mediations over one year apart, and communicating with other aggrieved employees

9. I am not aware of any overlapping class actions or other cases asserting claims like those asserted in the consolidated complaint. Accordingly, I do not expect that the proposed settlement in this case will extinguish claims in any other currently pending cases.

Settlement Implementation

10. According to TRR's records produced in discovery and at mediation, there are 449 aggrieved employees.

1 11. Plaintiffs filed a stipulation for leave to file the consolidated complaint on July 17,
2 2024. The consolidated complaint was filed on July 30, 2024.

3 12. The parties jointly selected Phoenix Settlement Administrators as the settlement
4 administrator. Phoenix previously administered the Belaire privacy notices in this case and
5 maintains the most current contact information for aggrieved employees. Phoenix also submitted
6 the lowest of three bids that Plaintiffs received.

7 **Individual Settlements of Arbitrations of Other, Separate Claims**

8 13. Plaintiffs Dougal and Morris have individual wage and hour claims pending in
9 JAMS and Signature Resolution arbitrations arising from alleged misclassification. Each has
10 settled their arbitration claims and agreed to general releases. There is no overlap in the legal
11 issues or damages calculations between those claims and the PAGA claims pending in court. The
12 individual settlements were negotiated separately from the representative PAGA claims and were
13 discounted from maximum damages in accordance with the variables applicable to the claims in
14 arbitration. Similarly, the representative PAGA claims were separately analyzed in accordance
15 with the different set of variables applicable to the PAGA litigation that were separately
16 accounted for.

17 **Valerian Law’s Qualifications and Experience**

18 14. I received my J.D., *magna cum laude*, from New York University School of Law
19 in 2007 where I was awarded Order of the Coif. I graduated from Harvard College with a B.A. in
20 2003, also *magna cum laude*, with high honors in Social Studies.

21 15. I am the managing partner of Valerian Law, P.C., which I founded in September
22 2017. My current practice is focused on representation of employees in single-plaintiff
23 negotiations and litigation as well as in class and representative actions. Before starting my own
24 practice, I was the Managing Attorney at the San Francisco office of Sanford Heisler Sharp, LLP
25 (“SHS”), a national plaintiff-side employment firm. At SHS, I litigated class, collective, PAGA,
26 and individual employment cases. Before joining Sanford Heisler Sharp, LLP full-time in 2013, I
27 was an attorney at Ram Olson Cereghino & Kopczynski, LLP, where I worked on consumer class
28

1 actions. I also clerked in the U.S. District Court for the Central District of California for the
2 Honorable A. Howard Matz (Ret.) for two years.

3 16. I have prosecuted class, representative, and individual cases in state and federal
4 courts in various areas of employment law including the following: *Abrishamcar v. Oracle*
5 *America, Inc.*, No. 535490 (Cal. Super. Ct., San Mateo, 2015) (ongoing PAGA-only
6 representative action arising from unlawful practices relating to commission wages, with two
7 phases of trial completed); *Branner v. Covenant Aviation Security, LLC*, No. 20-CIV-03164 (San
8 Mateo Superior Court) (pregnancy accommodations class action settlement approved in March
9 2021); *Casteel v. Alaska Airlines, Inc.*, No. RG20052826 (Cal. Super. Ct., Alameda, 2020)
10 (statewide PAGA representative action involving novel Labor Code section 232.5 violations;
11 settled pre-litigation and granted approval by the Superior Court); *Fletscher v. Overland*
12 *Solutions, Inc.*, No. RG17852058 (Cal. Super. Ct., Alameda) (wage and hour class and PAGA
13 representative action; final approval of class settlement granted April 15, 2019); *Pan v.*
14 *Qualcomm, Inc.*, No. 3:2016-cv-01885 (S.D. Cal. 2016) (gender discrimination putative class and
15 collective action initiated in pre-suit mediation in 2015 and approved as class settlement in 2017);
16 *Schaffer v. Massage Green Int'l Franchise Corp.*, No. BC571914 (Cal. Super. Ct., Los Angeles)
17 (minimum wage class and PAGA representative action; final approval of class settlement granted
18 in 2017); *Tian, et al. v. Ma Laboratories, Inc.*, No. 1-11-cv-195373 (Cal. Super. Ct., Santa Clara)
19 (unpaid overtime wages for a class of hourly workers; certified as a class action in 2014 and final
20 approval granted in 2015); and *Ha, et al. v. Google Inc., et al.*, No. 1:16-cv-290847 (Cal. Super.
21 Ct., Santa Clara) (unpaid overtime wages on behalf of Google contract recruiters; final approval
22 of class settlement granted).

23 17. I have also prosecuted class cases in other areas of employment law, such as equal
24 pay, pregnancy discrimination and gender discrimination, and in the fields of housing rights and
25 consumer rights. For instance, I prosecuted employment discrimination class cases, such as
26 *Ribeiro v. Sedgwick LLP* (putative class arbitration, JAMS-San Francisco, 2016), *Fretter v.*
27 *Boston Scientific Neuromodulation Corp.*, Case No. 2:15-cv-01988 (C.D. Cal. 2015) (gender
28 discrimination putative class and collective action), *Pan v. Qualcomm, Inc.*, Case No. 3:2016-cv-

1 01885 (S.D. Cal. 2016) (gender discrimination putative class and collective action initiated in pre-
2 suit mediation in 2015 and approved as class settlement in 2017); and *Branner v. Covenant*
3 *Aviation Security, LLC*, Case No. 20-CIV-03164 (San Mateo Superior Court) (pregnancy
4 accommodations class action settlement approved in March 2021).

5 18. I am the proposed lead class counsel in several wage and hour class actions filed in
6 2021 or later in California state courts. In my wage and hour class and representative cases, I have
7 represented low-wage and manual labor workers, including immigrants with limited English
8 proficiency, as well as workers at various levels of so-called white-collar jobs.

9 19. I am active in the legal community, and I am frequently invited to present on
10 employment law and litigation by bar organizations and continuing education providers, such as
11 the California Employment Lawyers' Association, Bridgeport Continuing Education, and local
12 bar associations. Since 2017 I have presented PAGA litigation and employment class actions in
13 multiple venues and conferences. I have been teaching audiences of both defense lawyers and
14 plaintiffs' lawyers for Bridgeport continuing education on wage and hour litigation and PAGA
15 litigation for numerous years. In 2016 and 2017, I was designated a "Northern California Rising
16 Star" by Super Lawyers Magazine. In each year since 2022, I received recognition as a Northern
17 California Super Lawyer.

18 20. I have billed 237.2 hours on this case to date after application of billing judgment.
19 I worked on nearly all aspects of this case from the outset. My work included developing theories,
20 drafting pleadings, negotiating with defense representatives, leading discovery meet and confers,
21 working with mediators, supervising investigation activities, working with Plaintiff and key
22 witnesses, drafting and responding to discovery, drafting discovery motions, overseeing document
23 review and reviewing key documents and data myself, taking PMK depositions and other
24 depositions of Defendants, drafting briefs relating to discovery and the merits. My customary
25 billing rate is \$900 per hour. All told, I recommend approval of this proposed settlement.

26 21. Dan L. Gildor: Mr. Gildor is Senior Counsel at Valerian Law. In 2002 he
27 graduated from the University of California at Berkeley School of Law (then-Boalt Hall), Order
28 of the Coif. After law school, Mr. Gildor clerked for the Honorable Barbara J. Rothstein in the

1 United States District Court Judge for the Western District of Washington. Mr. Gildor has a
2 master's degree from Stanford University and a Bachelor of Science degree from the
3 Massachusetts Institute of Technology.

4 22. Mr. Gildor has more than twenty years of experience as a litigator at both trial and
5 appellate levels. Mr. Gildor specializes in consumer and wage and hour class actions and has been
6 named class counsel in many state and federal actions, including *Sosa v. Dreyer's Grand Ice*
7 *Cream* (Alameda County, No. RG08424366); *Naranjo v. GNC* (Alameda County, No.
8 RG12619626); *Ely v. Davey Tree Surgery Co.* (Alameda County, No. RG08398173); *Bolton v.*
9 *U.S. Nursing* (N.D. Cal., No C12-4466 LB); *Mejia v. Prologix Distribution Services* (West) (N.D.
10 Cal, No. 12-CV-4840 YGR); *Minns v. Advanced Clinical Employment Staffing* (N.D. Cal., No.
11 13-CV-03249-SI), *Arens v. Popcorn, Indiana* (N.D. Cal. (N.D. Cal., No. 14-CV-1323-SC),
12 *Edenborough v. ADT* (N.D. Cal., No. 16-2233 JST), and *Pennington v. Apple, Inc.* (N.D. Cal.,
13 No. C12-2375 PSG). He has participated in various cases that resulted in published opinions
14 including *Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613 and *Building*
15 *Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th
16 866. He has also published pieces in the Ecology Law Quarterly and Plaintiff Magazine.

17 23. Mr. Gildor's prior affiliations include approximately nine years at Chavez &
18 Gertler LLP, a well-renowned class action law firm where he was a partner, and several years in
19 the Office of the Director – Legal Unit in the Department of Industrial Relations. Earlier in his
20 legal career, Mr. Gildor was a staff attorney at several public interest environmental organizations
21 such as the Natural Resources Defense Council, the Save Our Springs Alliance, and the
22 Environmental Law Foundation. Mr. Gildor's legal experience includes clerking for the United
23 States Department of Justice, Earthjustice, and the law firms of Pillsbury Winthrop and Shute,
24 Mihaly and Weinberger LLP.

25 24. Mr. Gildor has billed 44.4 hours to this case after application of billing judgment.
26 He drafted the settlement agreement and motion for settlement approval. Mr. Gildor also helped
27 develop a penalty model and assisted me in the day-to-day management of this case. His
28 customary hourly rate is \$900 per hour.

25. My former law partner, Dominic Valerian, billed 15 hours while a member of my firm. His last rate at my firm was \$800. Mr. Valerian has 19 years of litigation experience.

26. Over the course of the several years that the Dougal and Morris actions have been pending in the two Superior Courts, other legal staff in my firm have performed legal work for these cases. Former associate Helen Halldorsson billed 79 hours at her rate of \$400 per hour, and several legal assistants and paralegals billed 250 hours at rates ranging from \$250 to \$325 per hour.

Valerian Law's Rates

27. Valerian Law sets its rates for attorneys and staff based on prevailing market rates in the San Francisco Bay Area for attorneys with comparable skill, experience, and qualifications, handling similar matters. Our firm monitors private law firm rates in the Bay Area and major California legal markets. We set our rates to be comparable to rates charged by lawyers and legal support staff with comparable law practices, experience, skill, and credentials.

28. Our current rates range from \$900 for attorneys with over 15 years of experience and \$275-\$325 for support staff.

29. Valerian Law's hourly rates as stated above are the usual and customary hourly rates charged for services. Clients paying hourly have been charged and have paid the firm's customary rates, including our 2022, 2023 and 2024 rates.

30. I am familiar with the hourly rates generally charged by litigators in the San Francisco Bay Area and throughout California. More specifically, I am familiar with the hourly rates charged and the billing and work practices of employment lawyers with skills, qualifications, and experience similar to those of Plaintiff's counsel in this action. I gained familiarity with market rate ranges by tracking developments in the legal market and discussing attorneys' fees, billing, and work practices from both the plaintiffs' and defense bar through my various legal community activities; by reviewing legal newspapers and surveys pertaining to market rates; by reviewing and calculating market rates by reference to the Laffey Matrix (<http://www.laffeymatrix.com/see.html>), by reviewing rates charged by firms that my firm has

1 associated with or whom we have opposed; by setting billing rates for my own firm; and based on
2 my years as a plaintiffs' side employment lawyer.

3 31. The Adjusted Laffey Matrix is one of several sources that courts have consulted in
4 determining objectively a reasonable market rate for a particular geographic market. The rates of
5 Claimant's Counsel are lower than the Laffey rates adjusted for our region, as shown below.

6 32. The adjustment to the Laffey Matrix is determined as follows: We use the locality
7 pay adjustment method applied by the Northern District of California in *In re HPL Technologies,*
8 *Inc. Securities Litigation* (N.D. Cal. 2005) 366 F.Supp.2d 912 and *Theme Promotions v. News*
9 *Am. Mktg. FSI, Inc.* (N.D. Cal. June 14, 2010) 731 F.Supp.2d 937, 948. We use federal courts'
10 locality pay tables available at [https://www.uscourts.gov/careers/compensation/](https://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates)
11 [judiciary-salary-plan-pay-rates](https://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates) to calculate the adjustment to apply to the Laffey Matrix rates,
12 which are for Washington, D.C. The 2024 differential between the Washington-Baltimore-
13 Arlington locality pay (+33.26%) and the San Jose-San Francisco-Oakland locality pay tables
14 (+45.41%), is 12.15%, meaning there should be a 12.15% increase for our region compared to the
15 Laffey Matrix rates. In 2023, that adjustment was 11.66%.

16 33. Pursuant to this court-sanctioned method, Adjusted Laffey Matrix rates for the San
17 Jose-San Francisco-Oakland market are as follows:

18 Adjusted Laffey Matrix Rates

19

Year	Years Out of Law School		
	Paralegals/ Law Clerks	11–19 years	20 + years
6/1/23 - 5/31/24 Adjusted	\$251	\$985	\$1,185
6/1/22 - 5/31/23 Adjusted	\$268	\$927	\$1,113

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24 34. Our usual rates have been awarded in past actions. *See, e.g., Pham v. Wood Tech,*
25 *Inc.*, Case No. 22 CV011080 (Cal. Super. Ct., Alameda; Jan. 24, 2023) (adopting Valerian Law's
26 customary rates of \$850-\$875 for attorneys with over 15 years of experience and \$250-\$300 for
27 support staff in awarding discovery sanctions and class counsel fees after settlement); *Casteel v.*
28

1 *Alaska Airlines, Inc.*, Case No. RG20052826 (Cal. Super. Ct., Alameda; March 11, 2020;
2 approving Valerian Law’s customary hourly rates including \$850 for Xinying Valerian, \$775 for
3 Dominic Valerian, \$425 for associate and \$250 for legal assistants for work performed 2018 to
4 2020; *Fletscher v. Overland Solutions, Inc.*, Case No. RG17852058 (Cal. Super. Ct., Alameda
5 Apr. 15, 2019) (awarding fees of one-third of common fund with a lodestar cross-check based on
6 an hourly rate of \$850 for Ms. Valerian’s time); *Pan v. Qualcomm Inc.*, No. 16-cv-01885-JLS-
7 DHB, 2017 U.S. Dist. LEXIS 120150 (S.D. Cal. July 31, 2017) (awarding fees of one-third of
8 common fund with a lodestar cross-check based on an hourly rate of \$750 for Ms. Valerian’s
9 time).

10 **Valerian Law’s Timekeeping Practices**

11 35. It is my firm’s policy to record the time spent on all matters throughout each day,
12 as contemporaneously as possible, in increments of one tenth of an hour. Our firm has always
13 used software that enables contemporaneous time-tracking through a timeclock. We conduct
14 monthly audits of all timekeepers’ billings to ensure compliance with firm policy. We maintain
15 our timekeeping data in an electronic format in the ordinary course of business.

16 36. In preparing for the instant fee motion, I directed thorough reviews of these
17 billable time records by Mr. Gildor before finalizing them for this motion. I also prepared and
18 approved guidelines to be used by Mr. Li and myself in our review and audit of each time entry to
19 ensure that they were compensable under the standards applicable to the instant motion.

20 **Valerian Law’s Lodestar Fees in this Case**

21 37. My firm’s lodestar to date—excluding this fee motion but not accounting for the
22 time spent on the motion for final approval and settlement administration—is \$364,222.50. This
23 consists of 627.7 hours of effort after excluding hours through the application of billing judgment.

24 38. I believe that all the time my staff and I spent on this case was necessary. Staffing
25 was lean and dictated by staffing constraints, case needs, and the case schedule. Additional staff
26 necessarily had to pitch in to ensure coverage for all depositions, briefing, and other trial
27 preparation work. Legal assistants performed both standard paralegal duties and traditional junior
28

1 associate work, such as reviewing document productions and assisting with depositions and
2 hearings.

3 39. The requested fee represents 46% of counsel's lodestar.

4 **Costs Advanced by Counsel**

5 40. Over the course of this action, my firm has advanced Plaintiff over \$9,044.82 in
6 costs. These costs consist of expenditures reasonably necessary to develop and prosecute this
7 case. Attached hereto as Exhibit 2 is a true and correct list of the costs in this case.

8 41. The accrued expenses claimed here are reflected in my firm's books and records as
9 maintained in the ordinary course of business. Based on my experience, the cost bill here is
10 ordinary when compared with the costs of litigation in cases that settle relatively close to trial.
11 These out-of-pocket costs reflect a careful and frugal approach to litigation expenditures and were
12 reasonably necessary for the prosecution of this action.

13
14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16
17 Executed on August 19, 2024, in Albany, California.

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20 _____
Xinying Valerian

Exhibit 1

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT

This Private Attorneys General Act Settlement Agreement (“Agreement”) is made by and between plaintiffs Melissa Morris and Stephanie Dougal (“Plaintiffs”), on behalf of themselves and the Labor Workforce and Development Agency (“LWDA”), and defendant The RealReal Inc. (“TRR” or “Defendant” and together with Plaintiffs, the “Parties”).

1. DEFINITIONS

- 1.1 “Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.2 “Aggrieved Employees” means all persons who were employed by TRR in sales commission eligible roles in California during the PAGA Period.
- 1.3 “Aggrieved Employee Data” means each Aggrieved Employee’s name, last-known mailing address, social security number, and number of PAGA Pay Periods.
- 1.4 “Administrator” means Phoenix Class Action Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.5 “Administrator’s Expenses” means the amount the Administrator will be paid from the Gross Settlement Amount as reimbursement for its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid.
- 1.6 “Consolidated Complaint” means the complaint adding Stephanie Dougal as a co-plaintiff to the Morris Action.
- 1.7 “Court” means the Alameda County Superior Court of California.
- 1.8 “Defense Counsel” means Cheryl D. Orr and Sara Ehsani-Nia of Faegre Drinker Biddle & Reath LLP.
- 1.9 “Dougal Action” means the action against Defendant entitled *Dougal v. The RealReal, Inc.* Case No. CGC-22-600390, that was filed on June 24, 2022, pending in San Francisco County Superior Court.
- 1.10 “Effective Date” means the date that the Court’s order and judgment approving the settlement becomes a final, unappealable order, typically 61 days after entry.
- 1.11 “Gross Settlement Amount” means the \$500,000 that TRR agrees to pay under Para. 4, Monetary Terms and Para. 5, Settlement Funding and Payment. The Gross Settlement Amount will be used to pay the Individual PAGA Payments, the LWDA PAGA Payment, Plaintiffs’ Counsel Fees, Plaintiffs’ Counsel Expenses, the PAGA Representative Service Awards, and the Administrator’s Expenses.

- 1.12 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the total PAGA Penalties, calculated according to the number of PAGA Pay Periods worked by the Aggrieved Employee during the PAGA Period.
- 1.13 “Judgment” means the judgment entered by the Court upon approval of this settlement agreement.
- 1.14 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i), to receive a share of the PAGA Penalties.
- 1.15 “LWDA PAGA Payment” means the seventy-five percent (75%) of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.16 “Morris Action” means the PAGA action against Defendant entitled *Morris v. The RealReal, Inc.*, Case No. 23CV025851, that was filed January 17, 2023, pending in the Alameda County Superior Court.
- 1.17 “Notice” means the Court-approved notice to be mailed to Aggrieved Employees, along with their Individual PAGA Payment in the form, without material variation, attached as Exhibit A.
- 1.18 “PAGA Period” means the period between May 10, 2021, and the date of the Court’s approval of this settlement agreement, or 60 days after May 28, 2024 (*i.e.*, July 27, 2024), whichever is earlier. The Consolidated Complaint will reflect this start date for the relevant period, *i.e.* May 10, 2021.
- 1.19 “PAGA Representative Service Award” means the payment to each Plaintiff for initiating the Action and providing services in support of the Action.
- 1.20 “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked for TRR for at least one day during the PAGA Period.
- 1.21 “PAGA” means the Private Attorneys General Act, Labor Code, section 2698 et seq.
- 1.22 “PAGA Penalty Amount” means the share of the settlement fund to pay the LWDA PAGA Payment and all the Individual PAGA Payments.
- 1.23 “Plaintiffs’ Counsel” means Xinying Valerian and Dan L. Gildor of Valerian Law, P.C. and Dominic Valerian of Gallo LLP.
- 1.24 “Plaintiffs’ Counsel Fees” and “Plaintiffs’ Counsel Expenses” mean the amounts allocated to Plaintiffs’ Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, as set forth herein, as approved by the Court.

2. RECITALS

- 2.1 Stephanie Dougal filed a class and representative PAGA action against TRR on June 24, 2022, alleging claims for failure to pay overtime wages, failure to provide meal

periods, failure to provide rest periods, failure to provide accurate wage statements, waiting time penalties, unfair competition, and failure to provide compliant commission contracts. Prior to filing the complaint, Ms. Dougal provided LWDA notice of these violations on May 10, 2022. TRR filed a motion to compel arbitration and dismiss the class claims. The court granted the motion, dismissed the class claims, and stayed the representative PAGA claims pending arbitration of Dougal's individual claims.

- 2.2 Melissa Morris filed a representative PAGA action against TRR on January 17, 2023, in the Alameda County Superior Court alleging a single cause of action pursuant to PAGA for violations of Labor Code section 2751. Ms. Morris provided the LWDA with notice of these violations on October 28, 2022. Ms. Morris filed an amended notice on May 2, 2023, setting forth additional violations of Labor Code section 232 and 232.5.
- 2.3 Defendant denies all claims, liability or wrongdoing alleged in the Dougal and Morris Actions.
- 2.4 During the Morris Action, Plaintiff propounded 23 document requests, seven special interrogatories, six requests for admission, and one set of form interrogatories on TRR. In addition to this formal discovery, the parties also exchanged substantial information under the mediation privilege in advance of each of the two mediations that spanned the Dougal and Morris Actions. This investigation is sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.5 The parties mediated the Dougal and Morris Actions on April 18, 2023, before mediator Marisa Ratinoff, without reaching any resolution.
- 2.6 The parties mediated the Dougal and Morris Actions a second time on May 28, 2024, with Kevin T. Barnes, Esq. Though the parties did not reach a settlement at the mediation, the parties continued to discuss settlement and eventually agreed to a mediator's proposal that led to this Agreement to settle the Dougal and Morris Actions.
- 2.7 The Parties, Plaintiffs' Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. CONSOLIDATED COMPLAINT

- 3.1 Within 20 days of the execution of this settlement agreement, Plaintiffs' Counsel will seek to dismiss the Dougal Action in its entirety, without prejudice, and file a joint stipulation in the Morris Action to amend the operative complaint in that case to add Stephanie Dougal as a named plaintiff, for settlement approval purposes. The stipulation and proposed amended complaint for the Morris Action shall be subject to TRR's approval and shall be appended to the parties' formal settlement agreement as Exhibit B. The amended complaint shall assert only PAGA claims related to

alleged violations of Labor Code 2751, for which the start of the relevant time period in the Dougal Action will apply (i.e., May 10, 2021).

4. MONETARY TERMS

- 4.1 Gross Settlement Amount. TRR promises to pay \$500,000, as full and final settlement and compromise of the Consolidated Complaint, in its entirety.
- 4.2 The Gross Settlement Amount includes all Individual PAGA Payments to Aggrieved Employees; all attorneys' fees, costs and expenses incurred by Plaintiffs in connection with the prosecution, defense, mediation, and settlement of the claims asserted in the Consolidated Complaint; all payments to the LWDA; the Administrator's Expenses; and the PAGA Representative Service Awards, all in the amounts approved by the Court.
- 4.3 Escalator Provision. The Gross Settlement Amount was agreed to be based on the understanding that there are approximately 11,948 pay periods during which Aggrieved Employees received commission agreements, for the period of May 10, 2021, through May 28, 2024. Should the actual number of applicable pay periods worked by the Aggrieved Employees exceed 13,143 (e.g., 11,948 x 110%) by the Court's approval of this Agreement, then the Gross Settlement Amount shall be increased by the same number of percentage points by which the actual number of pay periods that exceeds 13,143 (e.g., a 2% increase above 13,143 shall result in a 2% increase in the Gross Settlement Fund).
- 4.4 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts approved by the Court.
- (a) To the LWDA and Aggrieved Employees. PAGA Penalties in the amount of \$309,339.18 to be paid from the Gross Settlement Amount, with seventy-five (75%) percent (\$232,004.39) allocated to the LWDA PAGA Payment and twenty-five (25%) percent (\$77,334.80) allocated to the Individual PAGA Payments.
- The Administrator will calculate each Individual PAGA Payment by (1) dividing the sum total Individual PAGA Payments by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (2) multiplying the result by the particular Aggrieved Employee's PAGA Period Pay Period(s).
- The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
- (b) To Plaintiffs. A PAGA Representative Service Award to each of the named Plaintiffs in the Consolidated Complaint of not more than \$5,000.

Plaintiffs will seek Court approval for the PAGA Representative Service Awards as part of the motion for approval. If the Court approves a PAGA Representative Service Award less than the amount requested, the Administrator will retain the remainder in the PAGA Penalty Amount. The Administrator will pay the PAGA Representative Service Award using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the PAGA Representative Service Award.

- (b) To Plaintiffs' Counsel. Plaintiffs' Counsel Fees of not more than \$166,666 (33⅓ percent) of the Gross Settlement Amount, and Plaintiffs' Counsel Expenses of not more than \$9,044.82. Defendants will not oppose requests for these payments provided they do not exceed these amounts.

Plaintiffs shall request these amounts as part of their motion for approval of this settlement. If the Court approves Plaintiffs' Counsel Fees and/or Plaintiffs' Counsel Expenses less than the amounts requested, the Administrator will allocate the remainder to the PAGA Penalty Amount.

The Administrator will pay the Plaintiffs' Counsel Fees and Plaintiffs' Counsel Expenses using one or more IRS 1099 Forms in one lump sum payable to Valerian Law, P.C. Plaintiffs' Counsel assumes full responsibility and liability for taxes owed on the Plaintiffs' Counsel Fees and the Plaintiffs' Counsel Expenses and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these payments.

- (c) To the Administrator. Administrator's Expenses not to exceed \$4,950 except for a showing of good cause and as approved by the Court. To the extent the Administrator's Expenses exceed \$4,950, any further amount will come out of the Gross Settlement Amount, and TRR will not have to pay an additional amount. To the extent the Administrator's Expenses are less or the Court approves payment less than the amount set forth herein, the Administrator will allocate the remainder to the PAGA Penalty Amount.

5. SETTLEMENT FUNDING AND PAYMENTS

- 5.1 Aggrieved Employee Data. Defendants will deliver the Aggrieved Employee Data to the Administrator, in the form of a Microsoft Excel spreadsheet, not later than ten (14) days after the Court grants Approval of the Settlement. To protect privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Plaintiffs' Counsel if it discovers that the Aggrieved Employee Data submitted to the Administrator omitted any Aggrieved Employee Data and to provide corrected or updated Aggrieved Employee Data as soon as reasonably

feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data. Aggrieved Employees will not have the ability to challenge their data for purposes of determining their individual share of the PAGA Penalty Amount.

- 5.2 Escalator Clause Implementation: If the Settlement Administrator determines that the total number of pay periods reported in the Aggrieved Employee Data exceeds the number set forth in paragraph 4.2, the Settlement Administrator shall inform the Parties of the additional amounts due within three (3) business days of receipt of the Aggrieved Employee Data.
- 5.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 60 days after the Effective Date.
- 5.4 Payments from the Gross Settlement Amount. The Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administrator's Expenses Payment, the Plaintiffs' Counsel Fees, the Plaintiffs' Counsel Expenses, and the PAGA Representative Service Award within 14 days after Defendant funds the Gross Settlement Amount. Disbursement of the Plaintiffs' Counsel Fees, the Plaintiffs' Counsel Expenses, and the PAGA Representative Service Award shall not precede disbursement of the Individual PAGA Payments.
 - (a) The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via first class mail. The face of each check shall prominently state the date (not less than 90 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - (b) The Administrator must conduct an Address Search for all Aggrieved Employees whose checks are returned undelivered without a forwarding address. The Administrator must re-mail checks to any forwarding address provided or to an address ascertained through the Address Search within three (3) days of receiving a returned check. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.
 - (c) Any Individual PAGA Payment that is uncashed and cancelled after the void date shall escheat to the State of California, Department of the

Controller Unclaimed Property Fund in the name of the Aggrieved Employees whose checks were not cashed.

- (d) The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to any Aggrieved Employee (such as retirement or 401(k) plan contributions, compensation, bonuses or benefits under other employment benefit plans or programs) beyond those specified in this Agreement.

6. RELEASES OF CLAIMS

- 6.1 Upon the Effective Date, Plaintiffs, on behalf of the LWDA, release the claims that were pled in the Consolidated Complaint, during the PAGA period, including claims for penalties, attorneys' fees and/or costs that were alleged in the Consolidated Complaint. The parties intend this release to preclude any claim by an Aggrieved Employee for civil penalties under PAGA for the claims pled in the Consolidated Complaint that arose during the PAGA Period.

7. MOTION FOR APPROVAL

- 7.1 Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel at least two (2) business days prior to filing all documents necessary for obtaining Court approval of this settlement, including: (i) a draft of the notice and memorandum in support of the motion for approval; and (ii) a draft proposed order granting approval this settlement.
- 7.2 Responsibilities of Counsel. Plaintiffs' Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the motion for approval no later than 45 days after the full execution of this Agreement; obtaining a prompt hearing date for the motion for approval; and for appearing in Court to advocate in favor of the motion for approval. Plaintiffs' Counsel is responsible for delivering the Court's Approval to the Administrator.
- 7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed motion for approval and/or the supporting declarations and documents, Plaintiffs' Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not approve the settlement or conditions approval on any material change to this Agreement, Plaintiffs' Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

- 8.1 Selection of Administrator. The Parties have jointly selected Phoenix Class Action Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, the proposed Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in

exchange for payment of Administrator's Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for the purposes of providing reports to state and federal tax authorities.
- 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 8.4 Notice to Aggrieved Employees. The Administrator shall send the Notice of PAGA Settlement attached hereto as Exhibit A along with each Individual PAGA Payment. Aggrieved Employees will not be provided with any opportunity to opt out of the settlement or object to the settlement.
- 8.5 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to the Aggrieved Employees including copies of the Settlement, motion for approval, the Consolidated Complaint, the Court's Approval order, the notice to be provided the Aggrieved Employees with their Individual PAGA Payment, and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive calls, faxes, and emails from Aggrieved Employees.
- 8.6 Final Report and Compliance Declaration by Settlement Administrator. The Administrator will provide Plaintiffs' Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement within 10 days after the Administrator disburses all funds in the Gross Settlement Amount. The Administrator will also prepare, and submit to Plaintiffs' Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement at least 15 days before any deadline set by the Court. Plaintiffs' Counsel is responsible for filing the Administrator's declaration in Court.

9. ADDITIONAL PROVISIONS.

- 9.1 No Publicity. Plaintiffs' Counsel shall not issue a press release regarding this settlement.
- 9.2 Waiver of Right to Appeal. Provided the Judgment is wholly consistent with the terms and conditions of this Agreement, specifically including the Plaintiffs' Counsel Fees and Plaintiffs' Counsel Expenses set forth in this Settlement, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals.

- 9.3 Parties to Bear Their Own Attorney's Fees and Costs. With the sole exception of the Plaintiffs' Counsel Fees and Plaintiffs' Counsel Expenses to be paid from the Gross Settlement Amount, each party to this Agreement shall bear all of its or his own attorneys' fees, costs and expenses of any kind, if any, incurred in connection with the prosecution, defense, mediation or settlement of the claims asserted in the Consolidated Complaint.
- 9.4 No Admission of Liability, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Consolidated Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses to the claims asserted in the Consolidated Complaint have merit. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 9.5 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding all oral representations, warranties, covenants or inducements made to or by any Party.
- 9.6 Attorney Authorization. Plaintiffs' Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 9.7 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence, and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of the mediator, Kevin Barnes, Esq., and/or the Court for resolution.
- 9.8 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.
- 9.9 No Tax Advice. Neither Plaintiffs, Plaintiffs' Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in

this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

- 9.10 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives and approved by the Court.
- 9.11 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 9.12 Prevailing Party Attorney Fees. If any party brings any claim or action for breach of, or to enforce the terms of, this Agreement, the prevailing party in said action shall be entitled to recover its costs and attorneys' fees incurred in the prosecution or defense of said claim or action, in addition to any other relief to which said party may be entitled.
- 9.13 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.
- 9.14 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 9.15 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Dougal or Morris Actions and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 9.16 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 9.17 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 9.18 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

If to Plaintiffs, to their attorneys at the following addresses:

Xinying Valerian (xinying@valerian.law)
Valerian Law, P.C.
1530 Solano Avenue
Albany, California 94707

Dominic Valerian (dvalerian@gallo.law)
Gallo LLP
1604 Solano Ave, Suite B
Albany, CA 94707

If to Defendant, to their attorneys at the following addresses:

Cheryl Denise Orr (cheryl.orr@faegredrinker.com)
Faegre Drinker Biddle & Reath LLP
Four Embarcadero Center, 27th Floor
San Francisco, CA 94111

Sara Ehsani-Nia (sara.ehsaninia@faegredrinker.com)
Faegre Drinker Biddle & Reath LLP
1800 Century Park East, Suite 1500
Los Angeles, CA 90067

- 9.19 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 9.20 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree pursuant to Code of Civil Procedure section 583.330 that the signing of this Agreement extends the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of the Court's settlement approval process.

Dated: July 23, 2024.

Melissa morris

Melissa Morris
Plaintiff

Dated: July 23, 2024.

Stephanie Dougal

Stephanie Dougal
Plaintiff

Approved as to form:

Dated: July 30, 2024.

VALERIAN LAW, P.C.



Xinying Valerian

Counsel for Plaintiffs Melissa Morris and Stephanie Dougal

Dated: July 30, 2024.

GALLO LLP



Dominic Valerian

Counsel for Plaintiffs Melissa Morris and Stephanie Dougal

Dated: July 24, 2024.



The RealReal, Inc.

Defendant

By: Todd Suko, Chief Legal Officer and Secretary

Approved as to form:

Dated: July 24, 2024.

FAEGRE DRINKER BIDDLE & REATH LLP



Cheryl Denise Orr

Counsel for Defendant The RealReal, Inc.

Exhibit A



Superior Court of California in and for Alameda County
Morris et al. v. The RealReal, Inc.
Case No. 23CV025851

Notice of PAGA Settlement

Authorized by the Superior Court of California in and for Alameda County

Why did I get this notice?

This notice tells you about the settlement of a lawsuit entitled *Morris et al. v. The RealReal, Inc.*, that was brought on behalf of individuals like yourself who were employed by The RealReal in sales commission eligible roles in California between May 10, 2021, and [date of approval].

This settlement was brought pursuant to the California Private Attorneys General Act of 2004 that allows the plaintiffs to stand in the shoes of the State of California and recover civil penalties for Labor Code Violations.

Attached is your share of the civil penalties recovered on your behalf.

What are my choices?

Cash the check	Get paid your share of the civil penalties for TRRs Labor Code violations
Do Nothing	You will still be bound by the settlement. Your share of the civil penalties will be sent to the California Controller's Unclaimed Property Fund

What were the claims in the lawsuit that were settled?

The lawsuit alleges that The RealReal ("TRR") violated Labor Code section 2751 by failing to provide workers paid in part by commission a written contract that sets forth the full method for computing and paying commissions. The lawsuit also alleges that TRR failed to provide these workers copies of the commission agreement signed by TRR.

What will happen if I cash the check?

Cashing the check will not release any remedies available to you for violations of the California Labor Code other than those penalties which could be recovered under PAGA in this lawsuit.

You can learn more at:

[\[settlement website\].com](#)

Exhibit B

1 Xinying Valerian (SBN 254890)
xinying@valerian.law
2 VALERIAN LAW, P.C.
1530 Solano Ave.
3 Albany, CA 94707
Phone: 510.567.4630

4 Dominic Valerian (SBN 240001)
5 dominic@valerian.law
GALLO LLP
6 1604 Solano Ave, Suite B
Albany, CA 94707
7 Tel: (510) 567-4632

8 *Attorneys for Plaintiffs Stephanie Dougal*
9 *and Melissa Morris*

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**
13 **UNLIMITED JURISDICTION**

14 MELISSA MORRIS, individually and on
15 behalf of aggrieved employees and the
State of California,

16 Plaintiffs,

17 v.

18 THE REALREAL, INC. and DOES 1
19 through 10, inclusive,

20 Defendants.

Case No. 23CV025851

**STIPULATION AND[PROPOSED] ORDER
GRANTING LEAVE TO FILE AMENDED
PRIVATE ATTORNEYS GENERAL ACT
COMPLAINT**

21 WHEREAS the parties to this case and the parties in *Dougal v. The RealReal, Inc.* Case No.
22 CGC-22-600390, that was filed on June 24, 2022, pending in San Francisco County Superior Court,
23 have reached a settlement on the claims asserted in the overlapping cases;

24 WHEREAS as part of the settlement, the parties have agreed to combine the cases in this
25 Court to foster judicial economy in approving and administering the settlement.

26 WHEREAS California case law provides that leave of court to amend a complaint shall be
27 freely granted
28

WHEREAS no new claims are being added in the proposed complaint.

WHEREAS the parties deem that Defendants' answer filed on March 17, 2023, shall remain the operative answer in this case.

NOW THEREFORE Plaintiff Melissa Morris and Defendant The RealReal, Inc.. hereby stipulate and agree that the Court should grant Plaintiff leave to file the first amended complaint attached hereto as Exhibit 1.

Dated: July __, 2024

VALERIAN LAW, P.C.
GALLO LAW

By: _____
Xinying Valerian
Attorneys for Plaintiff Mellissa Morris

Dated: July __, 2024

FAEGRE DRINKER BIDDLE & REATH LLP

By: _____
Cherly Denise Orr
Attorneys for Defendant The RealReal, Inc..

[PROPOSED] ORDER

For good cause shown, the stipulation is APPROVED. Plaintiff may file the amended complaint attached hereto as Exhibit 1 within 10 days of service of this order.

Dated: July ____, 2024

Hon. Keith Fong
Judge of the Superior Court

Exhibit 1

1 Xinying Valerian (SBN 254890)
xinying@valerian.law
2 VALERIAN LAW, P.C.
1530 Solano Ave.
3 Albany, CA 94707
Phone: 510.567.4630

4 Dominic Valerian (SBN 240001)
5 dominic@valerian.law
GALLO LLP
6 1604 Solano Ave, Suite B
Albany, CA 94707
7 Tel: (510) 567-4632

8 *Attorneys for Plaintiffs Stephanie Dougal*
9 *and Melissa Morris*

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**
13 **UNLIMITED JURISDICTION**

14 MELISSA MORRIS and STEPHANIE
15 DOUGAL, individually and on behalf of
16 aggrieved employees and the State of
California,

17 Plaintiffs,

18 v.

19 THE REALREAL, INC. and DOES 1
20 through 10, inclusive,

21 Defendants.

Case No. 23CV025851

**FIRST AMENDED PRIVATE ATTORNEYS
GENERAL ACT COMPLAINT**

INTRODUCTION

1. Plaintiffs Melissa Morris and Stephanie Dougal bring this action against Defendant The RealReal, Inc. (“Defendant,” “The RealReal,” or “TRR”) on behalf of themselves, aggrieved employees, and the State of California under the Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.*

2. Defendant The RealReal bills itself as the world’s largest luxury consignment business, committed to reliability, sustainability, and authenticity. Valued at over \$2 billion after its IPO in 2019, The RealReal sells thousands of high-end items on its website, including designer apparel, jewelry, watches, home goods, and fine art. In order to obtain these items, The RealReal employs hundreds of “sales” workers to contact consignors, travel to their homes for pick-ups and appointments, photograph, catalog, and ship consignors’ items to TRR facilities, help deal with lost items and otherwise manage consignor relationships.

3. The California Labor Code requires that employers provide commissioned employees written commission contracts fulfilling specific requirements. Defendant has deprived Plaintiff and other aggrieved employees of Labor Code protections by subjecting commissioned employees to opaque unsigned commission plans that fail to disclose the full method of computing commissions.

4. Plaintiffs are former employees of TRR who experienced these Labor Code violations firsthand and now seek to vindicate the rights of all aggrieved “sales” employees. As set forth in more detail below, Plaintiffs’ suit is based on Defendant’s violations of California Labor Code section 2751(a) and (b). Plaintiffs seek civil penalties and attorneys’ fees and costs.

5. The allegations herein that relate to Plaintiffs’ personal actions are made based on Plaintiffs’ personal knowledge. The balance are made on information and belief based on the investigation of counsel.

PARTIES

6. Plaintiff Melissa Morris is an individual residing in the city of Irvine, Orange County, California. Defendant TRR employed Plaintiff Morris as a Luxury Manager from approximately January 2021 to July 2022 in its “sales” organization in Orange County.

7. Plaintiff Stephanie Dougal is an individual residing in the city of Newport Beach, Orange County, California. Defendant TRR employed Plaintiff Dougal as a Luxury Manager from June 2021 to March 2022 in its so-called “sales” organization in Orange County.

8. Defendant The RealReal, Inc. (NASDAQ: REAL) is a Delaware corporation headquartered in San Francisco, California. The RealReal is a luxury consignment retailer that operates online and through brick-and-mortar retail locations. Its website claims, “We make consigning effortless with free in-home pickup, drop-off service, virtual appointments and direct shipping for individual consignors and estates.” (<https://investor.therealreal.com/news-releases/news-release-details/realreal-issues-first-ever-luxury-consignment-report>, last visited May 25, 2022.)

9. At all relevant times, Defendant TRR was Plaintiffs’ and the other aggrieved employees “employer” within the meaning of all applicable California laws and statutes.

10. DOES 1 through 10, inclusive, are sued pursuant to California Code of Civil Procedure § 474. Plaintiffs are ignorant of the true names or capacities of these defendants, and therefore sue these defendants by such fictitious names. Plaintiffs will amend this complaint to allege their true names and capacities when ascertained.

11. Each of the fictitiously named defendants is legally responsible in some manner for the wrongs and injuries alleged herein. At all times mentioned herein each defendant was or is the actual or ostensible agent or employee of each and all the other defendants and was or is acting within the course and scope of said agency or employment. Defendants, and each of them, were or are engaged in a joint venture and an integrated or joint enterprise and were or are acting within the scope of and in pursuance of the joint venture and enterprise.

12. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned Defendants and each of the DOE defendants are Plaintiffs’ and aggrieved employees’

1 employer(s), and/or agents, servants, employees, partners, joint venturers, alter egos, aiders and
2 abettors, and/or co-conspirators of one or more of their co-defendants, and, in committing the acts
3 alleged herein, were or are acting within the course and scope of said agency, employment,
4 partnership, joint venture, and/or conspiracy, or were or are aiding and abetting their co-
5 defendants. Plaintiffs are informed and believe and thereon allege that Defendants and each of the
6 DOE defendants are legally responsible for all of the unlawful conduct, policies, practices, acts and
7 omissions as described in this Complaint.

8 **JURISDICTION AND VENUE**

9 13. This court has jurisdiction over this action pursuant to Code of Civil Procedure
10 § 410.10. This action seeks monetary relief exceeding the minimal jurisdiction limits of the
11 Superior Court of California. The damages, penalties and other monetary relief will be established
12 according to proof at trial.

13 14. Venue is proper in Alameda County under Code of Civil Procedure section 393,
14 subdivision (a) and section 395.5. TRR employs some of the aggrieved employees in Alameda
15 County, and TRR committed some of the violations of Labor Code section 2751 for which
16 Plaintiffs seek penalties in Alameda County. Accordingly, TRR's "liability" (§ 395.5), and "some
17 part of the cause" (§ 393), arose in Alameda County. (See *Crestwood Behavioral Health, Inc. v.*
18 *Sup.Ct. (Fragoza)* (2021) 60 Cal.App.5th 1069, 1075-77.)

19 **FACTUAL ALLEGATIONS**

20 15. Defendant The RealReal is a major player in the luxury resale market for high-end
21 consumer goods. According to its public filings, "The RealReal is the world's largest online
22 marketplace for authenticated, consigned luxury goods. We are revolutionizing luxury resale by
23 providing an end-to-end service that unlocks supply from consignors and creates a trusted, curated
24 online marketplace for buyers globally."

25 16. TRR touts that it "offer[s] a wide selection of authenticated, primarily pre-owned
26 luxury goods on our online marketplace bearing the brands of thousands of luxury and premium
27 designers. The top-selling luxury designers on our online marketplace include Cartier, Chanel,
28

1 Christian Louboutin, Gucci, Hermès, Louis Vuitton, Prada, Rolex, Tiffany & Co. and Valentino.”
2 (Defendant’s Annual Report 2021.)

3 17. TRR has employed workers in its so-called “sales” organization throughout
4 California, organized into territories within defined geographic markets. The “sales” workers’ job
5 titles have included Luxury Manager, Luxury Account Manager, Luxury Client Manager, Luxury
6 Sales Associate, Business Development Representative, Client Account Representative, Customer
7 Success Manager, Inside Sales Account Executive, Luxury Specialist, Sales Account Executive,
8 Sales Account Manager, and Sales Manager.

9 18. The “sales” organization is responsible for supplying pre-owned luxury goods for
10 resale through TRR’s online marketplace and brick-and-mortar shops. The function of the “sales”
11 organization is to obtain luxury consumer goods – such as apparel, jewelry, and handbags – that
12 TRR then markets and sells to retail consumers.

13 19. For their labor, TRR’s “sales” employees earn below-market base salaries and are
14 eligible for commissions, which TRR touts as “uncapped” in order to garner interest from potential
15 recruits.

16 ***TRR’S VIOLATIONS OF LABOR CODE § 2751***

17 20. Throughout the relevant periods, Defendant TRR has systematically violated Labor
18 Code § 2751, a statute designed to protect commissioned employees from opaque schemes and oral
19 promises about commissions. Defendant has willfully ignored statutory requirements by failing to
20 set forth in its commission plans provided to employees the method by which commissions shall be
21 computed and paid, by failing to provide the entire commission plan before the commissioned
22 employee began rendering services for which the contemplated method of payment involved
23 commissions, and by failing to provide a statutorily compliant signed copy of any commission
24 contract to aggrieved employees—instead maintaining a policy and practice of obtaining only the
25 employee’s signature on a contract, but not a company representative’s signature.

26 21. TRR’s employment agreement with Plaintiffs and other employees has consistently
27 included commission as a part of compensation, and Defendant has consistently required each such
28 commissioned employee to agree to a written commission plan.

1 22. TRR has systematically violated Labor Code § 2751(a)'s mandate that a written
2 commission contract set forth the method by which commissions shall be computed and paid, in
3 two ways. First, its commission plans fail to set forth the method by which commissions shall be
4 computed and paid. Second, it fails to provide the entire commission plan before the employee
5 begins rendering services for which the contemplated method of payment involves commissions.

6 23. At TRR, the "Commission Plan" consists of a master document and a Monthly
7 Quota document. The Monthly Quota document is issued every month and is required to be signed
8 by the employee electronically. In violation of Labor Code § 2751(a), TRR's written commission
9 plans omit the method by which employees' commissions are computed and paid. Specifically, the
10 commission plans fail to set forth or disclose how TRR will calculate commissions. The plans
11 indicate that the commissions are related to a Monthly Quota, which is variable, and states the
12 components of quota. But the commission plans do not provide the Monthly Quota or any other
13 numbers or formulas necessary for commissioned workers to be able to calculate anticipated
14 commission.

15 24. Instead, the commission plans direct employees to ask their management for a
16 calculation tool to help them project their commissions. Later, separately from the commission
17 plan, TRR issues monthly quotas in writing in what is called a Monthly Quota Letter. But even
18 when the Monthly Quota letters supply the missing quota, the method of computing the
19 commission is still not stated or described. Even if the Monthly Quota Letters were to become part
20 of the Commission Plan, TRR's commission plans would still fail to set forth the computation
21 method. Indeed, TRR admits that employees must rely on some calculation tool separate and
22 outside of the written commission contract in order to estimate their commissions.

23 25. TRR's second violation of Labor Code § 2751(a) has been its failure to timely
24 provide commission plans to Plaintiffs and other commissioned employees. Specifically, the
25 Monthly Quota is a material component of the Commission Plan, but is not provided to employees
26 before, or at the start of, their employment in a commissioned job.

27 26. TRR has systematically violated Labor Code § 2751(b) by failing to give
28 commissioned employees a copy of their commission contract that has been signed by a company

1 representative. Instead, it has been TRR's policy and practice to obtain only the employee's
2 signature (i.e. "a signed receipt") on its commission contracts. Because no company representative
3 signs commission contracts on behalf of TRR, Defendant has failed to provide "a signed copy" of
4 commission contracts to aggrieved employees as required by Labor Code § 2751(b).

5 27. Accordingly, all employees whose employment compensation includes eligibility to
6 earn commissions and who were or will be subject to a commission plan – whether in "sales" or
7 not and whether in management roles or not – are or will be aggrieved by Defendant's violation of
8 § 2751(a) and (b).

9
10 **FIRST CAUSE OF ACTION**

11 **Private Attorneys General Act, Cal. Labor Code § 2698 *et seq.***
12 **(On behalf of Aggrieved Employees and the State of California, Against All Defendants)**

13 28. Plaintiffs incorporate by reference as though fully set forth herein the preceding
14 paragraphs of this Complaint.

15 29. Plaintiffs and other current and former employees who were employed by
16 Defendant TRR during the applicable statutory period and suffered one or more of the Labor Code
17 violations set forth herein are "aggrieved employees" under PAGA. Accordingly, Plaintiffs seek to
18 recover civil penalties on behalf of the State of California, herself and all other current and former
19 aggrieved employees of Defendant TRR, the civil penalties provided by PAGA, plus reasonable
20 attorneys' fees and costs.

21 30. Pursuant to Labor Code § 2699.3(a), prior to filing this Complaint, Plaintiff Dougal
22 gave written notice by certified mail to Defendant TRR and online to the Labor & Workforce
23 Development Agency ("LWDA") of the factual and legal bases for the Labor Code violations
24 alleged in this Complaint on May 10, 2022. The LWDA assigned case number LWDA-CM-
25 882968-22 and did not provide notice of its intention to investigate Defendant TRR's alleged
26 violations within the requisite period. See Exhibit A. Plaintiffs incorporate the contents of Exhibit
27 A by reference.

28 31. Plaintiff Morris gave written notice by certified mail to Defendant TRR and online
to the Labor & Workforce Development Agency ("LWDA") of the factual and legal bases for the

1 Labor Code violations alleged in this Complaint on October 28, 2022, and on May 2, 2023. The
2 LWDA assigned case number LWDA-CM-916609-22 and did not provide notice of its intention to
3 investigate Defendant TRR's alleged violations within the requisite period. See Exhibits B & C.
4 Plaintiffs incorporate the contents of Exhibits B and C by reference.

5 32. Defendant has not provided notice of an attempt to cure any violation that is curable
6 under PAGA. In addition, Plaintiffs are informed and believe and allege thereon that the Labor
7 Code violations are in fact not cured and remain ongoing.

8 33. Plaintiffs seek civil penalties pursuant to PAGA on behalf of themselves and other
9 aggrieved employees for TRR's failure to provide statutorily compliant commission plans to the
10 aggrieved employees in violation of Labor Code § 2751(a) and (b).

11 34. Civil penalties recovered by Plaintiffs and other aggrieved employees shall be
12 distributed seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the
13 aggrieved employees.

14 35. Plaintiffs also seek reasonable attorneys' fees and costs pursuant to California Labor
15 Code § 2699 and Code of Civil Procedure § 1021.5.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray for the following relief against Defendants, jointly and
18 severally as follows:

- 19 a. For an award of civil penalties pursuant to PAGA in an amount according to proof,
20 with 75% of the penalties to be remitted to the LWDA and 25% of the penalties to be
21 remitted to Plaintiffs and the aggrieved employees;
- 22 b. For an award of attorneys' fees as provided by California Labor Code § 2699(g),
23 Code of Civil Procedure § 1021.5, and all other applicable statutes and law;
- 24 c. For all costs of suit as provided by the Labor Code, Code of Civil Procedure, and all
25 other applicable law; and
- 26 d. For any other relief the Court deems just and proper.
- 27

28 Dated: July __, 2024

VALERIAN LAW, P.C.

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GALLO LLP

By: _____
Xinying Valerian

Attorneys for Plaintiffs and the Aggrieved
Employees

Exhibit 2

Melissa Morris v. The RealReal, Inc.

Expense Category	Amount
Filing and Motion Fees	\$1,053.98
Admin -- U.S. Certified Mail	\$16.56
Other -- Mediation Fees	\$4,118.00
Other -- Research Charges	\$11.64
Other -- Notice/Class Action Administrator	\$1,157.29
Total	\$6,357.47

Stephanie Dougal v. The RealReal, Inc.

Expense Category	Amount
Filing and Motion Fees	\$2,127.62
Court Reporter Fees as Established by Statute	\$296.30
Jury Fees	\$150.00
Admin -- U.S. Certified Mail	\$5.11
Service of Process	\$28.80
Other -- LWDA PAGA Filing Fee	\$75.00
Other -- PACER or other docket access	\$11.20
Other -- Research Charges	\$6.60
Total	\$2,700.63

Grand Total	\$9,058.10
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