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ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

06/24/2022
Clerk of the Court

BY: JEFFREY FLORES
Deputy Clerk

6 *Attorneys for Plaintiff and the Proposed Class*
7

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**
11 **UNLIMITED JURISDICTION**
12

13 STEPHANIE DOUGAL, individually and
14 on behalf of aggrieved employees, the State
of California, and all others similarly
15 situated,

16 Plaintiffs,

17 v.

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

20 Defendants.

Case No.

CGC-22-600390

**CLASS ACTION AND PRIVATE
ATTORNEYS GENERAL ACT COMPLAINT**

DEMAND FOR JURY TRIAL

1 **I. INTRODUCTION**

2 1. Plaintiff Stephanie Dougal brings this action against Defendant The RealReal,
3 Inc. (“Defendant,” “The RealReal,” or “TRR”) on behalf of herself, aggrieved employees, the
4 State of California, and all others similarly situated.

5 2. Defendant The RealReal bills itself as the world’s largest luxury consignment
6 business, committed to reliability, sustainability, and authenticity. Valued at over \$2 billion after
7 its IPO in 2019, The RealReal sells thousands of high-end items on its website, including
8 designer apparel, jewelry, watches, home goods, and fine art. In order to obtain these items, The
9 RealReal employs hundreds of workers to contact consignors, travel to their homes for pick-ups
10 and appointments, photograph, catalog, and ship consignors’ items to TRR facilities, help deal
11 with lost items and otherwise manage consignor relationships. This so-called “sales” operation
12 is the backbone of the company, responsible for obtaining a continuous supply of goods for
13 TRR to sell.

14 3. While The RealReal banks on its workers’ “entrepreneurial spirit” and passion
15 for beautiful products, California’s employment protections reveal the company’s supply chain
16 structure for what it is: a house of cards built on wage theft and illegal commission plans.
17 Plaintiff’s action challenges The RealReal’s illegal policy and practice of intentionally
18 misclassifying these workers as “sales” employees, despite the real nature of the work they
19 perform, in an effort to turn higher profits for the company. Aggrieved employees have been
20 grossly overworked and underpaid, while The RealReal imposes heavy production quotas
21 misleadingly called “sales” quotas, withholds workers’ earned wages and obscures the terms of
22 their commission plans. While classified as “exempt,” The RealReal’s “sales” employees have
23 worked excessive overtime hours to augment their below-market base pay with earned
24 commission, under pressure to obtain ever more units to shore up TRR’s inventory.

25 4. The California Labor Code requires employers to provide their non-exempt
26 employees, among other protections, minimum wages, overtime wages, meal and rest breaks,
27 premium pay for missed/non-compliant meal and rest breaks, accurate itemized wage
28 statements, and timely pay of their wages during employment and upon separation from

1 employment.

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

7 6. Plaintiff is a former employee of TRR who experienced these Labor Code
8 violations firsthand and now seeks to vindicate the rights of all aggrieved “sales” employees.
9 As set forth in more detail below, Plaintiff’s suit is based on Defendant’s violations of California
10 Labor Code §§ 510, 512, 515-516, 1194, 1197, 1197.1, 226.7, 204, 226, 1174, 201-203, 1198,
11 2751(a) and (b), and the applicable IWC Wage Orders. On behalf of herself, aggrieved
12 employees, all other similarly situated employees, and the State of California, Plaintiff seeks
13 unpaid wages, civil penalties, injunctive relief, and attorneys’ fees and costs.

14 7. The allegations herein that relate to Plaintiff’s personal actions are made based
15 on Plaintiff’s personal knowledge. The balance is made on information and belief based on the
16 investigation of counsel.

17 **II. PARTIES**

18 8. Plaintiff is an individual residing in the city of Newport Beach, Orange County,
19 California. Defendant TRR employed Plaintiff as a Luxury Manager from June 2021 to March
20 2022 in its so-called “sales” organization in Orange County.

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

28 10. At all relevant times, Defendant TRR was the “employer” of Plaintiff and was

1 or is the “employer” of other aggrieved employees within the meaning of all applicable
2 California laws and statutes.

3 11. Does 1 through 10, inclusive, are sued pursuant to California Code of Civil
4 Procedure § 474. Plaintiff is ignorant of the true names or capacities of these defendants, and
5 therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to
6 allege their true names and capacities when ascertained.

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

13 13. Plaintiff is informed and believes and thereon alleges that at all times herein
14 mentioned defendants and each of the Doe defendants are Plaintiff’s and aggrieved employees’
15 employer(s), and/or agents, servants, employees, partners, joint venturers, alter egos, aiders and
16 abettors, and/or co-conspirators of one or more of their co-defendants, and, in committing the
17 acts alleged herein, were or are acting within the course and scope of said agency, employment,
18 partnership, joint venture, and/or conspiracy, or were or are aiding and abetting their co-
19 defendants. Plaintiff is informed and believes and thereon alleges defendants and each of the
20 Doe defendants are legally responsible for all of the unlawful conduct, policies, practices, acts
21 and omissions as described in this Complaint.

22 **III. JURISDICTION AND VENUE**

23 14. This court has jurisdiction over this action pursuant to Code of Civil Procedure
24 § 410.10. This action seeks monetary relief exceeding the minimal jurisdiction limits of the
25 Superior Court of California. The damages, penalties and other monetary relief will be
26 established according to proof at trial.

27 15. Venue is proper in this court pursuant to Code of Civil Procedure § 395.5 because
28 Defendant’s principal place of business is in the County of San Francisco and its liability arose

1 here.

2 **IV. FACTUAL ALLEGATIONS**

3 16. Defendant The RealReal is a major player in the luxury resale market for high-
4 end consumer goods. According to its public filings, “The RealReal is the world’s largest online
5 marketplace for authenticated, consigned luxury goods. We are revolutionizing luxury resale by
6 providing an end-to-end service that unlocks supply from consignors and creates a trusted,
7 curated online marketplace for buyers globally.”

8 17. TRR touts that it “offer[s] a wide selection of authenticated, primarily pre-owned
9 luxury goods on our online marketplace bearing the brands of thousands of luxury and premium
10 designers. The top-selling luxury designers on our online marketplace include Cartier, Chanel,
11 Christian Louboutin, Gucci, Hermès, Louis Vuitton, Prada, Rolex, Tiffany & Co. and
12 Valentino.” (Defendant’s Annual Report 2021.)

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

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

23 20. TRR earns no revenue until it sells the pre-owned luxury goods to the retail
24 purchaser. TRR determines the retail list prices of the goods it sells at its sole discretion, based
25 on an evaluation performed at its sole discretion, to determine the value of the consigned
26 property. Upon its sale of each item, TRR pays the consignor a cut, which TRR’s
27 Consignment/Sales Agreement calls a “Commission for the Consigned Property.”

28 21. In contrast to traditional inventory practices, the key difference with

1 consignment inventory is that the inventory does not belong to TRR even though TRR is
2 marketing and selling it. The consignor retains ownership of the product until such time as TRR
3 has sold it. In short, as the retailer of consigned merchandise, TRR has not paid for the product
4 at the time it takes possession, but pays the producer (the consignor) after the product has been
5 sold to a customer.

6 22. In this merchandising chain, TRR’s “sales” employees operate primarily to
7 secure supply from the vendors of pre-owned goods, the consignors, as well as physically
8 engage in obtaining and transferring inventory into TRR’s possession.

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

12 **A. COMMISSION PLANS THAT FLOUT LABOR CODE § 2751**

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

23 25. TRR’s employment agreement with Plaintiff and other employees has
24 consistently included commission as a part of compensation, and Defendant has consistently
25 required each such commissioned employee to agree to a written commission plan.

26 26. TRR has systematically violated Labor Code § 2751(a)’s mandate that a written
27 commission contract provide the method by which commissions shall be computed and paid in
28 two ways. Firstly, its commission plans provided to commissioned employees fail to set forth

1 the method by which commissions shall be computed and paid. Secondly, Defendant fails to
2 provide the entire commission plan before the employee begins rendering services for which
3 the contemplated method of payment involves commissions.

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

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

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

25 30. TRR has not provided a “signed copy” of any commission contract to
26 commissioned employees as required by Labor Code § 2751(b). Instead, it has been TRR’s
27 policy and practice to obtain only the employee’s signature, a “signed receipt” to the master
28 document called a Commission Plan and to each Monthly Quota letter. Because no company

1 representative signs commission contracts on behalf of TRR, Defendant has failed to provide
2 “a signed copy” of commission contracts to aggrieved employees as required by Labor Code §
3 2751(b).

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

8 **B. MISCLASSIFICATION OF SALES EMPLOYEES AS EXEMPT**

9 32. Throughout the relevant period, TRR has maintained a consistent policy and
10 practice of classifying non-supervisory field “sales” employees as exempt. The misclassified
11 jobs have typically been titled with a variation of “Luxury Account Manager,” “Luxury
12 Manager” or “Luxury Sales Executive.”

13 33. Such employees are paid a base salary and incentive compensation for
14 performing primarily non-exempt job functions to maintain the supply of luxury goods that
15 Defendant sells at retail. They are not responsible for the reselling of consigned product in the
16 retail business of TRR or for matching specific consignors and their products with specific retail
17 consumers. Their job duties and compensation are such that no existing exemption in California
18 law applies that would exempt these employees from classification as non-exempt employees
19 in California.

20 34. The primary goal of the Luxury Manager and other field sales employees is to
21 meet numeric quotas for the value and quantity of products obtained from consignors, and
22 according to TRR, the employees’ incentive compensation (commissions and bonuses) depends
23 on their performance compared to their quotas. Like many other employee groups, TRR’s field
24 sales employees are or were subjected to numeric metrics for the volume of their work, such as
25 target numbers for outbound calls and appointments. TRR has constantly increased quotas, as
26 often as monthly, to drive aggrieved employees to obtain more and more supply.

27 35. Despite the fact that TRR considers them a remote, outside salesforce, TRR
28 uniformly mandates how the field sales employees should spend their time by scheduling

1 “sales” employees’ appointments, dictating what they should be doing and saying in interacting
2 with consignors, and monitoring employees’ activities daily and weekly.

3 36. Indeed, instead of a field sales job involving an unsupervised experienced
4 salesperson being responsible for meeting quarterly and annual sales targets, TRR imposes
5 production quotas for the number of items to ship to the company and for the value of the
6 inventory being contributed. And in service of its ever-shifting and oft-increasing production
7 quotas, TRR mandates specific numbers of daily phone calls, appointments, and metrics.

8 37. Stripped of superficial labels and luxury trappings, the true role played by TRR’s
9 field “salesforce” is akin to every other production job involving productivity quotas, whether
10 the work is a delivery service, a warehouse operation, in a factory assembly line or in a vast
11 fruit-and-vegetable growing operation.

12 38. TRR explicitly and implicitly has required Plaintiff and other aggrieved
13 employees to work over eight hours per day and over forty hours per week. Indeed, the
14 company’s written job expectations include “availability evenings and weekends, to
15 accommodate appointment requests” and working “evenings, weekends, and holidays, as
16 needed.”

17 39. TRR’s business model and expectations have required sales employees to work
18 significant overtime, including evenings and weekends, to try to meet quotas for obtaining pre-
19 owned items and to accommodate the preferences of the consignors. For example, Business
20 Development Representatives could place White Glove consignor appointments on Plaintiff’s
21 calendar anytime between 8 am and 6 pm. Plaintiff herself was expected to book in-home or
22 curbside pick-ups without regard to business hours, and to be responsive to consignor clients at
23 all hours.

24 40. TRR has enforced quotas and performance expectations through close
25 monitoring of performance, monthly or otherwise regular changes to quotas, and disciplining
26 and firing employees who do not meet its expectations.

27 41. The realistic expectations of the field “sales” positions require employees to
28 spend the majority of their overall work time performing non-exempt tasks associated with

1 gathering inventory from consignors who have already agreed to work with TRR. These non-
2 exempt tasks include pick-up, inventory data entry and packing, preparation of shipments to
3 warehouse, driving time incidental to conducting pick-up and shipments, and fielding and
4 resolving consignor complaints. Extremely minimal time, if any, is spent selling anything to
5 consignors while out in the field. The job duties of the field “sales” positions are such that all
6 or nearly all of the employee’s time in the field – outside of their workplace – is spent on non-
7 sales-related activities.

8 42. Moreover, since the onset of the COVID-19 pandemic, field “sales” workers
9 (e.g. Luxury Managers) have been engaged in even less field “sales” work. During the first
10 California stay-at-home period starting in March 2020, TRR “sales” employees performed all
11 of their work from either their homes or assigned company facilities. During the COVID-19
12 pandemic, there has been no workplace other than one’s home for those in the “sales”
13 organization.

14 43. In disregard of the realities of the job, TRR has uniformly deemed the field
15 “sales” positions to be categorically exempt from California’s overtime, meal and rest period,
16 and wage statement requirements. Defendant has knowingly and intentionally misclassified
17 Plaintiff and similarly situated employees in the “sales” organization to avoid paying overtime
18 for the significant number of hours that “sales” employees would have to work to meet
19 Defendant’s requirements.

20 44. TRR’s “sales” employees have regularly worked more than 8 hours per day
21 and/or 40 hours per week, but have not been paid any overtime wages. They have not been
22 provided with an off-duty meal period when working more than 5 hours per day and a second
23 off-duty meal period when working more than 10 hours per day. They have not been authorized
24 and permitted to take off-duty 10-minute rest periods for each 4 hours worked or major fraction
25 thereof. They have not been furnished with wage statements showing all hours worked each pay
26 period and applicable hourly pay rates.

27 45. By creating and maintaining a policy and practice of deliberately misclassifying
28 Plaintiff and other aggrieved employees as exempt, Defendant has deprived Plaintiff and

1 similarly situated employees of minimum wages, overtime wages, meal and rest breaks in
2 accordance with California law, and missed/non-compliant meal and rest break premium wages.
3 Defendant has also failed to provide compliant wage statements and failed to timely pay all
4 wages while employees remained employed and upon separation from employment.

5 **V. CLASS ACTION ALLEGATIONS**

6 46. Pursuant to California Code of Civil Procedure § 382 Plaintiff seeks to represent
7 the following Class:

8 All persons who have been, are or will be employed by THE REALREAL as a
9 nonsupervisory field sales professional in California and classified as exempt
10 from the date that is 4 years and 178 days before the filing of this action through
the date of class certification.¹

11 47. The Class is intended to include the field employees responsible for acquiring
12 goods from consignors, such as nonsupervisory Luxury Managers, Luxury Sales Associates or
13 Account Managers/Executives, or the functional equivalent however titled, whom TRR
14 classified as exempt.

15 48. Plaintiff also seeks to represent a further Former Employee Subclass consisting
16 of Class members whose employment by The RealReal terminated or terminates from one year
17 before the filing of this action through the date of class certification.

18 49. This action may properly be maintained as a class action pursuant to California
19 Code of Civil Procedure § 382 because the Class consists of numerous persons who share factual
20 and legal questions that are common, there is a well-defined community of interest in the
21 litigation, and the Class is manageable in that certification would produce substantial benefits
22 to both the litigants and the Court.

23 50. Numerosity. The Class is so numerous that joinder of all members is
24 impracticable. Plaintiff is informed and believes, and on that basis alleges, that there are over
25 100 individuals in the Class.

27 ¹ Statutes of limitation and repose for the causes of action herein were tolled from April 6, 2020
28 until October 1, 2020 pursuant to Emergency Rule 9 of the Judicial Council of California's
emergency rules related to the COVID-19 pandemic.

1 51. Typicality. Plaintiff's claims are typical of Class members' claims. Plaintiff, like
2 other Class members, was subjected to Defendants' policies and practices that violated
3 California law. Plaintiff was misclassified as exempt, not paid overtime wages, not provided
4 lawful meal and rest periods or paid premium wages in lieu of off-duty breaks, not provided
5 accurate and complete wage statements, and was subject to the same violations of the Labor
6 Code. Plaintiff's claims were and are typical of those of the Class members.

7 52. Adequacy. Plaintiff will fairly and adequately represent and protect the interests
8 of the Class members. Plaintiff's counsel are experienced in complex, employment class actions
9 and will fairly and adequately represent and protect the interests of the Class members.

10 53. Predominance. Common questions of law and fact exist as to members of the
11 Class that predominate over any individualized questions, including the following:

- 12 (a) Whether sales employees have been misclassified as exempt from California's overtime
13 and other wage and hour requirements;
- 14 (b) Whether Defendants have compensated Plaintiff and members of the Class for all hours
15 worked;
- 16 (c) Whether Defendants have provided Plaintiff and members of the Class meal and rest
17 periods as required by California law or have otherwise provided them with premium
18 wages;
- 19 (d) Whether Defendants have failed to pay Plaintiff and members of the Class all wages due
20 upon the end of their employment;
- 21 (e) Whether Defendants have provided Plaintiff and members of the Class accurate wage
22 statements showing all hours worked and all applicable hourly rates;
- 23 (f) Whether Defendants have engaged in unfair competition proscribed by the Business and
24 Professions Code by engaging in the conduct described herein above as to members of
25 the Class;
- 26 (g) The measure of restitution and damages to compensate Plaintiff and members of the
27 Class for the violations alleged herein;

28 54. Superiority. Class treatment would benefit the courts and Class members.

1 Certification of the Class would provide substantial benefits to the courts and Class members.
2 The damages suffered by individual Class members are relatively small compared to the
3 significant expense and burden of individual prosecution of this litigation. In addition, class
4 certification will obviate the need for unduly duplicative litigation which might result in
5 inconsistent judgments about Defendant's practices.

6 55. Proof of a common business practice or factual pattern, which Plaintiff
7 experienced and is representative of, will establish the right of each Class member to recovery
8 on the causes of action alleged herein.

9 56. Community of interest. Plaintiff and the Class share a community of interest in
10 the outcome of this action and the advancement of their rights under the California Labor Code.
11 Plaintiff is a member of the Class and does not have any conflict of interest with other Class
12 members.

13 57. The exact number and identity of the Class members are readily ascertainable
14 through inspection of TRR's business records.

15
16 **FIRST CAUSE OF ACTION**
Failure to Pay Overtime Wages
17 **(On behalf of the Class against All Defendants)**
(California Labor Code §§ 510, 1194 and 1199; Cal. Code Regs., tit. 8, §§ 11010, *et seq.*)

18 58. Plaintiff re-alleges and incorporates by reference the allegations contained in the
19 preceding paragraphs as though fully set forth herein.

20 59. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and
21 any work in excess of eight hours in one workday and any work in excess of 40 hours in any
22 one workweek must be compensated at a rate of no less than one and one-half times the regular
23 rate of pay for an employee. California law also requires that any compensation, including
24 commission and bonus, must be included in the regular rate of pay.

25 60. Defendants have had a consistent and uniform policy of failing to pay wages
26 and/or overtime to Plaintiff and the Class as a result of knowingly and deliberately
27 misclassifying them as exempt employees.

28 61. Plaintiff and the Class have been required to work on a regular and consistent

1 basis without receiving compensation for all hours worked at the premium overtime or double
2 time rate. Specifically, Plaintiff and the Class have not been paid at the proper overtime rates
3 when they work more than eight (8) hours in one day or forty (40) hours in one week, or more
4 than eight hours on their seventh consecutive day of work. Pursuant to Defendants'
5 compensation policies, Plaintiff and Class members have only been eligible for base and
6 incentive compensation determined without regard to their true on-duty hours.

7 62. By their policy of requiring Plaintiff and the Class to work in excess of eight (8)
8 hours in a workday and/or forty (40) hours in a workweek without compensating them at the
9 rate of one and one-half (1½) or double their regular rate of pay, Defendants have willfully
10 violated Labor Code §§ 510, 1194, 1194.2, and 1199.

11 63. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been
12 deprived of overtime wages in amounts to be determined at trial and are entitled to recovery of
13 such amounts, plus interest, penalties, attorneys' fees, and costs of suit.

14
15 **SECOND CAUSE OF ACTION**
16 **Failure to Provide Meal Periods**
17 **(On behalf of the Class against All Defendants)**
18 **(California Labor Code §§ 226.7(a), 512(a), 516; Cal. Code Regs., tit. 8, §§ 11010, et seq.)**

19 64. Plaintiff re-alleges and incorporates by reference the allegations contained in the
20 preceding paragraphs as though fully set forth herein.

21 65. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
22 compensation for each meal period the employer fails to provide. Employees are entitled to a
23 first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided
24 within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes
25 for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be
26 provided after no more than ten (10) hours of work. Section 11(A) of Wage Orders 1-2001 and
27 4-2001 and other potentially applicable Wage Orders reiterate the same mandates.

28 66. Defendants have failed to maintain a policy informing Plaintiff and the Class of
their ability to take meal periods consistent with these California laws.

67. Defendants have required Plaintiff and the Class to work over five (5) hours in

1 one day without being provided with a timely thirty (30) minute uninterrupted first meal break
2 and without being compensated one (1) hour of pay at the regular rate of compensation for each
3 workday that a meal period was not provided or provided after five (5) hours, all in violation of
4 California labor laws, regulations, and Industrial Welfare Commission Wage Orders.

5 68. Plaintiff and Class members have frequently worked shifts over ten (10) hours.

6 69. Plaintiff and all Class members have been forced by Defendants to work over
7 ten (10) hours in one day without being provided a second thirty (30) minute uninterrupted meal
8 break period(s) and without being compensated one (1) hour of pay at the regular rate of
9 compensation for each workday that a second meal period was not provided or provided after
10 ten (10) hours, all in violation of California labor laws, regulations, and Industrial Welfare
11 Commission Wage Orders.

12 70. Plaintiff and Class members are entitled to one (1) hour of pay at their regular
13 rate for each day during which any meal period was missed, late, shortened, or interrupted.
14 Defendants have failed to pay such wages.

15 71. Plaintiff and Class members have been deprived of their rightfully earned meal
16 period wages as a direct and proximate result of Defendants' policies and failure and refusal to
17 pay that compensation. Plaintiff and Class members are entitled to recover such amounts that
18 have been withheld including interest, penalties, and costs.

19
20 **THIRD CAUSE OF ACTION**

Failure to Provide Rest Periods

(On behalf of the Class against All Defendants)

(California Labor Code §§ 226.7, 516; Cal. Code Regs., tit. 8, §§ 11010, *et seq.*)

22 72. Plaintiff re-alleges and incorporates by reference the allegations contained in the
23 preceding paragraphs as though fully set forth herein.

24 73. Section 12(A) of Wage Orders 1-2001 and 4-2001 and other potentially
25 applicable Wage Orders provide that “[e]very employer shall authorize and permit all
26 employees to take rest periods, which insofar as practicable shall be in the middle of each work
27 period.” The authorized rest period time “shall be based on the total hours worked daily at the
28 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” During such

1 a rest period, the employee is to be relieved of all duty.

2 74. Defendants have failed to maintain a policy informing Plaintiff and the Class of
3 their ability to take rest periods consistent with these California laws.

4 75. Defendants have failed to provide rest periods of not less than ten (10) minutes
5 as required by the Labor Code and Wage Orders during the relevant time period.

6 76. Under the Wage Orders and Labor Code § 226.7, subdivision (b), Plaintiff and
7 Class members are entitled to one (1) hour of pay at their regular rate for each day during which
8 any rest period was missed, late, shortened, or interrupted. Defendants have failed to pay such
9 wages.

10 77. Plaintiff and Class members have been deprived of their rightfully earned rest
11 period wages as a direct and proximate result of Defendants' policies and failure and refusal to
12 pay that compensation. Plaintiff and Class members are entitled to recover such amounts that
13 have been withheld including interest, penalties, and costs.

14
15 **FOURTH CAUSE OF ACTION**
16 **Failure to Provide Accurate Wage Statements**
(On behalf of the Class against All Defendants)
(California Labor Code § 226)

17 78. Plaintiff re-alleges and incorporates by reference the allegations contained in the
18 preceding paragraphs as though fully set forth herein, and further alleges as follows:

19 79. Labor Code § 226 requires that Defendants provide Plaintiff and the Class
20 members with timely and accurate statements showing, inter alia, gross wages earned and total
21 hours worked, all applicable hourly rates in effect during the pay period, and the corresponding
22 number of hours worked at each hourly rate by the employee.

23 80. Defendants have knowingly and intentionally failed to provide Plaintiff and
24 Class members with wage statements accurately reflecting all hours worked, the corresponding
25 hourly pay rates, and the wages earned at each rate, in violation of Labor Code § 226(a) and (e).

26 81. Plaintiff and Class members have been harmed by, among other things, not
27 having accurate documentation to allow them to make a more precise calculation of their wages
28 owed or to prove their wage claims with more certainty. In order to determine their proper

1 earned wages Plaintiff and Class members must investigate other sources and conduct
2 mathematical calculations. The need to conduct such calculations is contrary to the requirements
3 of Labor Code § 226, subdivision (e).

4 82. Plaintiff and Class members have been injured and are entitled to all available
5 damages and penalties, costs, and reasonable attorneys' fees, including those provided in Labor
6 Code § 226, subdivision (e). Plaintiff also seeks an injunction pursuant to Labor Code § 226,
7 subdivision (g), to ensure compliance with the requirements of § 226 and to enjoin Defendants'
8 unlawful conduct.

9
10 **FIFTH CAUSE OF ACTION**
11 **Waiting Time Penalties**
12 **(On behalf of the Former Employee Subclass against All Defendants)**
13 **(California Labor Code §§ 201-203)**

14 83. Plaintiff re-alleges and incorporates by reference the allegations contained in the
15 preceding paragraphs as though fully set forth herein, and further alleges as follows:

16 84. California Labor Code section 203 provides that if an employer willfully fails to
17 pay, without abatement or reduction, in accordance with California Labor Code §§ 201, 201.5,
18 202, and 205.5, any wages of an employee who is discharged or who resigns, the wages of the
19 employee shall continue as a penalty from the due date thereof at the same rate until paid up to
20 a maximum of thirty (30) days.

21 85. Defendants had and continue to have a consistent and uniform policy, practice
22 and procedure of willfully failing to pay Class members, including Plaintiff, at the termination
23 of their employment their earned wages owed for all work performed, in violation of California
24 Labor Code §§ 201 and 202.

25 86. Numerous Class members are no longer still employed by Defendants in that
26 they were either discharged or resigned from Defendants' employ.

27 87. Defendants willfully failed to pay Class members who left their employ a sum
28 certain for earned wages, at the time of their termination or within seventy-two (72) hours of
their resignation. Defendants knew or should have known that wages were due, but nevertheless
failed to pay them.

1 88. Members of the Class who left Defendants' employ are entitled to penalties
2 pursuant to California Labor Code § 203, in the amount of each person's daily wage, multiplied
3 by thirty (30) days, plus interest thereon, attorneys' fees, and costs of suit.

4
5 **SIXTH CAUSE OF ACTION**
6 **Unfair Competition**
7 **(On behalf of the Class against All Defendants)**
8 **(Cal. Business & Professions Code § 17200, *et seq.*)**

9 89. Plaintiff re-alleges and incorporates by reference the allegations contained in the
10 preceding paragraphs as though fully set forth herein, and further alleges as follows:

11 90. The Unfair Competition Law ("UCL"), California Business & Professions Code
12 § 17200, *et seq.*, prohibits unfair competition in the form of any unlawful, unfair, or fraudulent
13 business acts or practices. The UCL provides that a Court may enjoin acts of unfair competition,
14 and order restitution to affected members of the public.

15 91. Since the start of the Class Period and continuing to the present, Defendants have
16 committed acts of unfair competition as defined by the UCL, by engaging in the unlawful and
17 unfair business practices and acts described in this Complaint, including, but not limited to:

- 18 (a) Failure to provide Plaintiff and members of the Class meal and rest periods
19 during which they were relieved of all duty, in violation of Labor Code §§ 226.7
20 and 512, and Wage Orders;
- 21 (b) Failure to pay overtime to Plaintiff and the Class in violation of Labor Code §§
22 510, 1194, 1194.2, and 1199 and Wage Orders.
- 23 (c) Failure to provide Plaintiff and members of the Class with accurate wage
24 statements showing all hours worked, the corresponding hourly rate, and wages
25 earned, in violation of California Labor Code § 226; and
- 26 (d) Failure to pay all accrued wages and other compensation due immediately to
27 each member of the Class who was terminated or within 72 hours to each
28 member of the Class who resigned, in violation of California Labor Code §§ 201
and 203.

92. The violations of these laws and regulations, as well as of the fundamental

1 California public policies protecting wages and safe and healthy working conditions underlying
2 them, serve as unlawful predicate acts and practices for purposes of the UCL.

3 93. The acts and practices described above constitute unfair, unlawful, and
4 fraudulent business practices, and unfair competition, within the meaning of the UCL. Among
5 other things, the acts and practices have taken from Plaintiff and the Class wages rightfully
6 earned by them, while enabling Defendants to gain an unfair competitive advantage over law-
7 abiding employers and competitors.

8 94. Business and Professions Code § 17203 provides that a court may make such
9 orders or judgments as may be necessary to prevent the use or employment by any person of
10 any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate
11 to prevent Defendants from repeating its unlawful, unfair and fraudulent business acts and
12 business practices alleged above. If Defendants are not enjoined from this conduct, they will
13 continue to engage in these unlawful practices. Monetary compensation alone will not afford
14 adequate and complete relief to Plaintiff and members of the Class because it is impossible to
15 determine the amount of damages that will compensate for Defendants' actions in the future if
16 such actions are not enjoined now. Thus, without injunctive relief, a multiplicity of actions will
17 result from Defendants' continuing conduct.

18 95. As a direct and proximate result of the aforementioned acts and practices,
19 Plaintiff and members of the Class have suffered a loss of money and property, in the form of
20 unpaid wages that are due and payable to them.

21 96. Business and Professions Code § 17203 provides that the Court may restore to
22 any person in interest any money or property that may have been acquired by means of such
23 unfair competition. Plaintiff and members of the Class are entitled to restitution pursuant to
24 Business and Professions Code § 17203 for all wages and payments unlawfully withheld from
25 employees since the start of the Class Period.

26 97. Business and Professions Code § 17202 provides: "Notwithstanding Section
27 3369 of the Civil Code, specific or preventive relief may be granted to enforce a penalty,
28 forfeiture, or penal law in a case of unfair competition." Plaintiff and members of the Class are

1 entitled to enforce all applicable penalty provisions of the Labor Code.

2 98. Plaintiff requests that the Court issue a preliminary and permanent injunction
3 requiring Defendants to advise all Class members of their rights pursuant to the California Labor
4 Code and Wage Orders, and to provide Plaintiff and members of the Class all applicable benefits
5 afforded by the Labor Code and Wage Orders, including but not limited to (a) payment of all
6 wages earned for all hours worked; (b) payment of all premium wages earned for improper meal
7 and rest periods; (c) provision of accurate wage statements; and (d) payment of all wages earned
8 upon termination of employment. Plaintiff's success in this action will enforce important rights
9 affecting the public interest and in that regard, Plaintiff sues on behalf of herself as well as others
10 similarly situated. Plaintiff and members of the Class seek and are entitled to unpaid wages,
11 declaratory and injunctive relief, and all other equitable remedies owing to them. Plaintiff herein
12 takes upon herself enforcement of these laws and lawful claims. There is a financial burden
13 involved in pursuing this action, the action is seeking to vindicate a public right, and it would
14 be against the interests of justice to penalize Plaintiff by forcing her to pay attorneys' fees from
15 the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure
16 § 1021.5 and otherwise.

17
18 **SEVENTH CAUSE OF ACTION**

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

20 99. Plaintiff incorporates by reference as though fully set forth herein the preceding
21 paragraphs of this Complaint.

22 100. Plaintiff and other current and former employees who were employed by
23 Defendant TRR during the applicable statutory period and suffered one or more of the Labor
24 Code violations set forth herein are "aggrieved employees" under the Private Attorneys General
25 Act ("PAGA"), Labor Code § 2698 *et seq.* Accordingly, Plaintiff seeks to recover civil penalties
26 on behalf of the State of California, herself and all other current and former aggrieved employees
27 of Defendant TRR, the civil penalties provided by PAGA, plus reasonable attorneys' fees and
28 costs.

1 101. Pursuant to Labor Code § 2699.3(a), prior to filing this Complaint, on May 10,
2 2022, Plaintiff gave written notice by certified mail to Defendant TRR and online to the Labor
3 & Workforce Development Agency (“LWDA”) of the factual and legal bases for the Labor
4 Code violations alleged in this Complaint. *See Exhibit A.* Plaintiff incorporates the contents of
5 Exhibit A by reference.

6 102. The LWDA assigned case number LWDA-CM-882968-22 and did not provide
7 notice of its intention to investigate Defendant TRR’s alleged violations within the requisite
8 period.

9 103. Defendant has not provided notice of an attempt to cure any violation that is
10 curable under PAGA. In addition, Plaintiff is informed and believe and alleges that the Labor
11 Code violations are in fact not cured and remain ongoing.

12 104. Plaintiff seeks civil penalties pursuant to PAGA on behalf of herself and other
13 aggrieved employees for violations of the following Labor Code provisions:

- 14 (1) Failure to provide statutorily compliant commission plans in violation of Labor
15 Code § 2751(a) and (b);
- 16 (2) Failure to pay overtime wages for all hours worked in violation of Labor Code §§
17 510, 516, 1194, 1197, 1197.1, and 1198 and the appropriate wage orders;
- 18 (3) Failure to provide meal and rest breaks and pay missed meal/rest break premiums
19 in violation of Labor Code §§ 226.7 and 512 and the appropriate wage orders;
- 20 (4) Failure to timely pay wages during employment in violation of Labor Code § 204;
- 21 (5) Failure to maintain and provide accurate itemized wage statements in violation of
22 Labor Code § 226;
- 23 (6) Failure to keep required records of work time in violation of Labor Code § 1174,
24 1198 and the appropriate wage orders;
- 25 (7) Misclassification of employees as exempt in violation of Labor Code § 515; and
- 26 (8) Failure to timely pay wages upon separation from employment pursuant to Labor
27 Code §§ 201-203.

28 105. Civil penalties recovered by Plaintiff and other aggrieved employees shall be

1 distributed seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the
2 aggrieved employees.

3 106. Plaintiff also seeks reasonable attorneys' fees and costs pursuant to California
4 Labor Code § 2699 and Code of Civil Procedure § 1021.5.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for the following relief for herself and all others on
7 whose behalf this suit is brought against Defendants, jointly and severally as follows:

- 8 a. An order certifying the proposed Class and appointing Plaintiff as Class
9 Representative and their Counsel as Class Counsel;
- 10 b. Upon the First Cause of Action, award of all overtime wages owed, and costs and
11 attorneys' fees pursuant to Labor Code § 218.5 and § 1194;
- 12 c. Upon the Second Cause of Action, award of all meal period wages owed, and costs;
- 13 d. Upon the Third Cause of Action, award of all rest period wages owed, and costs;
- 14 e. Upon the Fourth Cause of Action, award of damages or penalties pursuant to
15 California Labor Code § 226, and costs and attorneys' fees;
- 16 f. Upon the Fifth Cause of Action, award of waiting time penalties and for costs and
17 attorneys' fees pursuant to Labor Code § 218.5;
- 18 g. Upon the Sixth Cause of Action, award of restitution to Plaintiff and other similarly
19 affected members of the general public of all funds unlawfully acquired or retained
20 by Defendants, and costs and attorneys' fees pursuant to Code of Civil Procedure
21 § 1021.5; and time penalties and for costs and attorneys' fees pursuant to Labor
22 Code § 218.5;
- 23 h. Upon the Seventh Cause of Action, an award of civil penalties pursuant to PAGA
24 in an amount according to proof, with 75% of the penalties to be remitted to the
25 LWDA and 25% of the penalties to be remitted to Plaintiff and the aggrieved
26 employees, and for reasonable attorneys' fees and costs;
- 27 i. Entry of an injunction enjoining Defendants, their officers, agents and all those
28 acting in concert with them, from continuing the unlawful business practices


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alleged herein;

- j. Equitable accounting to identify, locate, and restore to all current and former employees the wages they are due, with interest thereon;
- k. On all causes of action, award of pre-judgment and post-judgment interest on all monetary amounts awarded in this action, as provided by law;
- l. On the First, Second, Third, and Sixth causes of action, pre-judgment and post-judgment interest from the date that the wages were due and payable in accordance with California Labor Code § 218.6;
- m. On all causes of action, award of attorneys’ fees and costs as provided by California Labor Code §§ 218.5, 226, 1194, 2699(g) and Code of Civil Procedure § 1021.5, and all other applicable statutes and law;
- n. All costs of suit as provided by the Labor Code, Code of Civil Procedure, and all other applicable law; and
- o. Any other relief the Court deems just and proper.

DATED: June 24, 2022

VALERIAN LAW, P.C.

By: 

Xinying Valerian
Attorneys for Plaintiff and the Proposed
Class

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial of all issues, claims, and causes of action so triable.

DATED: June 24, 2022

VALERIAN LAW, P.C.


By: 
Xinying Valerian
Attorneys for Plaintiff and the Proposed
Class

Exhibit A

VALERIAN LAW, PC

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Albany, CA 94707
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Xinying Valerian
(510) 567-4630 Direct
xinying@valerian.law

May 10, 2022

VIA ONLINE FILING

Labor and Workforce Development Agency
Department of Industrial Relations

**Re: Private Attorney General Act--Notice of Labor Code and Wage Order
Violations Committed by The RealReal, Inc.**

Dear Labor and Workforce Development Agency:

This is a notification letter, pursuant to the Private Attorney General Act, California Labor Code § 2698 *et seq.* (“PAGA”), concerning violations of the Labor Code and the applicable IWC Wage Order committed by The RealReal, Inc. (“TRR” or “Defendant”). The undersigned counsel submits this letter on behalf of aggrieved employee Stephanie Dougal (“Dougal” or “Plaintiff”) to inform the LWDA and Defendant of Dougal’s intention to pursue a PAGA action on behalf of the State of California for Labor Code violations, occurring between one year before the date of this letter and continuing to the date of judgment (the “PAGA Period”), experienced by aggrieved employees of Defendant in California. The aggrieved employees include all persons employed by Defendant within its so-called sales organization or the functional equivalent, however titled, and all employees whose method of compensation included commissions (the “Aggrieved Employees”).¹

I. The Parties

The RealReal, Inc. is a Delaware Corporation with its principal place of business in San Francisco, California that is in the business of reselling consigned luxury goods throughout the United States. It is principally an online retailer of such goods, but also operates brick-and-mortar retail stores in major cities around the country. TRR’s business model relied on Aggrieved Employees to ensure that it had “a sufficient amount of new and recurring supply of pre-owned luxury goods.” (June 27, 2019 Prospectus filed with the Securities and Exchange Commission, p. 13.)

Dougal is a California resident who worked for Defendant as a “Luxury Manager” in Orange County, California from on or about June 2021 to March 2022. The primary responsibility of a “Luxury Manager” was to obtain luxury products from consignors. The “Luxury Manager” was part of Defendant’s so-called salesforce with job duties consisting

¹ The job titles of Aggrieved Employees include, among other things, Luxury Manager, Luxury Account Manager, Luxury Client Manager, Luxury Sales Associate, Business Development Representative, Inside Sales Account Executive, Luxury Specialist, Sales Account Executive, Sales Account Manager, and Sales Manager.

of making outbound calls to consignor leads from one's home office, attending appointments with consignors that were scheduled by other parts of the salesforce for the purpose of picking up products (called the "White Glove" service), inventorying and shipping products picked up at consignors' homes, and arranging for UPS or other methods of transferring products from consignors to TRR warehouses. The primary goal of the Luxury Manager, as well as other "sales" employees, was to meet numeric quotas for the value and quantity of products sourced from consignors, and according to TRR, their incentive compensation (commissions and bonuses) would vary depending on their performance compared to their quotas.

Aggrieved Employees were not responsible for the reselling of consigned products in the retail business of TRR. Aggrieved Employees were not responsible directly or indirectly in matching specific consignors and their products with specific retailer consumers.

II. Defendant's Violations of the Labor Code

A. Violations of Labor Code § 2751(a) through Noncompliant Commission Plan

Labor Code § 2751(a) provides:

Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

Defendant systematically violates Labor Code § 2751(a) in two ways. One, its commission plans provided to Aggrieved Employees fail to set forth the method by which commissions shall be computed and paid. Two, Defendant fails to provide the entire commission plan before the employee begins rendering services for which the contemplated method of payment involves commissions.

Throughout the PAGA Period, Defendant has paid Plaintiff and other Aggrieved Employees on a commission basis and required each Aggrieved Employee to agree to a written commission plan. At TRR, the "Commission Plan" consists of a master document and a Monthly Quota document. The Monthly Quota document is issued every month and is required to be signed by the employee electronically. In violation of Labor Code § 2751(a), Aggrieved Employee's written commission plans omit the method by which Aggrieved Employee's commissions are computed and paid. Specifically, Aggrieved Employee's written commission plans fail to set forth or disclose how Defendant will calculate commissions. Instead, the commission plans direct Aggrieved Employees to ask their management for a calculation tool to help them project their commissions. Even when the Monthly Quota letters are issued and therefore become part of the Commission Plan,

Defendant's commission plan fails to set forth the computation method.

Defendant's second way of violating Labor Code § 2751(a) is through its failure to timely provide commission plans to Plaintiff and Aggrieved Employees. Specifically, the Monthly Quota is a material component of the Commission Plan, but is not provided to employees before, or at the start of, their employment in a commissioned job.

The Legislature's purpose in enacting Section 2751 was to provide protections to employees whose compensation includes commissions, and who are thus vulnerable to manipulations and obfuscations regarding how they will be compensated for their work. *See Lett v. Paymentech, Inc.*, 81 F.Supp.2d 992, 994 (N.D. Cal. 1999). Defendant's failure to provide a written contract containing the method of computation of commissions before Aggrieved Employees commence work defies the fundamental purpose of Section 2751. Plaintiff Dougal is personally aggrieved by the above-described violations.

B. Violations of Labor Code § 2751(b) through Noncompliant Commission Plan

Labor Code § 2751(b) provides in pertinent part:

The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee.

The "signed copy" requirement in this provision means the company must provide a copy of the contract signed by the company's representative, and the "signed receipt" refers to the requirement that the employer obtain the employee's signature signifying receipt and agreement to the contract.

Defendant's commission plans did not comply with these statutory requirements, because Defendant did not provide a "signed copy" of any commission contract to Aggrieved Employees. Instead, it was Defendant's policy and practice to obtain only the employee's signature, a "signed receipt" to the master document called a Commission Plan and to each Monthly Quota letter. Because no company representative signed commission contracts on behalf of Defendant, Defendant failed to provide "a signed copy" of commission contracts to Aggrieved Employees as required by Labor Code § 2751(b).

Plaintiff Dougal is personally aggrieved by the above-described violations. Plaintiff was required to sign a Commission Plan during her onboarding into the company, and she was required to sign Monthly Quota letters, but at no time did Defendant provide a signature of an authorized representative on a commission agreement.

C. Violations of Labor Code §§ 510, 512, 515 – 516, 1194, 1197, 1197.1, 226.7, 204, 226, 1174, 201-203, 1198 and Industrial Welfare Commission Wage Orders Through Misclassification of Employees as Exempt

Defendant has intentionally and willfully misclassified nonsupervisory Aggrieved Employees in its so-called sales organization as exempt from overtime and other wage and hour protections. Plaintiff is personally aggrieved by the misclassification-based violations alleged herein.

Defendant has had a consistent policy of requiring such employees to work more than eight hours per day or more than forty hours per week without payment overtime compensation; failing to pay a minimum wage for all hours worked; failing to provide timely, off-duty meal and rest periods of the statutorily required duration; failing to pay premium wages for meal and rest periods that were not provided or that were noncompliant; failing to maintain accurate records of the start and end of work periods and meal periods; failing to furnish accurate itemized wage statements reflecting hours worked, corresponding pay rate(s), and gross wages earned; failing to pay all wages in a timely biweekly or semimonthly schedule while employees remained employed; and failing to timely pay all wages owed upon separation from employment.

Defendant has knowingly deprived nonsupervisory Aggrieved Employees of such protections while requiring them to work excess hours in pursuit of ever-changing “sales” quotas that were consistently unattainable. Sales quotas were mainly driven by the number and retail value of the products that Aggrieved Employees were involved in sourcing from consignors. TRR constantly increased the quotas for number of product units and unit values, as often as monthly, to drive Aggrieved Employees to obtain more and more supply. A relatively small component of quotas, applicable to some but not all Aggrieved employees, was a quota for signing up new consignors. The nature of the business and TRR’s explicit expectations required Aggrieved Employees to work significant overtime, such as evenings and weekends, to try to meet quotas and to accommodate the preferences of the consignors. For example, Business Development reps could place White Glove consignor appointments in Plaintiff’s calendar anytime between 8 am and 6 pm. Plaintiff herself was expected to schedule at-home pickups or curbside pickups without regard to business hours, and to be responsive to consignor clients at all hours.

Nonsupervisory Aggrieved Employees were paid a base salary and incentive compensation for performing primarily non-exempt job functions in order to maintain the supply of luxury goods that Defendant sold at retail. Their job duties and compensation were such that no existing exemption in California law applies.

Business Development and Inside Sales employees fail to qualify for the inside commissioned sales employee exemption by virtue of their uniformly low commission compensation failing to meet legal thresholds. Business Development and Inside Sales employees also fail to qualify for the administrative and professional exemption work because their jobs involved practically no independent judgment or discretion, they supervised no one and were themselves subject to regular and consistent supervision, and they did not meet the minimum base salary requirement for such exemption.

Luxury Managers and other nonsupervisory “field sales” employees fail to qualify

for the above exemptions by virtue of their low base salaries and low commissions, and they also do not qualify for the outside salesperson exemption because by the very design of their jobs the vast majority of their work had nothing to do with being in the field selling any of TRR's products or services. Instead, the vast bulk of their work consisted of inventorying, delivery and other non-exempt work duties occurring in their home offices, at UPS stores, and at customer's homes. Such duties were divorced from the alleged sales work of convincing prospective consignors to sign up with TRR. A smaller portion of their work consisted of inside sales work, such as making cold calls to leads, occurring in home offices and using TRR's digital collaboration platforms (Salesforce sales management software, company email). As such, Luxury Managers, while "remote," were closely supervised when working in their home offices on sales calls to leads and when performing such sales calls were functionally no different than Inside Sales or Business Development representatives who were working either remotely from home or in TRR's offices.

As a result of the misclassification policies and practices alleged above, Defendant has deprived Plaintiff and other Aggrieved Employees of their rightful compensation and perpetuated substandard labor conditions and dodged their obligations to pay earned wages and waiting time penalties in a timely manner, and are thus liable for civil penalties.

III. Conclusion

As a result of the past, present and ongoing violations pled herein, Plaintiff Dougal provides this notice to the LWDA and Defendant pursuant to California Labor Code § 2699.3. Dougal intends to recover civil penalties for all violations of the Labor Code applicable to Aggrieved Employees during the PAGA Period.

Regards,



Xinying Valerian, Esq.

Service List

Via Certified Mail:

The RealReal, Inc.
c/o CT Corporation System
330 N. Brand Blvd Ste 700
Glendale, CA 91203