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ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

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By: Angela Linhares,
Deputy Clerk

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF ALAMEDA**

9 **UNLIMITED JURISDICTION**

10 MELISSA MORRIS, individually and on
11 behalf of aggrieved employees and the
State of California,

12 **Plaintiffs,**

13 v.

14 THE REALREAL, INC. and DOES 1
15 through 10, inclusive,

16 **Defendants.**

Case No. **23CV025851**

**PRIVATE ATTORNEYS GENERAL ACT
COMPLAINT**

DEMAND FOR JURY TRIAL

1 **I. INTRODUCTION**

2 1. Plaintiff Melissa Morris brings this action against Defendant The RealReal, Inc.
3 (“Defendant,” “The RealReal,” or “TRR”) on behalf of herself, aggrieved employees, and the
4 State of California under the Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et*
5 *seq.*

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

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

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

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

25 **II. PARTIES**

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

1 7. Defendant The RealReal, Inc. (NASDAQ: REAL) is a Delaware corporation
2 headquartered in San Francisco, California. The RealReal is a luxury consignment retailer that
3 operates online and through brick-and-mortar retail locations. Its website claims, “We make
4 consigning effortless with free in-home pickup, drop-off service, virtual appointments and direct
5 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)
6 [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
7 May 25, 2022.)

8 8. At all relevant times, Defendant TRR was the “employer” of Plaintiff and was
9 or is the “employer” of other aggrieved employees within the meaning of all applicable
10 California laws and statutes.

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

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

21 11. Plaintiff is informed and believes and thereon alleges that at all times herein
22 mentioned Defendants and each of the Doe defendants are Plaintiff’s and aggrieved employees’
23 employer(s), and/or agents, servants, employees, partners, joint venturers, alter egos, aiders and
24 abettors, and/or co-conspirators of one or more of their co-defendants, and, in committing the
25 acts alleged herein, were or are acting within the course and scope of said agency, employment,
26 partnership, joint venture, and/or conspiracy, or were or are aiding and abetting their co-
27 defendants. Plaintiff is informed and believes and thereon alleges Defendants and each of the
28 Doe defendants are legally responsible for all of the unlawful conduct, policies, practices, acts

1 and omissions as described in this Complaint.

2 **III. JURISDICTION AND VENUE**

3 12. This court has jurisdiction over this action pursuant to Code of Civil Procedure
4 § 410.10. This action seeks monetary relief exceeding the minimal jurisdiction limits of the
5 Superior Court of California. The damages, penalties and other monetary relief will be
6 established according to proof at trial.

7 13. Venue is proper in Alameda County under Code of Civil Procedure section 393,
8 subdivision (a) and section 395.5. TRR employs some of the aggrieved employees in Alameda
9 County, and TRR committed some of the violations of Labor Code section 2751 for which
10 Plaintiff seeks penalties in Alameda County. Accordingly, TRR’s “liability” (§ 395.5), and
11 “some part of the cause” (§ 393), arose in Alameda County. (*See Crestwood Behavioral Health,*
12 *Inc. v. Sup.Ct. (Fragoza)* (2021) 60 Cal.App.5th 1069, 1075-77.)

13 **IV. FACTUAL ALLEGATIONS**

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

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

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

1 Executive, Sales Account Manager, and Sales Manager.

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

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

9 **A. TRR’S VIOLATIONS OF LABOR CODE § 2751**

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

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

23 21. TRR has systematically violated Labor Code § 2751(a)’s mandate that a written
24 commission contract set forth the method by which commissions shall be computed and paid,
25 in two ways. First, its commission plans fail to set forth the method by which commissions shall
26 be computed and paid. Second, it fails to provide the entire commission plan before the
27 employee begins rendering services for which the contemplated method of payment involves
28 commissions.

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

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

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

22 25. TRR has systematically violated Labor Code § 2751(b) by failing to give
23 commissioned employees a copy of their commission contract that has been signed by a
24 company representative. Instead, it has been TRR’s policy and practice to obtain only the
25 employee’s signature (i.e. “a signed receipt”) on its commission contracts. Because no company
26 representative signs commission contracts on behalf of TRR, Defendant has failed to provide
27 “a signed copy” of commission contracts to aggrieved employees as required by Labor Code §
28 2751(b).

DEMAND FOR JURY TRIAL

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

DATED: January 17, 2023

VALERIAN LAW, P.C.

By: 
Xinying Valerian

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Exhibit A

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October 28, 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 Melissa Morris (“Morris” or “Plaintiff”) to inform the LWDA and Defendant of Morris’ 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

It is not Plaintiff’s intention to pursue civil penalties for the violations arising from exempt misclassification pled in the Complaint of *Jennifer Leighton v. The RealReal, Inc.*, Case No. 21STCV11208 in the Superior Court in the County of Los Angeles. Plaintiff intends to pursue the misclassification-based violations that are not adjudicated in the *Leighton* representative action.

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

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.

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.)

Morris is a California resident who worked for Defendant as a “Luxury Manager” in California from approximately January 2021 to July 2022. The primary responsibility of a “Luxury Manager” was to obtain luxury products from consignors for TRR to sell to end users. The “Luxury Manager” was part of Defendant’s so-called salesforce with job duties consisting 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 for 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 Employees' written commission plans omit the method by which Aggrieved Employees' commissions are computed and paid. Specifically, Aggrieved Employees' 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 Morris 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 Morris 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.

III. Conclusion

As a result of the past, present and ongoing violations pled herein, Plaintiff Morris provides this notice to the LWDA and Defendant pursuant to California Labor Code § 2699.3. Morris 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